

KEEPING THE RISK WHERE IT BELONGS

Charities and the Rental of their Facilities: An Insurance Perspective

By Kenneth A. Hall

Christian charitable organizations receive requests for use of their building facilities and properties by a wide variety of groups, organizations, businesses and individuals. These requests come from other church congregations and charities, community and sports associations, service clubs, boy's and girl's clubs, self-help groups, day cares, play groups, home educators, music schools, concert promoters, wedding parties and groups or individuals who simply want to use the gymnasium facilities for sports and recreation.

Your organization's decision to allow use of your premises by outside parties can be motivated by a variety of reasons. Often it is simply the recognition that your property may be underutilized for much of the week. This is especially true of many church buildings that are unused except for Sundays and mid-week family or youth 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 for charities struggling to balance budgets, or to expand their own programs. 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 of their facilities. Many charities also seek to raise their community profile and promote their ministries by encouraging activities and events that bring individuals on to their premises who might not otherwise darken the door of a church on Sunday!

However the choice to allow the use of your charitable property by outside parties can come at a very high price and following are some real life examples of what can go wrong when outside user groups lack the financial resources or proper insurance protection to address the damage or injuries resulting from the negligent actions or lack of proper supervision by their employees, volunteers and participants 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 not sponsor or supervise the activity, but was named as defendant in the resulting lawsuit because the recovery group had no assets and were 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 and 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 put up 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 using the sidewalk collided with the cables and in the resulting accident was thrown headfirst over the handlebars, striking her head on the concrete and suffered serious and permanent injuries. The lawyer representing the injured party discovered that the tenant congregation had no assets and no liability protection and focused the resulting lawsuit against the host church as the "deep pocket" source of recovery for civil damages.

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 and insurance issues in the event of property damage or bodily injury due to their negligence on the job site....

- ❖ 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 multi-million dollar total building loss. It left the church with a substantial claim on their insurance record because of the roofer's negligence and no realistic opportunity to subrogate and recover damages from the roofing company as it had few assets and no insurance.

All of these examples share one thing in common...an outside party whose lack of financial resources and insurance coverage for their own negligence left the host organization and its leaders “holding the bag” for damages and 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 “keeping the risk where it belongs” by following two simple rules

(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. Sometimes the line between sponsored activities and “outside” activities is fuzzy, but here’s a good rule of thumb to make the distinction:

Is the event, ministry, activity or occupancy...

- (a) Within your organization’s charitable and religious objects and purposes?
- (a) Recognized, approved and sponsored under the authority of your organization’s governing body?
- (b) Supervised and operated by your organization’s own staff and volunteers?
- (c) Composed of participants who are members, adherents, employees, guests or clients of your organization?

Activities meeting ALL of these criteria are clearly within the scope of your organization’s sponsored operations but it is always advisable to check with your insurance agent or broker regarding ok and risk management recommendations under your policy.

(2) Transfer legal and insurance responsibility for any activities, ministries and events not meeting all of these criteria to outside individuals, organizations or businesses using your premises. This transfer of risk fulfills the stewardship responsibilities of your organization’s leaders through the preservation and efficient use of your property and resources for the rightful purpose they were intended.

Here are some useful insurance tips to allow for use of your building and property for non-sponsored activities:

- (i) Develop formal property use guidelines for the rental or use of your facilities by outside parties and prohibit activities that present an unreasonable risk of harm or that are in contravention of your organization’s objects, statement of faith or lifestyle expectations. This

will strengthen your ability to refuse undesirable property use requests and avoid making decisions that are arbitrary, inconsistent or discriminatory.

- (ii) For any proposed use of your facilities by outside parties or for non-sponsored activities, there should be a mandatory rental or occupancy agreement which spells out the following requirements:

- (i) A waiver of legal liability against your organization by the tenant/occupant and their undertaking to indemnify your organization for any legal liability arising out of bodily injury or property damage caused by the tenant/occupant’s negligence.

- (ii) An agreement by any outside party 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 confirming coverage for their operations on your premises and naming your organization as additional insured for any legal liability arising out of the negligence of the outside party. We recommend a minimum General and Tenants Legal Liability coverage limit of \$2,000,000, but higher amounts may be appropriate in certain circumstances.

Please note that it is not acceptable or advisable to add coverage for outside parties to your policy as any resulting law suit and claim will still affect your organization’s legal liability, coverage and future insurability. For use of your property by outside individuals conducting weddings, receptions, family reunions, etc., we strongly recommend that they provide you with proof that they have obtained a party alcohol liability policy if the event is to be licensed and/or serve alcoholic beverages.

Conclusion

It is important for the leaders of Christian charities to fully understand the risk associated with the use of their charitable property by outside parties and to implement effective property use guidelines and insurance requirements. Responsible stewardship by charities in the rental of their facilities means striking the right balance between promoting Christian ministry opportunities in their community and avoiding unnecessarily placing the organization’s assets, resources and future insurability at risk because of the negligence of others.