Chapter 16

Risk Management

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Law is pervasive in every management function. Selected legal concepts are incorporated into the various chapters (see, e.g., enabling legislation in chapter 2; property acquisition in chapter 8; maintenance in chapter 9; equity in employment in chapter 13; and law enforcement in chapter 17). This chapter focuses upon negligence law and related liabilities.

In this chapter, as well as all others with legal information, the intent is to provide practical information and general legal concepts applicable to park and recreation organizations and not to furnish legal advice. State law varies, especially in the field of negligence, so always check with an attorney in your state when seeking specific legal advice. Most of the risk transfer strategies require the assistance of legal counsel. Some academic curricula offer a separate course in legal aspects. The basic legal concepts set forth in this chapter should be further explained and detailed in such course. This is an overview only.

Risk management is a part of the everyday business of park and recreation agencies, associations, and business enterprises, not unlike customer service, maintenance, personnel, and marketing. The process of managing risk need not be daunting, overwhelmingly difficult, or complex. However, it is an ongoing process requiring time and commitment from top management and all employees of the organization.

What risks are being managed?

Risk managers generally define risk as the possibility of suffering harm from a hazard that can cause personal injury, death, property damage, economic loss, or environmental damage. Essentially there are two types—risk of financial loss to the agency, association, or business enterprise, and risk of injury to participants, users, visitors, clientele, volunteers, or employees.

The emphasis of this chapter is on risks associated with possible injury to participants, how to reduce their frequency and severity, and how to minimize related financial loss. Reducing the frequency of accidents and severity of injuries is a shared responsibility between participants and park and recreation organizations. Although negligence law may make providers accountable for injuries, it has not made them absolute insurers of participant safety. Negligence law requires providers to act with reasonable care and prudence to prevent unreasonable risks of harm to participants. Correspondingly, participants must exercise reasonable care and foresight to avoid known circumstances, hazards, and situations that pose risks of harm. Risk management does not seek to eliminate all risk within an organization, but provides a framework for balancing and understanding the risks inherent within the programs and services of the organization and for empowering staff to make good choices in dealing with those risks. The basic principles outlined apply to federal, state, and local public agencies, as well as to private for-profit enterprises and nonprofit associations.

What is risk management?

Risk management is a process with three phases: (a) risk identification and assessment, (b) risk response strategies, or what to do about the risks, and (c) management to reduce the frequency and severity of the risks through an operational plan. These three phases, together
with pertinent legal concepts, are detailed in this chapter and are depicted in exhibit 16-1.

In the risk assessment phase, the various types of hazards associated with park and recreation services are identified and categorized. A hazard is an activity, event, or condition that poses a possibility (risk) of harm to persons or property. For example, failing to install or repair a safety feature on a piece of recreation equipment may result in a hazard to a participant. There is no specific method for risk identification that suits all entities; the method and tools used will vary according to the nature and extent of the operation. What is important, however, is that a systematic procedure be established to assure total assessment in order to avoid unexpected losses. Risk analysis should utilize any organization management information database, and include identification of risks and estimation of the extent of the risks.

Phase two, risk response strategies, covers the various approaches to control the activity risks and techniques to finance the risk. Risk control approaches include avoidance, reduction, and transfer, while risk financing techniques include retention in the provider's budget and transfer to a third party, such as indemnification or insurance. Organizations should identify alternate approaches for the control of risks and the expected impact of each. Management must select an approach to address the risks identified and assessed in phase one, and set forth related policies.

The management phase addresses formulation of an operational plan to implement and monitor the approaches selected. It details the organization's policies and procedures, which should be set out in a risk management manual.

Who should engage in risk management?

All organizations, regardless of size or type, should have a current risk management plan. For small organizations, the plan need not be complex, but it must be thorough and cover the range of programs, services, and facilities, including special events and partnership programs. For larger organizations with a greater scope, scale, and diversity of facilities, services, and programs, the plan must reflect this complexity. The plan should be tailored to accommodate the structure and style of each provider. There is no standard model plan that can apply to all organizations. Some of the basic principles are given in this chapter.

Why risk management?

Risk management adds "value" to an operation in four dimensions:

- **Enhances participant experiences.** The quality of customers' experiences increases, especially when providing for safety, and less fear of risk provides greater freedom for participation. The participant experience deteriorates in direct relation to the extent to which he or she is exposed to unreasonable risks for injury. Safety of participants should be a paramount goal of all organizations. The National Safety Council suggests that 85 percent of all accidents are preventable. Also, the safer a program is, the more the stature and public image of the organization is enhanced in the community.

- **Provides good stewardship of assets.** Financial, physical, and human resources are protected and conserved by good risk management practices which reduce liability exposures. Further, risk management determines the most cost-effective operational strategies not only to reduce the frequency and severity of its potential liabilities, but also to finance them.

- **Forestalls problems, including legal actions.** Risk management forestalls problems, and helps an organization have a better prepared defense if it is sued. A risk management program should deal with the legal risks in a way that protects the provider and those who serve it from undue liability exposure.

- **Encourages professional practices.** Risk management embodies excellent professional practices, which result in a more effective and efficient operation. It also increases employee and volunteer
Exhibit 16-1
Stages in the Risk Management Process

IDENTIFICATION
- Types
  - Fort
  - Contract
  - Property
  - Business
  - Human Rights
- Parties
  - Agency
  - Board
  - Employes
  - Volunteers
- Hazards
  - Environmental
  - Infrastructure
  - Programmatic
  - Emergency
  - Transportation

ASSESSMENT
- Probability
  - High
  - Low
- Severity
  - Fatal
  - Severe
  - Major
  - Minor
  - Law
- Financial
  - Catastrophic
  - Critical
  - Moderate
  - Minimal

ADOPTION
- Acceptance
  - Board
  - Director
  - Staff
  - Volunteers
- Evaluation
  - Activity
  - Results

RISK RESPONSE STRATEGIES
- Avoid
- Reduce
  - Inspect
  - Ware
  - Remove
  - Repair
- Transfer
  - Leasing
  - Contractors
  - Waivers
  - Insurance
Who facilitates risk management?

The size, type, and complexity of a park and recreation organization dictates the internal process for preparing and implementing risk management. However, whatever the nature of the organization, there should be a risk manager, an organization risk management team, and supportive policymakers and administrators.

Risk manager. There should be an employee with risk management responsibility and the authority to carry out the policies established for risk management. It is essential to assign responsibility for this vital act so that the function of risk management receives the credibility and organization-wide acceptance it warrants and needs. It must not be perceived only as insurance purchase.

The risk manager must be given authority to carry out policies and procedures, both with employees and with the administration. The risk manager works closely with the business officer of the organization in facilitating the financial approaches determined to be most appropriate, and works with the administrators and supervisors of the programs and services in obtaining essential employee performance as related to reduction of programmatic risks.

The structure and size of the organization will determine whether the risk manager doubles as financial officer, recreation director, the enterprise manager, or the like, or has no other responsibilities. Particularly larger organizations and businesses, or agencies that are part of a large parent organization (such as a city), may have staff devoted exclusively to risk management, under which the parks and recreation unit works. In others, it may be an adjunct responsibility of a business manager, safety officer, administrator, or other staff member. Whatever the arrangement, someone in the organization should be identified as the lead person responsible for developing and implementing a risk management plan. It is essential that the tasks of a risk manager be assigned specifically to one person. This is not to imply that risk management is a one-person job, but that one person should be the leader of a team effort to reduce and manage risk.

“Everyone’s responsibility is no one’s responsibility!”

