

**ROTATING SHELTER PROGRAM:
DISCUSSION MEMO FOR [_____] MANAGEMENT**

A. Purpose of Document

1. The purpose of this document is to provide information regarding selected risk management aspects of the Rotating Shelter Program (the “Program”) operated by [_____] (“Client”).
2. This document should not be viewed as a comprehensive assessment of all relevant legal considerations. It is intended simply to provide information. Please see also the “Nature of this Document” section at the end of this document.

B. Background

1. Client began the Program in [_____]. The Program provides overnight shelter, meals, and career counseling to homeless men. The Program is hosted by __houses of worship, each of which provides shelter for Program participants for one month of the year.
2. Client coordinates and administers the program, employs on-site supervisors, contributes supplies, and provides support services to participants. The Program is managed by Client’s [_____] and overseen by the Client Board of Directors.
3. Client receives funding for the Program from the cities of [_____], as well as from the [_____].

C. Program-Related Contractual Relationships

1. There are no written agreements between Client and the host houses of worship regarding the duties and responsibilities of each for the Program.
2. Under its funding agreements with the cities, Client indemnifies the cities against claims arising from Program activities, but the cities do not similarly indemnify Client.
3. As required by its agreements with the cities, Client carries liability insurance.

D. Potential Claims Arising from the Program

1. To the best of our knowledge, no legal claims arising out of the Program have ever been brought against Client in the 15 years of Program operations.
2. Program-related claims against Client might be based on property damage, theft, or personal injury allegedly caused by Program participants.
3. Parties who could potentially file Program-related claims against Client include the houses of worship who host the Program, Program participants, volunteers, neighbors,

worshippers and other visitors to the site, and the cities (which may seek payments under existing indemnification agreements with Client if a claim is brought against them).

4. Individuals making claims against Client are likely to make various allegations, including allegations based on the tort law concept of negligence. Negligence litigation focuses on whether the defendant failed to exercise “reasonable care” in its activities. What constitutes “reasonable care” is highly fact-sensitive and litigant-specific. A key context-dependent issue is the extent to which the defendant took measures intended to reduce the risk of harm resulting from its activities.

E. Methods to Manage Risk

1. *Methods*. Three methods of managing risk exposure—indemnification, release/waiver, and insurance—are based on entering into contracts with third parties. A fourth method—centered on reducing the risk of claims arising in the first place and improving the ability to defend against them—involves Program operations.
2. *Contractual Indemnification*. Client could reduce its exposure to liability by seeking contractual indemnification. Under this approach, Client would enter into an agreement with another party in which that party would agree to protect (“defend, indemnify, and hold harmless”) Client against any claims arising from the Program. As noted, the cities obtained such a promise from Client with respect to any Program-related claims against the cities.
 - a. *Probably Not Feasible* – As a practical matter, there does not appear to be any party available to indemnify Client. The most obvious candidates would be the cities of [_____], but Client has already agreed to indemnify the cities under existing agreements, making it unlikely that the cities would amend their contracts to indemnify Client instead. Requesting indemnification agreements from Program host sites seems inconsistent with the spirit of the Program, and it is hard to see why host sites would agree to enter into such contracts. Obtaining indemnity promises from Program participants is not likely to have practical value, since they are probably not capable of “making good” on the promise. As a more general matter, since Client actually operates the Program, other parties are likely to resist accepting broad financial responsibility for Client’s activities.
3. *Release and Waiver*. Client could also reduce its exposure to liability by having potential claimants sign release or waiver agreements in which they effectively surrender in advance any claims they may have arising from Program activities. By signing these agreements, the parties would agree not to sue or otherwise make claims against Client.
 - a. *Probably Not Feasible* – Although Client could probably obtain releases from Program participants, it is unlikely that other potential claimants (e.g., host sites, neighbors, individuals attending services or events at the site, etc.) would be willing to sign such agreements. Moreover, as a practical matter, it is impossible for Client to identify and obtain releases from all potential claimants.

4. *Insurance.* Client could manage its exposure to liability by purchasing liability insurance. Such insurance would protect Client against certain losses, up to an agreed upon limit.
 - a. *Already Adopted* – As required by its agreements with the cities of [_____], Client has already purchased liability insurance that protects it against certain losses arising from the Program. If Client is concerned with claims that fall outside the terms of its existing policy, Client may wish to consider obtaining additional coverage, if available.
5. *Avoiding Claims.* Client could reduce its exposure to liability by taking steps to avoid occurrences that can give rise to claims. This reduces liability in two ways. First, it makes it less likely that problems will occur and that claims will arise. Second, when a claim does arise, it may provide facts that are useful in defending against the claim.
 - a. *Feasible* – In contrast to indemnification, release, and insurance, Client does not need cooperation from other parties to pursue this approach. On its own, Client can adopt practices intended to reduce the likelihood of claims and help protect Client from liability.

