

~ ~ STATE ACCIDENT PREVENTION CHAIRMEN ~ ~  
**INFORMATION**  
 MARCH 2009

# HAPPY ST. PATRICK'S DAY

## CRIME/FIDELITY CLAIMS

### (EMBEZZLEMENT, DEFALCATION, BURGLARY, ROBBERY)

Any claim of this sort coverage should be reported without delay. A delay may complicate or negate available coverage.

In any claim, reserve all related records and data and be prepared to provide extensive detailed reports of the covered incidents. Recovery requires the establishment of a record trail or physical evidence, not just the knowledge that funds are missing.

To avoid fidelity claims, every Lodge should establish safeguards to review actions of officers or those persons responsible for handling money, paying bills or signing checks. Responsibilities should be divided and audited and double signature checks are definitely recommended.

The possibility of burglary and/or robbery can be reduced by retaining only minimum cash amounts and frequent bank deposits. The establishment of central station alarms and surveillance cameras is recommended.

It is also recommended that background checks be made to the extent possible on any employees, volunteers, officers and trustees. These background checks should be made for anyone handling cash, originating checks or paying bills. Any person who has a prior history of irregularities with reference to handling cash or checking accounts should not be allowed to have that kind of responsibility. Prior felony or misdemeanor problems should also act as a disqualifying factor.

Annual audits are necessary but should also be done more frequently on an internal basis. An independent review of monthly check reconciliations should be established.

In any circumstances, it is always recommended that the Lodge should not file charges or seek the arrest of a person alleged to have perpetrated any fidelity crime. Let the criminal prosecution be originated by local law enforcement. Any perceived crime can be reported to the authorities.

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## NO INDEMNITY FOR SERVICE PROVIDERS

As a general rule, Lodges should not indemnify a person or entity that it deals with when such a person or entity is providing a service, doing work for the Elks or utilizing Elks facilities. Similarly, mutual indemnities or hold harmless agreements are not to be granted by the Elks where the other party owes a duty to the Elks to serve or perform duties.



There have been several recent situations where Lodges or State Associations have been requested to hold hotels harmless and indemnify them for any claims arising out of the use of the hotel when meetings are to be held there.

This is a scam perpetrated by some hotel groups to try to escape the hotel's "Innkeeper Liability". The Elks must not fall victim to this unethical conduct on the part of hotels or similar meeting facilities.

Also, Lodges are never to hold harmless or indemnify anyone or provide a mutual hold harmless to anyone who rents the Elks facilities or on a long-term or short-term basis (see instructions on Pages 10-11 of the Liability Insurance Program Booklet).

## SELF-INSPECTION REPORTS

Each year, the State Accident Prevention Chairmen receive a copy of the local Lodges' Self-Inspection reports done at the annual visitation if a copy of that report is directed to the Grand Secretary's office with other required data. The chairmen should follow up with a Lodge to make sure deficiencies are corrected. Also, reports from year to year are to be compared to make sure such problems are not reoccurring.

If the Grand Lodge does not receive a copy of this report, we cannot send it to that state's chairman. If any chairmen are missing a report from a specific Lodge, he or she should contact the Lodge and obtain a copy of the current report.

All reports received by Grand Lodge for this year have been distributed.

I would also encourage that the self-inspection reports be done several times a year for internal use. Furthermore, I strongly urge every Lodge to use the monthly, weekly, daily and specialized inspection reports contained in the Accident Prevention Manual (Orange). These may be useful and applicable to the Lodge's operations.



## NO COVERAGE FOR VEHICLE OWNERS UNDER MASTER LIABILITY PROGRAM

We receive many inquiries regarding coverage for vehicles owned, loaned or somehow provided to Lodges or involved in Lodge activities. It must be clearly understood that there is no case where any owner of any vehicle will be provided liability coverage or any coverage for damages to the owned vehicle (or a vehicle normally furnished for use or any substituted or leased vehicle).

