FULFILLING OUR PROMISES
TO THE MEN AND WOMEN WHO SERVED

NONPROFIT ADVISOR

For DAV Departments and Chapters

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EVENTS:

Balancing The Risks and Rewards

With summer approaching and Department conventions in full swing, we want to touch upon some legal considerations to keep in mind when Departments and Chapters plan for and host various events throughout the year. Events may serve many purposes, including promoting camaraderie, educating the public, providing a sense of community and in some cases raising funds. Events may even take place on social media. For instance, the ALS Ice Bucket Challenge was a tremendous event in ALS Association's history, raising $115 million in the summer of 2014. While hosting events results in many benefits, it also exposes the Departments and Chapters to certain risks. In many cases, the risks are unavoidable. It is important to perform a risk analysis and to take steps to protect the organization, or at least limit potential exposure. This article outlines some items to take into account as you are planning your next event.

1. PROTECT THE ORGANIZATION

In cases where Departments and Chapters are planning events that involve a gathering of people or activity (golf tournament), make sure to protect the organization by considering the following items.

a. Permits

Obtain any special permits required. Bear in mind that many cities, towns, or districts have local ordinances, which may mandate permits or licenses. Event planners need to investigate these issues well in advance of the date of the activity. We would suggest contacting your local council/governing body for more information.

b. Insurance

Confirm the Department or Chapter has sufficient insurance, which should cover any medical problems that occur during the event as well as damage to the surrounding property.

c. Release of Liability Forms

Consider having the participants execute a release of liability form in order to protect the organization. A release of liability is a written, legal agreement between two parties – the person promising not to sue (Releasor) – and the company who is potentially liable (Releasee). You will hear such forms also referred to as waivers or exculpatory agreements. However, before moving forward, it is important for you to know your state's law on this topic. The enforcement of release of liability agreements is very state-specific. Some are lenient, but many states have very strict requirements on the enforcement of such agreements. Your state may even disallow waivers entirely. A majority of states strictly construe release of liability agreements against the party seeking to enforce them. This means such agreements must be clear, unambiguous and not overly broad in scope. For example, most states will enforce an agreement that

releases an organization from liability for negligence, but not for acts of gross negligence,[1] reckless conduct, willful/wanton conduct, or intentional acts.

Furthermore, a waiver does not automatically prevent an individual from filing a lawsuit against an organization. Instead, in most cases, the waiver of liability operates as a defense an organization may raise in the litigation. A judge, and in some cases a jury, will decide if the agreement is enforceable. For these reasons, we would recommend you consult with an attorney in your area.

2. CONTRACT FOR MUTUAL RISK SHARING

Vendor contracts are commonplace risks in event planning. What if presented with a contract with the following provision: "We can't let our customers terminate for poor performance. If we did that, we could go broke after several months of truly bad performance." Would you move forward with this agreement? Of course not. While this is an extreme example, many vendor contracts are at times predatory in nature and littered with boilerplate language. To boot, vendors will often present contracts for signature, and the signer will execute the agreement without first reading the terms and conditions. As you can imagine, this is a recipe for potential disaster.

So how to prevent against this? Have someone review the contract in its entirety. We understand it may not be possible or practicable to pay for review by outside legal counsel. As a rule of thumb, advocate for mutual risk sharing. "Mutuality" refers to obligations or conditions that should apply to BOTH parties (vendor and purchaser). Of particular note, make sure indemnification, termination and cancellation penalties clauses are mutual. If a vendor refuses to make a provision identical for both sides without providing a compelling explanation, consider finding another vendor.

In sum, avoid risking it all in event planning. Instead keep it **PC** by 1) Protecting the organization and 2) Contracting for mutual risk sharing.

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