Further, the risk manager should not be merely a safety director with a more sophisticated title. Safety is not the only concern of the position—there also are the financial risk management aspects and the issue of compliance with personnel and environmental requirements. However, a safety director or specialist might work under the risk manager or in a small operation, both functions might be given to the same person.

Most Tort Claims Acts provide that public entities may participate in joint risk management with other public agencies, such as municipalities, schools, or counties. An inter-organization joint risk management system may be formed, which has a management team with representation from each member municipality or district, as well as its own management personnel, which will establish, implement, and monitor procedures to reduce the current level of losses. However, each individual agency still must have its own designated risk manager.

Risk management team. While one person may be given specific responsibilities for administering a risk management program, no person should be expected to facilitate the program alone. The risk manager should recruit a multidisciplinary team, including legal counsel, insurance providers, safety specialists, and program, maintenance, and financial staff. Together they should examine risk issues, consider options for controlling risks, contribute to the risk management plan, and serve as a catalyst for action.

The risk management team should review all aspects of organizational policies, operations, and procedures that impinge on the organization’s risks. Typically the team would be expected to:

- Recommend goals and objectives for adoption by the policy body
- Guide management in setting risk management policy
- Establish channels of communication on all matters related to risk management
- Examine all critical risks
- Develop strategies for controlling losses

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- Provide training of employees related to risk management.
- Monitor implementation
- Evaluate risk management efforts and options

The initial preparation of a plan takes very extensive work to detail phase one and determine approaches of phase two; however, thereafter, the task is to continuously monitor the program and review the changing environment, current concerns, and the organization’s circumstances and capabilities regarding the approach to risks and implementation.

Policymaker and administrative support. Risk management requires policy and administrative support to ensure proper funding and implementation. Three key points:
- Risk management goals and objectives should be adopted as a guide to the planning and implementation process. See exhibit 16-2.
- Risk management is an ongoing process that does not end with preparing a plan. Continued staff and financial support is necessary. The plan must be a dynamic document reflecting the shifting demands, needs, and capabilities of the organization.
- The governing authority must adopt a policy statement endorsing risk management and, as needed, adopt policies prerequisite to certain risk management decisions.

PHASE I:
RISK IDENTIFICATION AND ASSESSMENT

This phase of risk analysis has two steps: identification of the risks, and assessment of their nature.

Step 1. Identification of Risks

Risk identification is crucial, since it is not possible to manage and mitigate risks without an awareness of the nature of the risks. The risk management team should identify as many risks as it can. There are three ways that might be used to have more complete coverage: legal-based; classes of loss; hazards, typology, and parties at risk.

Legal-based classes of losses

Just as each park and recreation organization is unique, so too is the spectrum of legal losses faced. While some providers may have predomi-

Exhibit 16-2
Goal/Objective Statements

Goal:
To develop a risk management plan that seeks to provide the safest environment for all park visitors, while maintaining the essential natural and recreation character of the park.

Objectives:
- To establish a risk management team by (specify month).
- To inform all employees of the program and to develop a process to solicit their input.
- To provide an annual training program on safety inspections for employees and volunteers and to ensure that all employees and volunteers attend the program at least once every three years.
gate areas, roads, and trails. Although the improper design, layout, and construction of areas and facilities can pose a hazard to users, infrastructure hazards more often arise from improper inspection or maintenance, making safely designed or constructed facilities defective and dangerous. (See chapter 9 for more information about maintenance and inspection.) The more common risks result from such conditions as:

- Slippery/uneven surfaces
- Stairs/steps not in good condition
- Protrusions/sharp edges
- Moving parts
- Overhead objects
- Design/layout defects
- Fences/layout defects

Programmatic hazards. If not organized and conducted properly, programs can put participants at risk for injury. Hazards can result from failure to:

- Properly supervise based on location, competency, and number of supervisors, or the nature of their supervision
- Develop and enforce safety rules
- Properly train supervisors and instructors
- Adequately instruct
- Ascertain participant fitness
- Furnish proper safety devices and equipment
- Select appropriate activity for age, experience, and ability
- Warn

Emergency care hazards. Park and recreation organizations have a legal duty to provide emergency care and first aid to visitors and program participants. Many factors influence the type of care to be rendered, including the nature and location of the program or facility, the attributes of users, expectations regarding range of injuries associated with programs or facilities and proximity to medical facilities. Some of the more common bases for negligence claims include failure to:

- Provide prompt aid
-Employ trained personnel
- Properly supervise or equip personnel rendering aid
- Provide appropriate treatment
- Transport injured persons appropriately

Transportation hazards. A number of recreation programs require participant transportation. This poses additional hazards to program sponsors. Liability can be avoided only when no transportation is provided. However, risks can be managed and liability reduced if transportation hazards are identified and minimized. Hazards associated with transporting participants include failure to:

- Use the appropriate type of vehicle
- Properly maintain vehicle
- Determine if the driver has a proper license
- Train and supervise driver
- Have a policy regarding participants being drivers

Parties at risk

While the focus is often on organization risk, it is important to recognize that other parties (board members, employees, volunteers) who are involved in providing park and recreation services also are subject to varying degrees of risk (liability) while engaged in their respective duties. Many lawsuits are brought against all possible parties, including employees and volunteers, even though they may have limited ability to pay substantial damage awards. However, the individual parties-at-risk, when acting within their scope of authority and responsibility if found liable, usually are indemnified by the organization. The risk management plan should consider the respective interests of all at-risk parties when forming risk management strategies.

The Park and Recreation Entity

General rule: The park and recreation entity, whether a public agency, nonprofit association, or for-profit enterprise, is liable for the negligent acts of its
board members, employees, volunteers, and agents unless liability protection is extended by state law. Under the doctrine of respondeat superior (let the superior respond) and the law of agency, liability is imputed to the entity providing the park and recreation services.

Immunity. Immunity is when an entity is not liable for its acts, usually acts of ordinary negligence. For example, if a child is injured on a playground because proper supervision is lacking and the city offering the playground program is in a state that provides immunity to cities for recreation, the city would not be liable for the damages (injury) to that child.

Immunity is normally conferred by statute. There is very little common law immunity today, such as governmental immunity for schools and municipalities, which, prior to the 1960s, many states had. Common law is law established by court precedence, not legislators. Almost all states now have a Tort Claims Act, which sets forth the liability and immunity of public agencies—state, county, municipal, and schools. In a few states there is liability only to the extent of the insurance coverage.

Each state’s law is slightly different; there is no model law. However, most states provide immunity for discretionary acts and liability for dangerous environmental conditions, such as buildings. A discretionary act is one that embodies policy/planning and decision making. The entity and the policy-making board members have immunity for injury resulting from their policy making. In the late 1990s, depending on the nature of the state’s Tort Claims Act, there has been increasing application of discretionary act immunity to administrative policy decisions at all levels of government to further protect governmental entities.

The doctrine of charitable immunity is primarily a judicial doctrine (i.e., decreed by case law, rather than by statute). And, just like municipalities, most charitable organizations in the mid-1950s were protected by charitable immunity. This immunity was based on the concept that these associations held the donations from the people in public trust and therefore the money should not be used to pay for liability. However, by the mid-1990s only one state, Arkansas, had general charitable immunity, but this was being questioned. In a few states, there are remnants of immunity, although the extent of immunity may be only to certain types of claims, to a specified dollar amount, or to insurance coverage. As of fall 1998, Alabama, Colorado, Georgia, Maine, Maryland, Massachusetts, New Jersey, South Carolina, Tennessee, Texas, Virginia, and Wyoming offered limited liability protection for qualifying associations.