This means that any volunteer using an owned vehicle must rely on his or her own liability and/or collision insurance. The Lodge cannot contractually agree to provide coverage to an owner of a vehicle in any situation, whether it be a volunteer, retail company or a transportation company. The following are examples of some possible situations:

- ◆ No coverage can be provided to school districts, churches or retail companies for use of a bus to transport members or to transport others such as Hoop Shoot participants, Veterans or other persons participating in Lodge programs.
- ◆ Lodges should not own any vehicles, especially buses. If a Lodge owns a vehicle, it must obtain insurance, but it must be noted that it is rare that a Lodge could obtain sufficient limits to protect against a catastrophic occurrence. It is very important that a Lodge does not accept the donation of any type of vehicle.
- ◆ The Master Liability Program cannot provide insurance to car dealerships that loan vehicles to Lodges for special occasions. They do Lodges no favors by loaning the vehicle if the Lodge has to buy expensive "named non-owners" coverage.

The Master Liability Program does provide non-ownership/hired auto coverage for the Lodge, but the owner's auto coverage or the personal insurance of the operator would be called upon first. Furthermore, the Master Liability Program would assert that the Lodge was not vicariously liable for the actions of the operator in every case.

## ROOFS

Over the last few years, the Lodges of the Order have had a large number of claims submitted for roof damage.

The Property Plus Program does provide such coverage for actual damage but such coverage does not include protection for wear and tear or deterioration. Claims made that are the result of aging are not covered in whole or in part.

It is absolutely necessary for all Lodge management to maintain, repair and replace roofing in a timely fashion.

The Property Plus Program is an insurance program, not a maintenance program.



# Happy Easter

## SWIMMING POOL SAFETY

In the past few years, almost all Lodges have cooperated with the policy to remove diving boards and other play apparatuses. It is realized that such equipment is a potentially dangerous instrument that should be removed as a safety measure to protect users and to protect the Order's Self-Insured Master Liability Program.

In recognition of this hazard, most schools, community pools, YMCA's and health clubs have removed such equipment; however, a few Lodges have not done so as of yet. There is no valid reason for any Lodge to have such equipment.

We have one Lodge in the West that has had three claims. In the South and East, we have had several serious claims. One claim involving a minor child resulted in a very high verdict even though the Lodge involved was not negligent from a factual point of view. Such cases place an unfair burden on Lodges that are compliant and remove these hazards.

With reference to pool safety, every Lodge should have an adequate number of properly trained lifeguards on duty at any time the pool is open (regardless of local rules or laws). If the Lodge cannot afford lifeguards, the pool should be closed. Furthermore, alcoholic beverages should NOT be served in the pool area.

## PROPER SERVICE OF ALCOHOL

As has been previously stated, there has been a marked reduction in liquor claims. As a whole, the Order is to be complemented for the work done in training both paid and volunteer servers and in the almost universal acceptance by Lodge leadership that this is a prime objective.

The message has been received by almost everyone, but there are still a very few that, either by neglect or a lack of concern for the Order, have failed to implement proper service of alcohol.

The service of alcoholic drinks must, as a first principle, require that no service be given to anyone who is intoxicated, approaching intoxication or gives an appearance of intoxication.

No patron should be allowed to serve themselves or to buy drinks for others who have been or would be cut off from service (open bars or beer kegs should never be allowed). If others use the facilities, never allow them to dispense liquor in any way.

It is also suggested that every Lodge look inwardly and determine if they have any "problem drinkers" who use the Lodge facilities and how "help" programs or actions can be initiated to serve these individuals.

## STAGES/RAISED AREAS

We have recently mentioned that a number of claims arise from falls from stages or raised areas. In recent months, there continued to be several additional claims of this type.

Every Lodge should review the exposures in these areas and take precautions to avoid more injuries.

- ◆ All changes in walking levels should be clearly marked with tape or noticeable markings on the walking surfaces as well as with prominent signs. Particular effort should be made to warn guests.
- ◆ Railings should be placed on stairs and around the perimeter of raised areas or stages where there is any drop.
- ◆ Access to stage areas should be limited. When not in use, they should be blocked off from traffic.
- ◆ Stages should be in good repair and not crowded.

Injuries of this type are avoidable if the Lodge management properly handles the facility's use.