F. Measures to Reduce the Risk of Claims

1. Courts often look to “industry custom and practice” in determining whether an organization has exercised reasonable care in operating a particular program. With this in mind, we reviewed public documents relating to selected rotating shelter providers in the area, as well as a local government guide to shelter planning. Shelter operating practices noted in these materials included:
 - a. *Program Manual* – Shelter providers may develop program manuals that contain all of the rules, policies, and procedures pertaining to their shelters. This centralizes all information relating to shelter operations and administration, and provides a useful reference and guide for shelter personnel and supervisors.
 - b. *Shelter Orientation* – Shelter providers may hold an orientation for patrons upon arrival at a new shelter site. This orientation may include a brief tour of the facility (highlighting emergency exits), introduction to facility staff, and a summary review of the shelter rules and procedures.
 - c. *Site Eligibility Criteria* – Temporary shelter providers may establish a list of criteria that a site must satisfy in order to serve as a shelter. Such criteria focus on safety and suitability concerns, such as the presence of sufficient space, bathrooms, climate controls (particularly heating), secured storage areas, accessibility aids (for disabled individuals), emergency exits (with signs marking exits), smoke detectors, health and safety code violations, fire code violations, and any unsafe conditions.
 - d. *Prescreening* – Shelter providers may screen applicants for conditions or characteristics that may require special attention or endanger shelter residents and

personnel. This includes mental health problems, physical health problems (including contagious diseases), drug or alcohol abuse, and criminal history (including probation status).

- e. *Registration* – Shelter providers may require patrons to register before they begin using the shelter. Registration may involve recording important information about the applicant, including any special needs, conditions, or health concerns. The completed registration forms may be made available to shelter supervisors, so that they are aware of any special conditions or circumstances.
- f. *Formally Trained On-Site Staff* – Shelter providers may require a formally trained supervisor to remain at the shelter at all times. These supervisors may receive or already have formal training in first aid, health and fire safety, and shelter policies and procedures (*e.g.*, for responding to emergencies or conflicts). The supervisors may be required to remain awake while on duty.
- g. *Safety Equipment* – Shelter providers may require that their shelters have certain safety equipment on site at all times. This includes flashlights and batteries, battery powered radios, fire extinguishers, telephones (for emergency calls), first-aid kits, and site-specific evacuation plans.
- h. *Emergency Procedures* – Shelter providers may develop explicit, written procedures for handling medical and other emergencies. Such procedures may include instructions on how to proceed if an emergency occurs, as well as site-specific evacuation plans. They may also include quarantine procedures designed to limit the spread of illness between shelter patrons.
- i. *Shelter Rules* – Shelter providers may develop written rules to govern the behavior of patrons while they stay at shelters. They may make these rules known by having patrons review and agree to them in writing at registration, by posting them prominently in the shelter, and by reinforcing the rules during shelter orientation. They may also make efforts to ensure that supervisors and staff enforce the rules. Shelter providers have adopted rules regarding, among other things, restricted areas of the shelter, curfew, quiet hours, smoking, abusive or belligerent conduct, theft, destruction of property, attire, alcohol and drugs, weapons, pets, bedding (*i.e.*, using the same cot or bedding consistently), open flame devices, visitors, and loitering in nearby neighborhoods.
- j. *Shelter Records* – Shelter providers may keep extensive records of the individuals present and events that occur at the shelter. These records may include a list of all patrons and volunteers present, a record of any referrals made, a catalog of all belongings stored for shelter patrons, a record of any complaints made and all responsive actions taken, and incident reports on any unusual occurrences, such as emergencies, illnesses, or disciplinary problems.
- k. *Occupant Inflow and Outflow* – Shelter providers may carefully monitor the inflow and outflow of shelter patrons. They may maintain a sign-in/sign-out

policy. To enforce this policy, they may designate a single entryway as the sole entrance/exit and secure all other doors against use except as emergency exits.

- l. *Patron Medications* – Shelter providers may record and store patron medications. This ensures that they remain secure and are taken only by the patrons to whom they have been prescribed. At the same time, this may actually impose new duties upon the shelter provider, since the shelter temporarily becomes responsible for the availability of patrons’ medications.
- m. *Patron Confidentiality* – Shelter providers may take careful steps to maintain patron confidentiality. This includes securing files both when they are kept at the shelter provider’s offices and when they are kept on site by supervisors.

G. Moving Forward

1. *Measures to Avoid Claims* – Client may wish to review the list of practices summarized above and assess whether refinements to existing Program operating practices should be considered. The act of engaging in such a review and documenting the review process should be useful in addressing any questions from your insurance carrier and presumably in defending against any claims in the future.
2. *Contacting Other Shelter Providers* – Client may wish to contact other rotating shelter providers to discuss what strategies and measures they have adopted to manage program risks. Among organizations offering similar programs are:

[_____]

3. *Releases from Program Participants* – Client may want to consider whether Program participants should sign release forms upon registering for the Program. Release language could be integrated into existing registration documents, or into any written acknowledgment of shelter rules signed by Program participants. Although releases may not fully insulate Client from potential liability to Program participants, they could be useful in defending against claims brought by such individuals. Client may however wish to evaluate whether there is any negative message risk from requiring such releases.

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Nature of this Document:

This document is not a legal opinion or audit report. We obtained all information regarding the Program and Client from several documents provided by, and several communications with, [_____]. We have not performed any independent investigation into the Program or Client, nor have we examined Client’s actual practices with respect to Program operations. This document does not reflect any assessment of Client’s potential legal exposures arising from Program operations or of the adequacy of Client’s current practices and procedures. For clarity, we are not making any representations that adoption of the practices described in Sections E and

F will eliminate or reduce potential liability. This document is intended as an information resource only.

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[_____], 2008