State recreational user statutes. To encourage private landowners to make their land available to the public for noncommercial recreation use, all but one state (North Carolina, whose statute relates only to trails) have enacted statutes limiting landowner liability for injuries suffered by the recreation user. These statutes do not provide immunity to the landowner, but rather reduce the standard of care required toward the user. Whereas the recreation user is usually classified as an invitee, licensee, or trespasser, under these statutes, a fourth classification has been established, the “recreational user,” with its own standard of care. In effect, the statutes provide significantly greater liability protection for the landowner than is available at common law. A landowner is under no duty to:

- Inspect the property to discover hidden dangers
- Warn the recreation user of hidden dangers, except known ultrahazardous conditions
- Keep the property reasonably safe for use
- Provide assurances of safety to the recreation user

While landowners have very little liability risk exposure to gratuitous recreation users, they still have some obligations. Landowners must avoid injuring the recreation user through gross negligence or willful and malicious misconduct. Willful and malicious misconduct is when the landowner’s conduct is intentional and in total disregard of a known and obvious risk, making it highly probably that harm to the user will follow. It is conduct that shows an utter indifference to, or conscious disregard for, the safety of others; for example, if a landowner stretches (perhaps at “neck level”) a wire, cable, or rope across a trail where motorbikes or snowmobiles are ridden.
Gross negligence is the failure to exercise even that care which a careless person would use, falling just short of reckless disregard of consequences. It differs from ordinary negligence only in degree, not in kind, and is of an aggravated character as distinguished from the mere failure to exercise ordinary care which is the standard of ordinary negligence.

To qualify for protection under the recreational user statutes, the landowner is precluded from receiving "consideration," or something of value. That is, the use must be gratuitous; no economic benefit can be derived from the recreational use. However, the definition of "consideration" varies from state to state. Some states have changed their law (or interpretation) to "no fee for the use of the premises," and then have declared that the "fee" is not for use of premises but for a service such as parking or rental of a canoe or raft.

While the original target of the statutes was private landowners, and they strictly applied to outdoor recreation on natural lands and waters, some states have extended application to state and local public lands and waters. In all states, the statutes have been applicable to federal lands, because under the Federal Tort Claims Act, the federal government is to be treated as "a private individual."

Further, in the late 1990s, a limited number of states have also encompassed "urban" recreation on outdoor areas, such as sports. The "consideration" question is again at issue as to whether a sport registration or entry fee is "consideration," or merely defraying the costs for maintenance, officials, and incidental expenses.

Shared responsibility statutes. In order to provide more recreation opportunities for people, especially the so-called risk or adventure/challenge activities, with a reduced fear of liability by the provider, many states have enacted statutes which share the responsibility for injury between the provider of the facility and the participant engaged in the activity. Essentially, the provider is liable for negligence related to the facility that causes injury, while the participant bears responsibility for knowing how to engage in the activity. This applies to the recreational use of a facility, not to instructional classes. A few states, such as California and Illinois, have a law entitled "Hazardous Recreation Activities" that gives protection to both the public entity and public employees. These statutes encompass a broad range of outdoor activities.

Most statutes are activity specific and apply to all sectors — public, nonprofit, and private for-profit. For example, nearly one-half of the states have a ski responsibility law, defining the operators' duties and the skiers' responsibilities.

In general, when participants have knowledge and understanding of an activity, they assume the inherent risks, that is, those integral to an activity, without which the activity would not exist. For example, if one is playing soccer, one must expect to get kicked in the shins once in a while, stumble when running, or perhaps receive a face or head injury when attempting to head a ball. It is the nature of the sport.

Comparative fault statutes. Nearly all states now have comparative fault statutes, wherein the negligence of the provider is compared to the contributory fault (referred to as secondary assumption of risk) of the participant. Any monetary award to the injured participant is reduced by the percentage to which that participant was "at fault." In about one-half of the states, if the contribution of the injured (plaintiff) is 50 percent or more, then the injured receives nothing. The jury determines percentage of fault attributed to the provider (defendant) and the injured (plaintiff). The manager must keep excellent records in order to be able to prove the contribution of the participant to his or her own injury, and thereby endeavor to document that the injured plaintiff did in fact contribute a percentage of fault toward the injury.

Board Members

General rule: Board members are not individually liable for the collective actions of the board or for the tortious acts of organization employees. However, board members can be individually liable for:

- Those collective acts of the board or those individual acts of board members that are outside their legal scope of authority
- Breaches of statutory and/or fiduciary duty or violation of participant/employee Constitutional rights
• Intentional torts, such as assault and battery, slander, or libel

**Employees**

**General rule:** Employees, including administrators and supervisors, are individually liable for their own tortious misconduct; however, administrators and supervisors are not liable for the tortious acts of their subordinate employees.

Managers and supervisors are liable for their own negligence and the failure to carry out their own supervisory or administrative responsibilities, which might enhance a subordinate’s likelihood of being negligent. For example:

- Failing to employ competent personnel
- Failing to train employees properly
- Failing to provide proper supervision
- Failing to establish and enforce safety rules
- Failing to staff adequately
- Failing to warn of, remedy, or remove defective and dangerous equipment
- Failing to follow the standards of a reasonable professional as related to a specific program, activity, or service
- Failing to properly facilitate maintenance, after notice of dangerous conditions (see chapter 9)
- Deliberate disregard when complaints are made of sexual harassment or child abuse by an employee (see chapter 13)
- Negligent hire, that is, failure to do proper background checks for an applicant’s propensity for violence (see chapter 13)

The immunity afforded public entities under the Tort Claims Acts, for the most part, does not give protection to public employees. A few states have sought to extend limited immunity protection to governmental employees. However, most tort claims acts do authorize indemnification of employees, particularly through carrying insurance. In some situations there is “qualified immunity” and “absolute immunity” because of the nature of the task being performed by the employee. This is particularly applicable to law-enforcement personnel and some administrative or supervisory responsibilities.

A few states may provide some damage limitations for employees of nonprofit associations. In Texas, for example, the Charitable Immunity and Liability Act limits an employee’s liability to $500,000 in damages for each person, $1,000,000 for each single occurrence of bodily injury or death, and $100,000 for property damage. Employee liability is not limited for intentional torts (assault, battery, false arrest), willful and wanton misconduct, gross negligence, or for acts committed beyond the scope of employment.

**Volunteers**

**General rule:** Volunteers of public, nonprofit, and private for-profit organizations are liable for their own tortious misconduct, unless they can qualify under the federal Volunteer Protection Act or a state statute, and such negligence is imputed to the corporate entity under the doctrine of respondeat superior.

More than one-half of the states have protection laws for volunteers in nonprofit associations. Of these, ten specifically reference youth sport, including both coaches and officials. A few of these youth sport laws have the completion of a training course prerequisite to the protection. New Jersey has one of the most extensive laws in this regard. The laws protect volunteers from civil liability for certain acts or omissions resulting in death, damage, or injury if the volunteer was acting in good faith and in the course and scope of his or her duties. Protection is only for ordinary negligence; the individual remains fully liable for any gross negligence, willful and wanton misconduct, or intentional tort. The laws usually do not cover injuries due to motor vehicle accidents. Usually the laws provide that volunteers may accept expenses to cover their services, but not any honorarium.

In 1997, the Federal Volunteer Protection Act [P.L. 105-19, 11 Stat. 218] was passed. It is very similar to the state laws, but covers volunteers of both governmental entities and nonprofit associations.

Notwithstanding protective legislation, most agencies and associations provide indemnification or insurance coverage. The difference
between indemnification and insurance coverage should be noted. When an individual is indemnified, the organization pays the judgment (award) after the award has been made; when an employee or volunteer is covered by insurance, the insurance carrier defends the suit from its initial filing, which is of considerable benefit to individual employees or volunteers, who otherwise would have to secure their own lawyer to defend themselves. Individuals at risk may carry their own professional insurance. A number of national organizations make this available at a nominal cost, such as NRPA, AAHPERD, state teacher education associations, and some associations for specific sports.

