

# RISK MANAGEMENT BULLETIN

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## **Absence of Coverage for Code Enforcement Officers Using Tasers During the Course of His or Her Duties**

A question has arisen as to whether LGIT provides coverage for code enforcement officers who carry Tasers while on duty. A Taser is an Electronic Controlled Device utilized in law enforcement and corrections to temporarily incapacitate dangerous and combative suspects and convicts who pose a risk to the safety of others. Because code enforcement officers are not empowered to perform law enforcement activities, the answer is no.

LGIT's primary liability policy defines "law enforcement activities" as "all activities related to investigation of crime, apprehension and arrest of suspects, care and supervision of Prisoners, and security and related tasks . . ." If a weapon is intentionally discharged by a member while engaged in these types of activities, the incident would be covered under the insurance policy. However, the duties performed by a code enforcement officer do not fall within this definition.

A code enforcement officer is not a sworn police officer and does not have the authority to apprehend or arrest anyone. A code enforcement officer does not supervise prisoners or provide any type of security related tasks. Further, a code enforcement officer, in most cases, is not certified by the Maryland Police Training Commission to carry out police functions. To the contrary, a code enforcement officer generally has the authority to issue civil citations for municipal infractions. That authority does not give a code enforcement officer the ability to detain or seize a citizen.

The United States Constitution and Maryland Declaration of Rights prevent government actors from improperly seizing citizens. A seizure occurs when a government actor restrains a citizen's freedom of movement. The intentional use of a Taser to immobilize a citizen, even briefly, is considered a seizure. In Maryland, a seizure is appropriate only if a sworn police officer has reasonable suspicion to believe that criminal activity is afoot, or probable cause to believe that a criminal act has been or is being committed. There are no provisions in federal or state law that extend that power to code enforcement officers.

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The Maryland Declaration of Rights and the United States Constitution also guarantee the right of citizens to be free from excessive use of force. The use of a Taser implicates that right. A police officer, unlike a code enforcement officer, can use reasonable force in the performance of his or her duties. There is no statute or case law extending that right to a code enforcement officer.

The use of force by a police officer will be scrutinized by the courts to determine whether the use of force was reasonable. The analysis looks at the totality of the circumstances presented to the police officer and invariably takes into consideration whether other, less intrusive applications of force, such as command presence, verbal commands, arm holds, strikes to the body, or the use of pepper spray would have achieved the same result. And, while a code enforcement officer may be certified by Taser International in the use of a Taser, he or she has not, with limited exceptions, received the training given to police officers regarding the application of force.

The use of a Taser can also result in the imposition of punitive damages against a code enforcement officer. In a federal constitutional claim, there is no cap on the amount of punitive damages that can be awarded to a plaintiff. Punitive damages are awarded in order to deter improper conduct in the future. Punitive damage awards are not covered by the standard employee liability policy. Punitive damage coverage must be purchased separately.

The use of a Taser by a code enforcement officer against a citizen is, unquestionably, an intentional act that is not covered by the primary liability policy issued by the LGIT. Consequently, the use of a Taser by a code enforcement officer would render both the member and the employee liable for damages arising from a lawsuit alleging the misuse of a Taser by the officer.

***This bulletin is intended to be merely informational and is not intended to be used as the basis for any compliance with Federal, State or local laws, regulations or rules, nor is it intended to substitute for the advice of legal counsel.***