

LIABILITY ISSUES FOR THE MASTER GARDENER

We face risk and potential liability issues everyday. Almost everything you do, say, or own in this day and age carries some risk. Anyone can sue anyone for an action that causes injury (even indirectly); for providing incorrect advice that results in a detrimental result to their person or property; or for an injury or accident that happens on their property. MGs can be sued for things they do and/or recommend to Extension's clientele when acting as an Extension volunteer. If MGs are found to have been negligent when doing so, the MGs can be held legally responsible for damages.

Liability Coverage Provided by UW Extension

The State of Wisconsin self-insures its employees and volunteers who are deemed to be "agents of the state" against liability lawsuits. Wisconsin Master Gardeners (certified, interns, or inactive members working to become active again) are deemed "agents of the state" and are covered by State of Wisconsin liability insurance (offered through UW-Extension) if they meet these criteria:

- The volunteer provides a service that is in the public good for which nothing of monetary value is received.
- The volunteer is under the control of a State of Wisconsin employee in a manner comparable to a paid employee (selected, trained, supervised and can be relieved of responsibilities).
- The volunteer is listed on local or state member records.

If a MG's actions are legally contested, the Wisconsin State Attorney General's office makes the final determination if the MG meets these criteria. If the determination is positive, state law requires UW-Extension to provide for legal representation and to assume responsibility for any financial damages that are awarded. UW-Extension does not provide insurance that covers injury or damage incurred by participants at a MG event.

Liability Coverage by Provided The Good Samaritan Law

Wisconsin has a "Good Samaritan" law under which any person who gives first aid or emergency assistance at the scene of an accident in good faith cannot be liable for providing emergency care. The "Good Samaritan" law, in the opinion of a UW System attorney, would not apply to Master Gardeners in their normal activities as horticultural educators. This law is intended to limit liability in emergency life saving situations in accordance with the skill and preparation the "volunteer" possessed.

There are other civil liability exemptions that may cover Master Gardeners in specific situations (for example, see 895.51, "Food donation," or 895.52, "Recreational activities," available online at <http://www.legis.state.wi.us/statutes/99Stat0895.pdf> or through the Wisconsin Statutes database at http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=153613&infobase=stats.nfo&softpage=Browse_Frame_Pg) but there does not appear to be any general exemptions to protect the individuals during their activities with volunteer organizations.

Additional Coverage

This leaves individual MGs and local associations open to a certain amount of risk, particularly when hosting an event open to the public. The best way to protect yourself

is to be prepared! This may include instituting certain procedures at events and/or purchasing supplemental insurance. Probably nothing will ever happen, but if it does, you'll be sure to be covered.

Individual Insurance

For garden tours, every homeowner is liable for anything that happens on their property – which can be a major disincentive for homeowners to agree to participate. These homeowners are having "visitors", so if they have a broken step and someone trips on it, the individual homeowners policy would be the first line of insurance¹. However, if someone was injured because of the negligence of the MGs (for example, the registration table in a dangerous place causing someone to fall off a step, or failure to control traffic, etc.) the Extension policy would come into play because the MGs, during the tour, are acting as volunteers (although the plaintiff's attorneys would probably try to recover from the individual MGs'/insurance policies). Anyone participating in such an event should check with their own homeowner's insurance to see if they are covered in the event of a lawsuit, since each insurance company or individual policy might be different.

Supplemental Insurance Purchased by the Local Association

The MG association itself can also purchase supplemental insurance, either on an annual basis to cover all activities throughout the year, or single event coverage. In some cases single event policies can cost almost as much as an annual policy, so it would be a good idea to compare costs for various strategies. The membership can decide if there should be an extra policy to cover anything that may not be covered by the individual homeowners' insurance and the Extension insurance. An extra insurance policy probably it is not necessary, but only you can decide your risk "comfort" level!

The St. Croix Valley MGs obtained an annual insurance policy (for \$188) rather than a special events policy. This liability insurance (up to \$1 million/incident, 2 incidents/year) would cover injuries to third parties in any of their activities, allaying homeowners concerns. They felt that this was a small price to pay to make MGs feel comfortable that should anything happen, there is some kind of coverage – which will encourage more active participation. 4-H in most counties gets annual accident insurance for each of their participants (children) and additional liability insurance (up to \$1million) to cover their trained leaders. They also get special event insurance - for example, at the fair.

Many MG groups in other states have obtained inexpensive special event insurance through American Income Life Insurance Co. (<http://www.ailins.com/main/default.htm>; 317-849-5545). They have a special

¹ Medical accidents that are not due to negligence are the responsibility of the injured health provider first. If there is negligence (loose step, shovel left on the ground, etc.) then it goes to homeowner's insurance first. There is a no fault section of homeowner policies that deals with these not due to negligence, but most people don't want to file a claim if possible so that their rates won't be increased. If the injured person's health insurance still won't deal with it, the two insurance companies discuss it. Small claims are likely to be paid by the homeowners, bigger ones contested in court.

camp and 4-H department, with insurance for college and University programs, including field trips, etc.

Other Precautions

• Create a list of participants

An extra precaution is creating a list of participants for each event or location. A "sign-in" or guest book (requesting a name and city they live in) at each of the gardens is not only useful for tracking how many guests visit each garden, but also provides a list of "participants." Should a catastrophic injury to a visitor occur during the tour, this would provide a record of attendance to defend the position that the injured person was clumsy and negligent; for example, if 600 people walked over a particular step and only 1 tripped, then the MGs were probably not at fault. (And unrelated to the liability issue, this list could also be useful in planning publicity for the next year.)

• Develop an event "Activity Plan"

Prior to each local Master Gardener Association event develop an outline which describes the activities included in the event. An outline needs a complete listing of all educational opportunities/activities. The educational opportunities/activities component should compose 51% or more of the total for association to be considered to be acting as "agents of the state" and therefore to be eligible for the possibility of UW Extension liability coverage. In the total event description, a listing of other non-educational activities (e.g., plant sale, craft sale, lunch, etc.) need to be identified and described.

Example:

Event Title:	Annual Spring Plant Sale
Non- Educational Activities:	Sale of plants
Educational Activities:	<ol style="list-style-type: none">1. Plant identification via labels and pictures.2. Sharing the cultural management of the sale plants, including watering, light, fertilization, repotting, pest management, stress symptoms, and other growing considerations.3. Establish a climate for shoppers to ask Master Gardeners and vendors general horticulture questions.4. Educational displays/posters, e.g., Gypsy Moth, Soil Testing, Oak Wilt, etc.5. Inquiry booths: Plant Doctor or Ask the expert.