Step 2.
Assessment of Risks

After the risks have been identified (step 1), they must be evaluated by the risk management team as to (a) “risk probability,” or frequency of occurrence, and (b) “consequence severity,” or the severity of injury to participants and the financial impact on the organization. Since no two risks are alike, they must each be evaluated individually. For example, statistics suggest that there are far more accidents and injuries on playgrounds than at swimming pools. The severity of playground injuries, however, is often less than at pools. There are basically three sources of data on which to base the assessment of probability and consequence.

Organizational data. An organization should have an information or documentation system as part of its risk management plan. It can then access its own data about the frequency and severity of risks in order to develop a risk profile for the organization. Incident and accident reports are very important and should be used to develop hazard profiles for facilities and programs. (See Phase III, Adoption and Facilitation, in this chapter.)

Staff assessment. Staff with experience in particular facilities and programs can exercise their own judgment in estimating probabilities and consequences in order to evaluate agency risks. This is particularly useful when frequency and severity are low, when there is not much data available, or when an activity or service is new to the organization. Staff should be utilized to gather both qualitative and quantitative data. Of course, the risk management team will have excellent insights into risk assessment. In addition to the profiles, the risk management team should rank the risks, assigning priorities.

National and similar organization data. When one does not have an experience record with a particular program, facility, or service, then, if available, national data may be used, or one may consult with professional colleagues who manage similar programs, facilities, or services.

Risk probability (frequency)

Probability reflects how frequently a risk occurs. Many organizations rate risks as high, medium, or low. This represents a simple way to characterize and understand risks. See exhibit 16-3.

The three categories of frequency could be further delineated by using a point scale, for example, a three- or five-point scale. Regardless of the scale used, the comparative frequency designation should reflect sound judgment based on the best available data.

Consequence severity

To determine how severe the consequences could be, one must consider both the severity of the injury as related to the participant, and its financial impact on the organization. It can be useful to express injury and financial severity also on a scale. The scale for injury severity usually ranges from fatal to low. See exhibit 16-4. User injuries may financially affect the provider and its ability to function. The more severe the participant’s injury, the more profound the financial consequences for the provider tend to be. See exhibit 16-5.

Using the ratings for the various risks on the three scales (e.g., low-low-minimal), the risk management team can prioritize the risks.

Phase II:
Risk Response Strategies

Once the risk management team has identified the risks and determined the probabil-
### Exhibit 16-3
Injury Frequency Scale

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Future incidents are expected recurrently, more or less on a routine basis. For some risks, these might be yearly, monthly, or weekly in occurrence.</td>
</tr>
<tr>
<td>Medium</td>
<td>Occurrences are infrequent or will seldom happen—they could be described as occurring more often than desirable.</td>
</tr>
<tr>
<td>Low</td>
<td>Incidents will be unusual and unexpected, but not impossible.</td>
</tr>
</tbody>
</table>

### Exhibit 16-4
Injury Severity Scale

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatal</td>
<td>One or more deaths possible.</td>
</tr>
<tr>
<td>Severe</td>
<td>Injuries to one or more persons, extensive hospitalization required, permanent disability, disfigurement, or loss of bodily functions; injuries may be life-threatening.</td>
</tr>
<tr>
<td>Major</td>
<td>Substantial injuries, though non-life-threatening, temporary disability and/or loss of bodily function; hospitalization required.</td>
</tr>
<tr>
<td>Minor</td>
<td>Injuries that require first aid, or minimal hospitalization, short-term discomfort, no permanent damage.</td>
</tr>
<tr>
<td>Low</td>
<td>Incidents requiring no first aid.</td>
</tr>
</tbody>
</table>

### Risk Control Strategies

There are three basic strategies available to the park and recreation organization: avoidance, reduction, and transfer. The risk management team must use subjective appraisal and exercise professional judgment to select risk control strategies. The attributes of the organization, its mission, and its financial status must be matched with the type, frequency, and severity of risk exposures.

**Risk avoidance**

One way to manage certain risks is to avoid them. Although the laws sometimes require agencies to offer certain services with which come certain risks, for the most part, organizations choose what risks they assume. For example, a park department may be required by law to own and manage land, but the activities and services offered on the land are at the discretion of the park department. Likewise, if a nursing home, whether public or private, wants certain state funding, and to qualify it must hire

### Exhibit 16-5
Financial Consequences Scale

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catastrophic</td>
<td>Losses that require major tax or fee increases; private enterprise would declare bankruptcy.</td>
</tr>
<tr>
<td>Critical</td>
<td>Losses that would require major service cutbacks, reorganization, facility closings, major program cancellations.</td>
</tr>
<tr>
<td>Moderate</td>
<td>Temporary service reductions, minor tax increases, or financial reallocation.</td>
</tr>
<tr>
<td>Minimal</td>
<td>Losses can be absorbed with current operation revenues. No program reductions.</td>
</tr>
</tbody>
</table>
an activity director and offer recreation, then it must offer recreation activities, but the choice of activities offered is discretionary.

There are two forms of avoidance. The first form is not offering an activity or service. For example, many public recreation agencies do not offer challenge/adventure activities because, they say, of the high liability risk. The second form of avoidance is discontinuing a particular activity or service because the risk in terms of frequency and severity is deemed too great. For example, trampolines were removed from schools, and certain types of playground equipment were removed from playgrounds when the school or agency could not afford the type of surfacing recommended by the Consumer Product Safety Commission (CPSC) standards.

When considering avoidance, park and recreation providers should use a benefit/harm test. Under this test, the question is whether the amount of social harm that is done plus the cost of transferring the risk is greater than the benefit derived from the facility, program, or services.

**Risk reduction**

This strategy seeks to reduce both the frequency and the severity of a risk. For example, frequency may be reduced by risk prevention, such as installing a railing on a stairway, or severity may be reduced by providing timely first aid to someone who falls on the steps.

**Areas and facilities.** Organizations can practice area and facility risk prevention and reduction by:

- Anticipating the occurrence of “risky” activities
- Inspecting areas and facilities to discover hidden defects and hazards
- Warning users of hidden risks once they are discovered
- Instituting timely repairs of hidden defects
- Removing facilities or equipment from service if repairs cannot be made in a timely manner

These are some of the risk reduction and prevention practices that the risk management team can consider. They are based on a history of park and recreation litigation and outline basic legal obligations for providers of services and programs.

**Recreation programs.** Recreation program risk prevention and reduction practices include:

- Hiring competent personnel to supervise and conduct activity programs (this includes insuring that they possess the appropriate credentials based on education, experience, and certifications)
- Communicating expected performance measures and safety obligations
- Inspecting facilities and equipment to discover defects and removing hazardous facilities and equipment from use
- Monitoring conformity to performance measures and safety obligations
- Correcting improper performance
- Providing safety training and education to staff
- Establishing and enforcing safety rules and regulations
- Providing the appropriate level of first aid to injured users/participants

While this list is not exhaustive, it presents a starting point for further refinement of program risk prevention and reduction practices.

