

HOW TO AVOID LIABILITY RISKS WHEN RENTING FACILITIES TO OUTSIDE USER GROUPS

by Kenneth A. Hall

Churches and charitable organizations receive numerous requests for use of their building facilities and premises by a wide variety of outside groups, including other congregations, charities, community and sports associations, service clubs, boys and girls clubs, self-help groups, day cares, play groups, home educators, music schools and teachers, concert promoters and wedding parties. These outside groups often want to use the classroom space, the kitchen, the fellowship hall, or the gymnasium for

- meetings
- birthdays
- anniversaries
- receptions
- sports
- recreational activities

Sometimes members and adherents want to use the facilities for their own personal activities, celebrations, or events. Your organization's decision to allow access to your facilities by outside parties, or for personal use, can be for a variety of reasons. Often it is simply recognition of the fact that your premises are unused for much of the week, with the exception of Sunday services and mid-week family nights. Rentals to outside user groups can also make a great deal of sense from a financial point of view as a source of additional revenue. The mandate of Christian charities



to reach out to their surrounding community can be well served by supporting other compatible ministries through free use, or below fair market value rental cost, of their facilities. Many charities also seek to raise their community profile and promote their ministries by encouraging activities and events that bring individuals onto their premises that might not otherwise darken the door of a church on Sundays!

However, the choice to allow the use of your charitable property by outside parties can come at a very high price! Following are some real-life claims examples of what can go

wrong when outside user groups or individuals lack the financial resources or proper insurance protection to address the potential property damage or bodily injuries resulting from their negligence or the lack of proper supervision and care by their employees, volunteers, and participants for their activities and events on your premises:

- A member of an alcohol recovery group meeting in a church basement arrived at a weekly support meeting in an inebriated state, fell down a flight of stairs, suffered a serious hip injury, and sued the host church and its trustees. The church did

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not sponsor or supervise the activity, but was named as defendant in the resulting lawsuit because the recovery group had no assets and was uninsured.

- Supervisors of a non-profit community association renting a church gymnasium for an inner-city youth event failed to check the premises carefully following the event. After the building was locked, several unidentified youth came out of hiding, stole valuable sound equipment, and caused over \$80,000 of malicious vandalism damage. The host church was stuck with a major insurance claim because of a lack of care and supervision by the uninsured association.
- A newly-formed congregation renting the premises of another church erected a temporary banner to promote an upcoming event. Without the knowledge of the host church, the sign was tethered by cables overhanging and pegged into the seam between the municipal sidewalk and curb at the front of the property. Later the same morning, a cyclist hit the cable and was thrown headfirst over the handlebars, striking her head on the concrete and suffering serious and permanent injuries. The lawyer representing the injured party discovered that the tenant congregation had no assets and no liability protection and therefore directed the resulting lawsuit against the host church as the “deep pocket” source of recovery for civil damages.



- A mother dropping off her child early one morning at a private day care operated on a church premises slipped and fell on an icy sidewalk. The church did not have insurance requirements in place or any formal agreement with the day care over who was responsible for salting and snow removal during the day care hours of operations. As a result, the church and its board members were sued.

- A child bystander was struck in the eye and seriously injured by a stick being swung by another child during a game of piñata at a private birthday party being held in a church gymnasium. The church and board members were sued as defendant parties in the resulting lawsuit.

Hiring **uninsured** contractors, roofers, other sub-trades, and maintenance services (landscaping, snow removal, janitorial, etc.) to do work on your premises can also create significant unwanted liability risks for your organization arising out of their negligence:



- A roofing contractor’s employees replacing a church torch-on roof failed to keep a long enough fire watch to check for hot spots with an infrared gun and ensure there were no flare ups. After leaving the job site too early, a fire ensued, resulting in a \$2,700,000 total building loss. It left the church with a substantial claim on their insurance record because of the roofer’s negligence and no opportunity to subrogate and recover damages from the roofing company, as it had few assets and no liability insurance to cover property damage.