## LODGES OWNING SUBSTANTIAL COMMERCIAL PROPERTY

Some Lodges own large commercial buildings or shopping centers. These should be insured under a separate business policy. The Self-Insured Master Liability Program cannot be used to provide coverage to such commercial operations, but this does not mean that the coverage cannot be applied for the risks associated with the rental of a small portion of the Lodge building; however, any such tenant in the Lodge building must be responsible for its own liability.



## FOOD AT LODGES

It is very important that every Lodge review the food serving process; anyone involved in the service as well as the kitchens and equipment. **The Lodge must meet all health standards.**

Lodges cannot run its kitchens as communal facilities with many family members using the premises without proper control or procedures. The lack of such control can result in injuries to volunteers or employees, but there is also the possibility of causing claims related to the allegations of contaminated food.

Food contamination or poisoning can have widespread results and can cause injuries. It can also generate a large number of claims that can result in a catastrophic loss to the self-insurance Program.

Recently, at one Lodge, an individual claimed he had been served contaminated food. The person had other health problems and did die within a short period of time. It was determined that the Lodge had thirty-nine health violations after a health department inspection. Under other claim circumstances, these thirty-nine violations could have supported a claimant's allegations.

In another case, an Elk volunteer made a claim for a serious injury resulting from bad kitchen procedures and the claimant's negligence. This claim also pointed out bad health practices and unsanitary food preparation.

Other recent examples not involving the Elks are:

- ◆ A large grocery chain served bad milk and paid an amount approaching one hundred million dollars.
- ◆ A medium-sized caterer served bad salads that were contaminated through bad practices. They received several hundred claims and had to go bankrupt.
- ◆ A large fast-food group did not cook food properly and had hundreds of claims and several deaths. The company sought Chapter 11 protection.

Bad claims can come from the kitchen and bad management. Health laws vary throughout the Country but most jurisdictions require inspections. The cook in charge should be certified.

Lodges should not allow food to be brought in by members or anyone else. The Lodge cannot be responsible for the bad acts or hygienic deficiency of others.

If independent contractors are used or contracted with, the caterer must have its own insurance and must hold the Lodge harmless.

## LIFE SAFETY IN LODGES

In areas occupied or used by members or guests, Lodges should have appropriate safety devices such as fire, smoke and carbon monoxide detectors.

If a Lodge owns any facilities rented to or used by individuals as living quarters, these same devices should be provided.

Furthermore, any facilities should be free from lead paint and asbestos exposure (any claims alleged from these sources are not covered under the Master Liability Program).

Entrances and exits must be accessible and properly constructed and configured.

In every case, all fire safety, zoning and construction code provisions must be complied with.





## LEGAL REVIEW FOR THE NEW LODGE YEAR

The following are only some steps a Lodge can take to take stock and review the status of its legal health:

- ◆ What is the legal status of the Lodge (a corporation or an unincorporated association)? What is the status of any affiliated or related entities? Does the Lodge management know where legal documentation is located? Are required filings and registrations maintained appropriately? In general, it is recommended that Lodges and any necessary affiliated corporations be established as not-for-profit corporations in the state their domicile.
- ◆ What contracts or obligations has the Lodge assumed and are all assumptions of liability or established obligations of the Lodge appropriate, necessary and for the benefit of the Lodge and its members? The officers and trustees should know of any obligations and maintain proper records.
- ◆ Are contractual obligations established on an equitable basis with no conflict of interest or any appearance of a conflict of interest?
- ◆ Does the Lodge have written personnel policies and work rules?
- ◆ Are contracts submitted to the Lodge for acceptance reviewed by the Lodge attorney or persons knowledgeable in contract matters?
- ◆ Has the Lodge anticipated the possible need for emergency service and have they previously executed service contracts with repairmen, plumbers, electricians, etc.? Such contracts should provide indemnification to the Lodge and any service contract must provide evidence of liability insurance, including contractual liability coverage and name the Lodge as additional insured on the contractor's policy. Make sure that the indemnification includes the employer's obligation to protect the Lodge from any claims made by the service contractor's employees.
- ◆ Is the management of the Lodge aware that it is generally unacceptable to indemnify other individuals or corporations?
- ◆ Are the financial and business records of the Lodge properly filed for retrieval and provided with back-up redundancy?
- ◆ Has the Lodge prepared a rental or use contract to be signed by individuals or corporations using the Lodge on a basis allowed by the Statutes of the Order? In this agreement, the using entity should hold the Lodge harmless for activities under its control and provide evidence of insurance coverage (see Pages 10-11 of the Liability Booklet).