*The focus of a risk management operational plan is on reduction. See Phase III — Manual of Policies and Procedures — in this chapter.*

**Risk transfer**

This strategy involves the contractual transfer of risk to a third party. That third party then bears the risk consequences associated with the operation and use of the recreation area or facility or the conduct and provision of an activity. Three of the commonly used transfer strategies are:

- Leasing
- Independent contractors
- Liability waivers

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Leasing and rental agreements. It is common practice for a park and recreation organization to allow others to use areas and facilities, often by just signing up for a time reservation. However, it would be desirable to transfer liability with a written rental agreement or lease. Unless the agreement or lease specifically transfers the custodial care and maintenance of the area or facility to the lessee, the provider remains legally responsible for the condition of the facility. However, one may transfer the liability for the activity being conducted on an area or in a facility to the renter or lessee by so stipulating in the written agreement or lease. Further, it is desirable to include a stated transfer of liability for the behaviors of the participants engaging in such activities to the organization that is renting or leasing the area or facility. With these two provisions, the provider of the facility/area is liable only for the condition of the facility or area itself.

A common practice for financial risk transfer is to include an indemnification agreement or clause or require a certificate of insurance in the lease or rental agreement and require additional insured status on the lessee/renter(s) liability insurance policy. (See Financial Risks)

Independent contractors. Using an independent contractor to conduct an activity or provide a program or service is another way to transfer risks. For example, an organization can retain aerobic or weight training instructors as independent contractors to conduct fitness classes in their community center, or a golf or tennis pro to give golf and tennis lessons, or sport officials, or a physician to service a camp as independent contractors. These persons would be responsible for the liability that their service occasions (e.g., any participant injuries), and for any insurance coverage for themselves. The organization does not have to pay benefits for these persons and they are not called employees. One caution, however: some organizations call the employment an independent contract, when it is not. (See chapter 13.)

It is essential that the individuals are contracted to provide a designated program or service, and the contract can provide certain parameters, but once contracted, the individuals are totally responsible and the organization must not interfere. Any effort to direct or control the manner in which the program or service is conducted would negate the independent contractor status.

A second type of independent contractor is another organization, usually a private for-profit or nonprofit entity, that provides either a program or a service. For example, many public and nonprofit organizations do not wish to assume the liability risks of adventure activities (horseback riding, rafting, ropes courses, climbing, etc.), and thus contract with a private for-profit enterprise to provide that service to their constituency. Or, an organization may wish to contract for services, such as concessions, premises maintenance, or security.

However, for liability to be transferred to an independent contractor, reasonable care must be used in selecting competent independent contractors. The credentials of the independent contractor, for whatever service is being contracted, must be carefully and systematically checked.

Liability waivers. A liability waiver is a type of fault-freeing or risk-transferring agreement that relieves one party (the provider) of its responsibility to another party (the participant).

A waiver presents a conflict between two fundamental legal theories: the contract freedom to bargain for behavior, and the negligence theory that one should be responsible for his or her negligent acts. Waivers generally are signed by program participants and stipulate that they give up any legal rights to recover damages from the organization, its staff, or volunteers caused by their ordinary negligence. For example, if an adult is injured while on a rafting trip due to the negligence of the guide, a waiver would relieve the guide and employing entity of liability and the rafter would not be able to obtain damages. Waivers are commonly used by fitness centers and providers of adventure activities, such as mountaineering, skiing, and whitewater rafting. (Note: while the terms waivers, releases, hold harmless agreements and indemnification clauses are often used interchangeably, they do have distinct legal differences. See next section on Risk Financing.)

A waiver may be an effective strategy to transfer liability risk. When written correctly, it
is valid for adults participating in recreational activities. Because of the conflict in contract and negligence theory, a number of states examine the contract either "vigorously" or "moderately," while others are lenient in regard to the validity of a waiver.

There are several principles which must be followed for a waiver to be valid. The waiver:

- Must be signed by an adult; a waiver signed by a minor will not be enforced; parents cannot sign away a child’s rights, but can sign away their own rights if their child is injured; minor may ratify upon reaching majority.
- Must be voluntarily signed.
- Must be very explicit, in clear language that states that the waiver is for the negligence of the provider and is not merely acknowledging acceptance of the inherent risks of the activity; awareness and understanding of the activity is not necessary if the statement is clear.
- Must make the exculpatory clause obvious; participant must be aware that it is a waiver being signed.
- Cannot be against public policy; this is not to be confused with public entity, as public entities can use waivers in the same manner as any nonpublic entity.

If a waiver seeks to release the provider from intentional or willful and wanton acts, or gross negligence, this would be against public policy and make the waiver invalid.

For minors, since waivers are not valid, it is recommended that an acknowledgment of risk form or an agreement to participate form be used. Such a form describes the inherent risks and thus gives an express, written verification by the participant regarding such risks. A participation form also should set forth the expectations of the participant, the requirements to participate, the behavioral expectations, and the responsibilities, which, if violated, gives some evidence of secondary assumption of risk and thus contribution under comparative fault laws. These forms should be signed by the participant, whether a minor or not, and if a minor, also by the parent or guardian.

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**Risk Financing Strategies**

Paying for the losses that do occur is another component of risk management. Risk financing involves either retention (paying for losses out of the organization’s budget) or transfer (a third party pays for the loss).

**Retention**

There are several retention techniques available to park and recreation providers:

- **Current expensing.** This is also known as the "pay-as-you-go" system. The organization pays for the losses as they arise out of their ongoing budget. This works well if the loss expenses are small; however, it may result in insufficient funds to respond to unexpectedly large losses.

- **Unfunded reserves.** An accounting technique known as the unfunded reserve may help respond to large losses by noting the likelihood of future loss payments on the organization’s books. It keeps management aware of future expenses for financial losses.

- **Funded reserves.** Money is set aside in the provider’s budget to pay for future losses. The use of funded reserves requires a strong commitment from the organization’s senior management and policy board not to use these seemingly “idle funds” for other projects. With the help of actuary tables, the risk management committee should be able to demonstrate the amount needed for future losses. Just as pension programs need substantial assets far in advance of the time benefits are to be paid, funded reserves do too.

- **Borrowing.** When an organization does not have sufficient assets to pay for losses, it can borrow money from other internal or external sources. It is often difficult to borrow from an external source to respond to a loss, and so this strategy is limited and generally not recommended in the industry. It also may be necessary for a public entity to levy taxes or float a bond, if a damages award is in the millions of dollars.

- **Self-insurance and joint pooling.** Most states in their Tort Claims Acts authorize municipalities and schools to not only self-insure but also participate in joint pooling. Most joint pooling is done through an intergovern-
mental contractual agency which self-funds predetermined levels of loss with provision for catastrophic losses through the purchase of excess and reinsurance and, if necessary, issuance of bonds.

The Park District Risk Management Agency (PDRMA), which services the park districts, forest preserve districts, and special recreation associations in Illinois, is one of the largest and most extensively developed. It has about 125 members. Its comprehensive risk management program provides broad liability coverage, including property, fidelity, crime and surety bonds, auto, general liability, employment practices, liquor, police professional, owners and contractors, public officials errors and omissions, and workers compensation coverage for employers. However, it does much more—it also provides extensive loss control and safety information and services, staff risk management training and education, claims administration, legal defense, and loss experience reports.

The way a joint pool works is that there is a formula for the annual base membership contribution. Then at the end of the year there is a debit or credit applied to this annual base contribution based upon how the individual member’s losses compare to the group as a whole.

Transfer of financial risk to a third party

It is common to divide transfer techniques into two categories: (1) transfers to parties that are not commercial insurance companies, but are in some way a party to the provision of services, and (2) transfers to commercial insurance companies.

Contractual transfers: releases and indemnification agreements. A release is an after-the-accident contract. It ordinarily establishes that a participant is giving up an existing claim, and usually is used in out-of-court settlements. Releases are intended to bring closure to disputes between participants and providers.

