

# THOR

INSURANCE FINANCIAL

## Waivers - Managing Risk for Recreation and Sporting Events

Waivers tend to be poorly understood, both by the organizations that require their use and by the individuals who are asked to sign them. Courts impose stringent requirements when considering whether to enforce a waiver as a defence to a lawsuit brought by a user. As a result, the Courts routinely reject waivers that fail to meet these technical requirements. However, a properly worded waiver, administered in a manner consistent with the requirements laid down by the Courts, can provide a defense in the event of a lawsuit brought by a participant.

### What is a Waiver?

A waiver is a legal contract between two parties in which one party (the participant) gives up the right to sue the other party (the organization and its representatives) under specific circumstances. In return, the participant receives a benefit, usually the right to participate in an activity.

### Characteristics of Enforceable Waivers

Each liability claim and Court case has its own unique circumstances. However, where waivers have been found to be enforceable in recreation-based lawsuits, the following factors have been present:

- T** The physical risks and dangers related to the activity have been pointed out in advance of the person making the decision to participate
- T** The waiver language was clear and easy to read
- T** The waiver was specific to the activity and outlined the physical risks involved, and the legal rights to be given up
- T** The waiver and its effect was brought to the attention of the participant at the time he or she was requested to sign it and they were given ample time to read it
- T** The person signing the waiver was capable of understanding its intent and effect. That is, a waiver will probably have no effect if the person signing it was intoxicated

Can a waiver protect an organization from liability? Or is a waiver simply a routine formality which will not hold up in a court of law? The courts have upheld waivers. The final outcome depends on the particular circumstances, how the waiver is written and how it has been executed.

Waiver & Other Agreements – Rachel Corbett & Hilary Findlay

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## Effective Administration of Waivers

How a waiver is administered or used is just as important as what it contains. Employees and/or volunteers must follow a standard procedure when obtaining a participant's signature on a waiver and be provided with basic training on the procedure. The Courts have relied heavily on the evidence provided by the defendant's employees as to how a participant's signature was obtained on a waiver.

The effective administration of waivers should include

- T** advance notice of the requirement to sign a waiver and provision of a sample copy of the waiver form,
- T** confirmation of participant's identity at the that time of signing,
- T** assurance that the participant has not changed or crossed out any wording on the waiver,
- T** confirmation of participant's understanding of the waiver.



**Do not allow any individuals who appear to be intoxicated to participate in the activity.** Employees should be instructed that if they suspect the participant may be intoxicated or otherwise impaired, they must refuse to witness the waiver.

**Note:** The attitude and behavior of staff towards the administration process can undermine the effectiveness of the waiver. All staff should be coached to take the process seriously and to make it clear to participants that the waiver is an important document.

Participants must not be rushed when they are reviewing and signing the waiver, and staff members must never downplay the fact that the participant is giving up his or her legal rights by signing the document. If the participant asks for an explanation of the waiver, your employee or volunteer should respond as clearly and simply as possible.

## Is a Waiver Enforceable Against a Minor?

Waivers signed by parents or legal guardians are not enforceable with respect to the interests of the child. A parent cannot sign away the right of a child, in the event of injury, to pursue legal remedies. The child, upon reaching the age of majority, has the right to pursue legal recourse on their own behalf. Additionally, if the minor signs the waiver, it is not enforceable against the minor's interest. An exception to this principal is where a minor contracts with respect to the "necessities of life", such as a housing rental agreement.

## Voluntary Assumption of Risk and Informed Consent

are legal concepts that may mitigate the risk in cases where waivers have limited effectiveness; however, they may not completely eliminate risk. Contributory negligence will also have a bearing on the extent to which your organization is exposed for potential incidents arising from an event.