There are many other subjects to be considered (see the 4th Edition of the Accident Prevention Manual).

## DEATH BENEFITS

The Insurance Department frequently receives mail or email from the families of deceased members asking if there are any life insurance benefits due them. The Statutes of the Order prohibit such benefits.

## KITCHEN FIRE PREVENTION

In prior years, it was always strongly recommended that dry chemical hood units be installed in every kitchen. For thirty years, these units have done an excellent job in avoiding kitchen stove fires; however, in recent years, new technology is now recommending a wet chemical unit that better deals with new hotter cooking oils and other methods. In many areas, codes require this newer technology. Each Lodge should review local requirements as well as a Lodge's individual needs on this subject.



## CLAIM REPORTS FROM LOCAL LODGES

As we have stated in the past, Lodges should do a better job of completing claim reports:

- The report must be completed by an authorized representative of the Lodge, NEVER by the injured party or their representative.
- Fill in all spaces.
- If there is any indication that the claim is questionable or that the claim by the alleged injured party is misstated, please make such comments on the report.
- Any information helpful to the defense of the claim should be provided. If additional space is needed, add a page to the report.
- After any incident, the Lodge should attempt to take pictures of the site of the alleged incident. Each Lodge should have an inexpensive disposable camera available at all times.
- The Master Liability Program does not cover claims by employees injured while working. Such matters should be reported to the Lodge's Workers' Compensation carrier, not the Master Liability Program.
- Damage/vandalism to cars or personal property that occurs on the Lodge premises or in the parking lot that is not caused by Lodge negligence will not be paid under the Master Liability Program. Such incidents should be reported and paid by the insurance carriers of the parties who own the property.
- Damage or vandalism to a vehicle parked in a Lodge's lot will not be paid for by the Master Liability Program. All persons park at their own risk.



## EMPLOYMENT DEFALCATION AWARENESS

The accident prevention chairmen should, on a continuing basis, remind the officers and management of Lodges about the acts of infidelity by employees, officers or members that can lead a Lodge to bankruptcy or serious financial problems. Even small defalcations on a continuing basis (and over time) can lead to a weakening of the overall financial vitality of an organization. All too often, a Lodge is operating on a narrow survival margin. This type of incident can act as the final blow.

Every Lodge should always follow good accounting practices with a separation of functions to avoid one party having total control over expenditures or fundraising. This does not mean that the system has to be overly elaborate or difficult. A system to suit each Lodge will have separate functions to make sure more than one person is involved in every transaction. The elected officers should never relegate all functions to a paid manager or, for that matter, to the secretary or the chairman of the Board of Trustees. Periodic checks should be made on the operations, employees and volunteers who handle the business of the Lodge.

The Lodges will almost always have some insurance under the Property Plus Program, but losses of this type are frequently hard to prove in order to make a full recovery. When there is a loss, the Lodge may never find out the proportions of the loss and may never be able to make a claim on the coverage available. This is especially true when the claim is experienced by a badly managed Lodge.

These losses can occur over a long period of time and can come from long-term trusted employees, officers or volunteers. Remember that, if any defalcation for any individuals are discovered (even minor ones), future actions by this individual may not be covered under the Property Plus Program.



## OUTDOOR AREAS

Every lodge should carefully inspect outside areas used during summer activities, such as picnic grounds, athletic fields, outdoor meeting areas, etc. Make sure that there are no hazards such as uneven footing, holes, blocks or hidden objects for people to trip or fall on. If only safe paths are to be used, clearly mark such paths and warn against deviation from such routes. It is important to closely inspect these areas because changes occur over the winter season.