There are two types of indemnification or “save-harmless” clauses, one relating to a participant and the other to an entity offering services or using the facilities of another. The first is frequently found in a waiver form, where the signee of the waiver agrees to cover any loss that the provider incurs as a result of the participant’s involvement in the program or service. They seldom are enforced and in limited court decisions have been held unenforceable when signed by a parent as a “conflict of interest.”

In the second type, an indemnification clause in a lease or rental agreement, the lessee or user of the area or facility agrees to indemnify the provider of the facility or area for any losses due to their use. Sometimes rather than an indemnification clause, or perhaps in addition to, the provider may request a “certificate of insurance” (proof of insurance coverage) or ask to be a “co-insured” or add additional insurance on the lessee’s insurance policy. Whereas one must suffer a loss to be indemnified, insurance coverage assures that there is financial coverage, and if a “co-insured,” that the insurance company will pick up the defense immediately.

Commercial insurance companies. Liability insurance is a cornerstone of most park and recreation risk management programs. Through the purchase of insurance, a provider transfers to the insurance company the financial risks it cannot afford for a premium it can afford. The provider pays the insurer a known amount at the start of the policy year in exchange for the promise that the insurer will pay losses of potentially much larger amounts for the entire policy year. While the premiums may be lower than the losses paid in certain years, they will usually be higher than the losses in an average year. Over an extended time frame, purchasing insurance is generally the most costly risk management strategy. However, because of the reliability of commercial insurance, it remains one of the most popular techniques for transferring financial risk of loss.

Insurance does not protect the provider from an injury or damage occurring, nor does it protect against personal anxiety or professional embarrassment. It only protects the insured from the financial losses arising from the covered risk. It must be noted, though, that the amount which an insurance company will pay is only to the limits of the insurance coverage. For example, if a court award was $5 million and the coverage was for only $2 million, the insurance company would pay only the $2 million.
Determining the insurance needs for a park and recreation organization is a complex task that can be made easier by the risk management program. Some risks are so small (low frequency and low severity) that the organization may choose not to insure them, while others may be so large that insurance or avoidance is the only reasonable strategy for the provider. Insurance adequacy should be reviewed annually with an insurance agent, broker, or risk management consultant.

While most entities (public, nonprofit, and for-profit) include their employees and volunteers, when acting within the scope of their responsibilities, within their insurance policy, some professionals do take out their own personal insurance coverage in addition.

Many organizations adopt an administrative policy to limit exposure to lawsuits by settling claims rather than litigating them. Many insurance companies also take this approach — i.e., settle a claim, even though there may be technically no liability — because it is more economical to do so. It takes a great deal of money to prepare materials, investigate, and pay attorneys' fees — in other words, to litigate. For small claims it is usually much less expensive to settle. There is also the publicity that goes with a trial, which usually is unfavorable to the school, municipality, nonprofit association, or private for-profit enterprise. On the other side, however, is the psychological trauma of the employee, in an injury suit, of having a settlement inferring negligence and guilt when there is none; and, some individuals, knowing an entity is settlement-prone, will file just to get money. The policies established for claims settlement are very important to discouraging unfounded claims, to protecting the morale of the employees, and to providing the best financial benefit for the organization.

Somewhat similar to claims settlement, but much more formalized and set forth in the initial agreement or contract, is arbitration, sometimes referred to as ADR, Alternative Dispute Resolution. A provision in a lease, a contract for services, or a participant form may state that for any dispute (including an injury claim) the parties will go to arbitration, rather than bring a lawsuit. In arbitration, each party presents their "case" and a third person arbitrates or determines the rights of each. Arbitration may be legally binding. This should be distinguished from mediation, which is not binding, but an effort by a third person to negotiate between the two parties. There are firms which engage in the business of arbitration, and there is a professional organization, the American Arbitration Association.

**PHASE III: THE RISK MANAGEMENT PLAN**

Phases I and II provide the background analysis necessary to create a risk management plan which can be operationalized. There are three aspects to phase III:

- Adoption and facilitation
- Manual of policies and procedures
- Monitoring performance of the plan

**Adoption and Facilitation**

The policy body of the entity must adopt the underlying policies on which the risk management plan is based in order to operationalize the plan. These especially include the financial transfer of insurance or other strategies and the risk control transfers related to leases and rental agreements, independent contractors, and waivers.

The organization must commit financial resources. Senior management must accept the plan and support employee effort to facilitate and operationalize it. Budgeting and risk management are flip sides of the same management coin. Funding to undertake the risk management process, along with financial resources to purchase insurance, fund contingencies, or to pay damage claims must be included in the provider's annual budget.

The implementation of the plan depends upon management and staff. To be successful, employees must accept the plan and feel that they are truly a part of the risk management team with opportunity for valued input. For this reason, the management team should have a
process for staff input and develop a training and education program for employees, which includes going over policies and procedures in the manual, and organizational structure. Employees should be involved in the goals and objectives of the plan.

The risk management plan should involve active interaction between employees at all levels and with administrators or supervisors. This interaction is essential because all facets of the operation must be included, and the line-level employees have insights to risks and are critical to implementation of risk management procedures. Employees must be assured of their importance to successful risk management, and understand the operational procedures.

There must be commitment by both management and employees. Just as it is desirable to have the policy board involved in the establishment of risk management policies, so must employees be involved in determination of desirable practices in implementing policies. Particularly in medium- to large-sized agencies, an employee risk management committee is highly desirable to augment the risk manager. The committee

- Continuously monitors the risk management program, recommending changes
- Reviews operating safety manuals and emerging plans
- Fosters a safety-conscious attitude among employees and encourages participation in staff training including first aid
- Reviews accidents and claims, analyzing nature thereof and possible action to ameliorate, and the cost thereof
- Makes periodic inspection/tour of programs and premises.

In especially large operations, there might be practices to pinpoint problem areas and recommend changes and to project trends and possible future losses. It must be made very clear to employees that the practices requested and recommended are not only to provide a safe program so participants will not be injured, but also for their own well-being.

An information/documentation system must be maintained, not only to have data available for risk management, but also to have it available should one become involved in a lawsuit. Responsibility must be established for input of the information/documents, for maintaining the system, and for determining the method and format of record keeping and for how long it should be kept. The records should be kept at least until the statute of limitations has run out. This system should include such documents as:

- Registration identification information
- Accident forms
- Health forms, if appropriate
- Participation forms and waivers
- Rental agreements and leases
- Program data and documents
- Operations information

Policies and Procedures Manual (The Operational Plan)

It is one thing to adopt policies based on Phases I and II, but just what does that mean to the employees, and just what is it that they are to do to manage the risks? It is one thing to say that reduction is the strategy to be used to control risks, but how are the risks to be prevented or reduced in frequency and severity? The manual systematically sets forth procedures for doing so. Often an insurance company will have specific procedures that must be conformed to for insurance to be provided on a specific activity or facility to be covered. The public entities may belong to a risk management authority, either specific to parks and recreation, such as the Park District Risk Management Agency (Illinois), or related to the parent organization, for example, the Michigan Risk Management Authority for municipalities in the state. Nonprofit entities have a national resource in the national Nonprofit Risk Management Center.

The accreditation standards of the American Camping Association for camps and of the Association for Experiential Education for adventure or challenge programs provide some specific procedures for conducting these pro-
grams. However, most accreditation standards are not so detailed. There are also a considerable number of manuals and books on specific services, such as fitness and health centers, aquatics, and golf courses. The professional personnel in charge of conducting these services should know of these resources and be able to develop the section of the manual related to their service. Maintenance and security staff can also help develop procedures for reducing the frequency and severity of risks (see chapters 9 and 17).

