

Minimize Risk for ‘Extracurricular’ Activities

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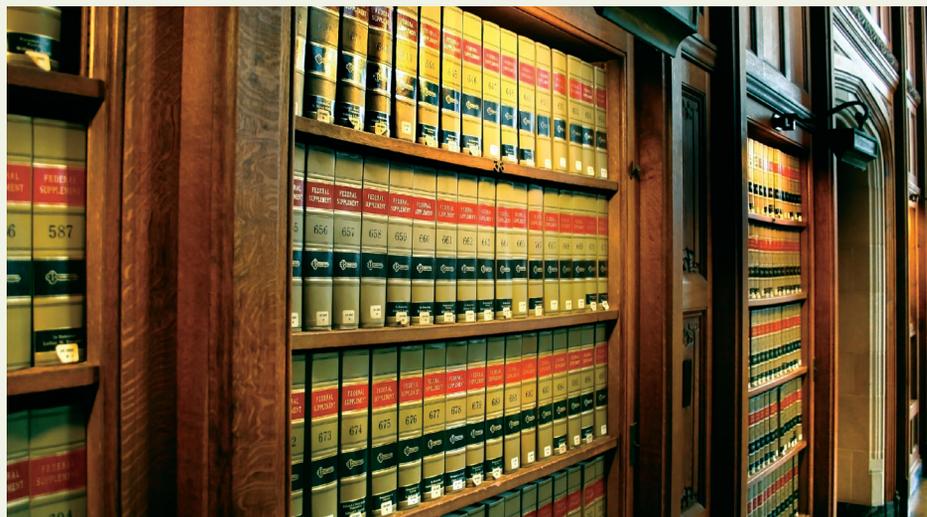


Q. We are planning our annual meeting and would like to offer activities outside of the educational sessions and meetings geared toward our members’ families (including children) for the first time. What is the best way to protect the organization in the event of any mishaps?

A. While offering attendees and their families the opportunity to participate in “extracurricular” activities is an attractive way to draw meeting attendees, such events do create potential risk to the sponsoring organization. Assuming that the organization determines that the benefits outweigh the potential risks, there are several ways to minimize the potential liability. Organizations offering any type of event involving physical or potentially dangerous activity should require participants to sign a waiver, permission slip or informed consent.

Effective Waivers

Written waivers or releases entered into knowingly and voluntarily in exchange for the ability to participate in an activity (or other consideration) can be effective at shielding the organization from liability. The organization’s goal in requiring participants to sign a waiver is to gain the participant’s agreement to waive his or her right to sue the organization in the event of injury or other harm suffered during the course of the activity. To be effective, waivers must be entered into knowingly and voluntarily. Therefore, it is important that the waiver be clearly drafted, fully describe the activity and the associated risks, and establish that the participant has agreed to assume the risks involved in the activity. Waivers are not enforceable for minors (they do not have the legal capacity to sign contracts) unless they are signed by the participating minor’s parent or guardian. Beware: Even the best crafted waiver will not shield an organization for injuries caused by its own negligence and are subject to scrutiny by the courts. The ultimate



effectiveness of any waiver will be based on the specific facts and circumstances of the situation.

Permission Slip

If the scheduled event is specifically geared toward minor children (younger than 18), organizations should consider including a permission slip as part of the waiver process. The permission slip should (i) fully inform the child’s parent/guardian of the nature of the activity; and (ii) indicate the parent or guardian’s knowledge and permission for the child to participate in the activity or attend the event. While a permission form does not eliminate the organization’s liability in the event of an accident or injury, it is an important tool to establish that the parent/guardian was fully informed of the planned activities and had the opportunity to assess the risks and make an informed decision about allowing their child to participate.

Consent Form

If the activity in question is inherently dangerous (e.g., race car driving, skydiving), an informed consent form can be used to help protect the organization from claims associated with the risks of the activity itself (as opposed to excusing the organization from responsibility for

its actions). Informed consent can offer protection only from risks clearly set forth in the consent form. A good form will (i) identify and describe all inherent risks; (ii) require the participant to represent that he or she has read the form and understands the risk associated with participating in the activity; and (iii) secure the participant’s agreement up front (as a condition of being allowed to participate) not to sue the organization for any injury, expense or other liability resulting from the risks identified in the form. Inherent risks are those risks that are essential to the nature of the activity. For example, jumping out of an airplane may result in serious injuries resulting from a fall from great heights.

Waivers, permission slips and informed consent forms can be effective ways to limit an organization’s liability and manage risk. However, they do not take the place of careful planning, supervision and communication. Organizations always should exercise reasonable due diligence in selecting activities for their participants and, where possible, hire outside experts to manage those activities. ■

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.