All of these examples share a common theme: an outside party (or a member needing space for a personal event) uses the facilities without contractual legal responsibility and/or liability insurance to cover their own negligence, leaving the host organization and its leaders “holding the bag” for damages or injury. So how do Christian charities responsibly promote the use of their facilities without unnecessarily risking their own legal liability, assets, and future insurability?

The answer lies in properly differentiating the activities taking place on your property and transferring legal and insurance responsibility where necessary:

1. **DIFFERENTIATE** between activities, ministries, and events taking place on your premises that are “within” the umbrella of your own operations and those that are operated, sponsored, and/or supervised by outside individuals, groups, and businesses, or are personal use.

Sometimes the line between sponsored activities and outside or personal activities is fuzzy, but here's a good rule of thumb to make the distinction:

Is the event, activity, or occupancy:

- a. Within your organization's charitable and religious objects and purposes?
- b. Advancing your organization's ministries and work - not personal use?
- c. Supervised and operated by your organization's own staff and volunteer leaders?
- d. Formally sponsored and approved by your organization's leadership?

Activities meeting **ALL** of these criteria are clearly within the scope of your organization's sponsored operations. However, if it is a new activity, it's always advisable to check with your insurance agent or broker to confirm proper coverage and obtain valuable risk management resources to keep your staff, members, and guests safe.

2. TRANSFER legal and insurance responsibility for any outside or personal activities, ministries, and events that do not meet the above criteria. This transfer of risk fulfills the stewardship and charitable trust responsibilities of your leaders for the preservation and efficient use of your property and resources for your organization's charitable objects.

Here are some useful insurance tips to allow access for the safe use of your building and property for non-sponsored, outside or personal activities and events:

- a. Develop formal property use guidelines for the rental or use of your facilities by outside parties, or for personal use. Prohibit activities that present an unreasonable risk of harm of bodily injury or property damage, or that are in contravention of your organization's objects, statement of faith, and lifestyle expectations. This will strengthen your position to refuse undesirable property use requests and avoid making decisions that are arbitrary, inconsistent, or discriminatory.
- b. For any proposed use of your facilities by outside parties or for personal activities, there should be a mandatory rental or occupancy agreement in place which spells out the following requirements:
 - (i) A waiver of legal liability against your organization by the group or individual using your facilities, along with their undertaking to indemnify your organization for any legal liability arising out of bodily injury or property damage caused by their negligence.



- (ii) An agreement by any outside party or private individual renting, using, or working on your premises (including third party contractors doing construction, repairs, or maintenance) to furnish your organization with a Certificate of Liability Insurance in advance of their activity confirming coverage for their operations on your premises and naming your organization as Additional Insured for any legal liability arising out of their negligence. For most activities and events, we recommend a minimum General Liability and Tenants Legal Liability coverage limit of \$2,000,000. Higher limits may be appropriate in certain circumstances. "Participants" coverage should also be required if the activity involves sports or recreational activities, including gym rentals and use of outside playgrounds or playing fields.

THE SOLUTION:

For use of your premises by other churches or registered Christian charities that are uninsured, have them contact an insurance agent, broker, or Robertson Hall Insurance directly to obtain their own liability insurance policy.

For other groups or individuals, we recommend they inquire into the coverage available through specialty insurance providers such as PAL Insurance, DUUO Insurance, and Front Row Insurance, or check with their personal insurance broker or agent for options they may have available such as Premier Canada's group event liability program, or through their own Homeowner's, Condo, or Tenant's Package policy.

CONCLUSION It is important for leaders of Christian charities to fully understand the potential risks associated with the use of their charitable property by outside parties, or for personal use, and to implement formal property use guidelines, agreements, and liability insurance requirements. Responsible stewardship means striking the right balance between promoting access to your facilities for the benefit of your community and avoiding the risk of unnecessarily placing your assets, resources, and future insurability on the line because of the negligence of others. ■