RISK MANAGEMENT IS NOT ONLY PREVENTING PARTICIPANT INJURIES, BUT ALSO INCLUDES PRACTICES RELATED TO EMPLOYEES, BUSINESS OPERATIONS, AND PROPERTY. Some call the manual a “safety manual,” but it is much more than that. The manual should be the operating procedures for carrying out risk management policies. And as such, all administrative and supervisory personnel should have a copy and other employees should have the sections pertinent to their responsibilities.

Specific operational procedures are an important element in a risk management plan. Guidelines for operationalizing the procedures set forth for the approaches to be used should be put together into a risk management manual to provide an authoritative guide and immediately available reference for all levels of employees. The manual should cover such operational information as what automobile insurance coverage the organization has and, if a car is rented, what insurance should be purchased; periodic inspections regarding risk potentials; supervision system, emergency plans, the accident and incident reporting system; and many other aspects.

Particular attention should be given to emergency plans and procedures for such large-scale natural disasters as earthquakes, tornados, hurricanes, forest fires, and floods. Evacuation procedures, inventory and location of equipment and materials, displacement plans for facility residents and activities, and psychological aid for staff affected by an emergency should be included. Plans also should be prepared for civil disturbances, for emergency care at special events with a large number of participants and/or spectators, and for ongoing activities in the park and recreation facilities. Special cooperative arrangements should be made with public departments and agencies, private contractors, and community organizations.

Of course, an agency, association, or business enterprise must focus the manual on the services, programs, facilities and areas under its jurisdiction or control. However, all share common elements, and exhibit 16-6 is a generic table of contents to be adapted in accord with the nature of the provider and the programs/services/facilities it offers.

Monitoring Performance

Once the plan is adopted and put into practice it should not be forgotten. The plan should be assessed at least annually to measure progress toward the purposes, goals, and objectives. (See exhibit 16-2.) The performance of risk management programs is often assessed by setting goals at the beginning of the year and comparing them with the outcomes at the end of the year. When risk management outcomes take longer than a year to assess, incremental measures may help determine whether the program is on track to meet expectations.

Risk management efforts should be judged by a combination of procedural and results goals and objectives.

- Procedural goals and objectives. These are measures of actions taken to achieve program goals, without considering the actual results. For example, “All playground equipment will be inspected quarterly” to reduce the risk of injury from defective equipment. This means that the standard is met if the equipment is inspected, even if injury is not reduced. Because these goals and objectives focus on the procedure, what people have been doing, rather than on a specific outcome of these efforts, they often neglect actual cost savings for the organization.

- Results goals and objectives. These measures usually focus on a decrease in the severity or frequency of accidents. For example, “Playground accidents
## Exhibit 16-6
### Generic Contents of a Risk Management Manual

**Organizational structure**
- The team – who's in charge; role of employees

**Goals and objectives**
- Priority risks and prioritizing risks

**Policies related to contracts**
- Licenses
- Leases
- Insurance
- Permits
- Rentals

**Conduct of programs and services**
- Program and facility standards for conduct, e.g., playground, aquatics, fitness
- Type of participants, ADA
- Special events (security, liquor, etc.)
- Warnings (importance and role)
- Medical/health exams
- Joint sponsorships
- Use of waivers
- Participant forms (registration, entry, agreements to participate, photo permissions)

**Human resources policies (See chapter 12)**
- Occupational safety standards
- Hiring and discharge
- Sexual harassment
- Violence in the workplace
- Sexual and physical abuse of children, elderly, disabled

**Supervisory functions**
- The supervisory plan
  - Who supervises what, when; by function and area, not person in charge
  - Written
- Management of behavior
  - Discipline
  - Crowd control for large events
  - Violence in sport
  - Use of drugs
  - Intoxicated participants, spectators, visitors
- Rules and regulations (establish, communicate, enforce)
  - General behavior
  - Use

**Emergency plans and procedures**
- Personal injury of participants, spectators, users, visitors
  - Rendering of first aid (kits, supplies, personnel)
  - Hierarchy of service (person in charge, calling 911 or other transport)
  - Medical services policies
  - Accident reports and disposition

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Exhibit 18-6 (continued)

Emergency plans and procedures (continued)
- Large-scale natural disasters, such as earthquakes, tornadoes, hurricanes, forest fires, and floods
- Inventory and location of equipment and materials
- Evaluation procedures
- Displacement plans for facility residents and activities
- Psychological aid for staff affected by emergency
- Civil disturbances, bomb threats, fires, and power failures
- Special events with a large number of participants and/or spectators
- Ongoing activities in the parks and recreational facilities
  - Runaway children
  - Wandering seniors
  - Reunishing missing persons with the proper parent/guardian
  - Crisis management
    - How to deal with other participants, with the families of participants, with the clientele from a marketing/community perspective
    - Dealing with the lawyers on both sides and with other staff
    - Special preparatory arrangements with other public departments and agencies, private contractors, and community organizations

Protection against criminal acts and security (See chapters 9, 17)
- Safety of persons and property in the parks and other areas
- Security in all areas
- Law enforcement special facilities and areas
- Large public events

Transportation and vehicles (See chapter 9)
- Travel regulations: who can drive, checking licenses, for what type of vehicle to be used
- Driver safety
- Vehicle maintenance
- Traffic and pedestrian circulation patterns

Equipment
- Parking and operational
- Authorization to use
- Proper fitting to user
- Repair

Environmental conditions (undeveloped natural environment)
- Dispersion of recreation safety, e.g., mountain bike trails, cross-country ski trails
- Hazards and warnings

Developed areas and facilities (See chapter 9)
- Inspection system
- Lighting
- Signage
- Sanitation
- Reporting premise defects
Case Study #1: Risk Identification and Assessment, and Response Strategy

You are the director of the City community center. There is no risk management plan in place. You have just been notified by the City Manager that all facilities will now have a risk management plan pertinent to their programs and services. Chart the risk identification and assessment, then suggest possible risk response strategies. Have three columns to your chart:

<table>
<thead>
<tr>
<th>First column</th>
<th>Step 1: Identification of risks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Using the legal-based classes of loss,</td>
</tr>
<tr>
<td></td>
<td>list as many risks as you can under each class.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Second column</th>
<th>Step 2: Assessment of risks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Subdivide this column into three subcolumns and for each of the risks listed in Step 1, assess the frequency, the severity, and the financial consequences.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Third column</th>
<th>Phase II. Risk response assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For each risk identified and assessed, suggest possible risk control strategies (avoidance, reduction, type of transfer) and risk financing strategies (retention, type of transfer to third party)</td>
</tr>
</tbody>
</table>

Case Study #2: Risk Management Planning

You have just become a manager of a facility. Upon taking over you spend some time going through existing manuals and determining what needs to be done. One of the things you notice is that there are no emergency action plans. Select an existing facility with which you are familiar. You want to update the risk management manual. Develop the chapter or section on emergency action. How would you, as manager, implement this aspect of the plan with your staff?
9.0 RISK MANAGEMENT

Commentary: Many local governments have a risk management division with a designated/specific risk manager. In such situations, parks and recreation should be a part of the overall plan and its implementation. If the overall plan with implementation meets the following standards, then the agency meets the requirements of this section. This section sets forth only the essential elements. Throughout the Standards are many additional important aspects of risk management, such as an inspection system for areas and facilities, emergency procedures, accident recording, competent personnel, supervision, and visitor protection.

9.1 Statement of Policy

There should be a policy for risk management, which is approved by the agency policy entity.

Commentary: The agency policy entity must set the direction and give appropriate authority for the implementing operational practices and procedures.

9.2 Risk Manager

There should be an employee with risk management responsibility and authority to carry out the policies established for risk management.

Commentary: There must be aggressive loss control management and monitoring. It is essential to assign responsibility for this vital act so that it receives the credibility and institution-wide acceptance it warrants and is needed and is not perceived only as insurance purchase. Operationally, for most effective implementation, a risk manager should be designated. The risk manager must be given authority to carry out the policies established regarding risk management, both with the employees and the administration. The risk manager will work closely with the business officer of the corporation in facilitating the financial approaches determined to be most appropriate and with the administrator/supervisors of the programs and services in obtaining essential employee performance as related to reduction of programmatic risks. The structure and size of the corporate entity will determine whether the risk manager doubles as financial officer, is the same with the recreation director, the enterprise manager, et al., or has no other responsibilities. Whatever the appropriate arrangement, it is essential that the tasks of a risk manager be assigned specifically to one person. “Everybody’s responsibility is no one’s responsibility!”

Further, the risk manager is not a safety director with a more sophisticated title. The risk manager is a safety director in a general sense, but is much more. Safety is not the only concern of the position — there also is the financial risk management aspect. However, a safety director or specialist might work under the risk manager or in a small operation, both functions may be given to the same person.

There may be intra-agency management with an overall risk manager for the whole municipality or entity. Where there is an inter-organization risk management agency, such as a joint risk management system formed by several municipalities, such agency will have a management team with representation from each member municipality, as well as its own management personnel, which will establish, implement, and monitor procedures to reduce the current level of losses.
9.3 Plan

There shall be a risk management plan reviewed annually and updated to reflect new information, operational techniques, and services.

Commentary: A comprehensive risk management plan, which encompasses both financial and programmatic risk management, is essential to minimize legal liabilities and personal injuries. A risk management plan systematically analyzes the services offered and facilities/areas managed for personal injury and financial loss potential and selects approaches to handle such losses. It sets forth basic policies and the implementing operational practices and procedures of the approaches which will be utilized to manage the identified risks of loss. (See 9.6.)

A plan cannot be static; it is dynamic and needs to be regularly reviewed for updating regarding services of the organization and changing approaches to controlling losses in keeping with changing needs and capabilities of the organization and opportunities which become available within the financial industry as well as within the organization itself.

9.4 Risk Analysis and Control Approaches

There should be risk analysis systematically performed annually and with approaches to control of risks clearly identified.

Commentary: There is no specific method for identification of risks suitable for all entities; the method and tools used will vary according to the nature and extent of the operation. What is important, however, is that a systematic procedure be established to assure total assessment in order to avoid unexpected losses. Risk analysis should utilize any agency management information data base, and include identification of risks and estimation of extent of the risks. Alternate approaches for control of risks and the expected impact of each should be identified, with the selection of approaches to control specific risks then clearly identified.

9.5 Employee Involvement

The risk management plan should involve active interaction between employees at all levels and administrators/supervisors.

Commentary: This interaction is essential because all facets of the operation must be included, and the on-line employees both have insights to risks and are critical to implementation of risk management procedures. It is the employees which must be assured of their importance to successful risk management, as well as understand the operational procedures.

There must be commitment by both management and employees. Just as it is desirable to have the policy board involved in the establishment of risk management policies, so must employees be involved in determination of desirable practices in implementing policies. Particularly in medium to large-sized agencies, an employee risk management committee is highly desirable to augment the risk manager. It continuously monitors the risk management program, recommending changes; reviews operating safety manuals and emerging plans; fosters a safety-conscious attitude among employees and encourages participation in staff training including first aid; reviews accidents and claims, analyzing nature thereof and possible action to ameliorate, and the cost thereof; and makes periodic inspection/tour of programs and premises. In especially large operations, there might be practices, to pinpoint problem areas and recommend changes, and to project trends and possible future losses. It must be made very clear to employees that the practices requested and recommended are not only to provide a safe program so participants will not be injured, but also for their own well-being.
9.6 Operational Procedures

There should be a manual of operating procedures for carrying out the risk management plan. All administrative and supervisory personnel shall have a copy of the manual and other employees' procedures pertinent to their responsibilities.

Commentary: Specific implementing operational procedures are an important element in an risk management plan. Guidelines for operationalizing the procedures set forth for the approaches to be used should be put together into a risk management manual to provide an authoritative guide and immediately available reference for all levels of employees. Not all employees need a full copy of the manual, but it should be available, and pertinent aspects definitely should be given to the employees in accord with their responsibilities. The manual should cover such operational information as what automobile insurance coverage the corporation has and if a car is rented, what insurance should be purchased; periodic inspections regarding risk potentials; supervision system, emergency plans, the accident and incident reporting system (see 3.4.2.3); and many other aspects set forth in other standards.

Particular attention should be given to emergency plans and procedures directed toward large-scale natural disasters, such as earthquakes, tornadoes, hurricanes, forest fires, and floods, and include evacuation procedures, inventory and location of equipment and materials, displacement plans for facility residents and activities, and psychological aid for staff affected by emergency, et al. Plans also should be prepared for civil disturbances, as well as the usual emergency care both for special events with a large number of participants and/or spectators and for on-going activity in the parks and recreational facilities. Special cooperative arrangements should be made with other public departments and agencies, private contractors, and community organizations. Park and recreation agencies should be integral to any community emergency plan.

9.7 Risk Accounting

The risk management plan should be monitored in terms of the dollar costs.

Commentary: Risk management is an ongoing process; not only must it be integrated into the very fiber of an organization, but also its effectiveness must be systematically evaluated and adjustments made as appropriate. Neither the implementation of the plan nor its effectiveness assessment just happen — “everybody’s business is nobody’s business.” Responsibilities must be assigned and structure set in place to facilitate risk management. While a primary purpose of risk management is the savings of lives, it is essential that the risk management plan be monitored in terms of the dollar costs — is it paying off financially and if not, why not? In calculating the costs of risk, one must add together the costs of insurance, uninsured losses that come from the operating budget, the losses which may come from the funded reserve (self-insurance), the administrative costs of maintaining the risk management office/personnel and its operation, and the safety and loss control expenses, including personnel training. If this amount is over five percent of the operating budget, serious evaluation of the risk management plan must be undertaken; costs usually range from two to three percent. However, in terms of effectiveness of the plan, calculation of savings also should be made on reduction of the indirect and hidden costs of accidents, such as time lost from work by injured employees, damage to equipment and facilities, failure to provide services and thus loss of income, etc. Initially, to establish a sound risk management plan, a financial investment may need to be made to implement good practices; but, it is an element of sound financial management to spend initially to obtain substantial long-term savings.

Many agencies adopt an administrative policy to limit exposure to law suits by settling claims rather than litigating claims. Many insurance companies take this approach — settle a claim, even though there may be technically no liability, because it is more economical to do so. It takes a great deal of money, in terms of preparation of materials, investigation, time of attorneys, et al, to litigate, and for small claims it is usually much less expensive to settle, Here, also, is the publicity attendant to a trial,
which usually is unfavorable to the school, municipality, or leisure agency. On the other side, however, is the psychological trauma of the employee, in an injury suit, of having a settlement inferring negligence and guilt, when there is none; and, some individuals, knowing an entity is settlement-prone, will file just to get some money. The policies established for claims settlement are very important to discouraging unfounded claims, to protecting the morale of the employees, and to providing the best financial benefit for the organization.

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Park, Recreation, & Leisure Services Curricula Accreditation Standards, 1999 Edition

8.39 Understanding of the principles of risk management planning, and the ability to participate in the development and implementation of a risk management plan

9A.03 Understanding of the use of the law in management of leisure services, including land management, personnel, human rights, financing, and risk management


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