

# DO LIABILITY WAIVERS WORK?

by Mary MacGregor

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I am often asked about liability waivers. Do they work? Do they help a land-owner manage risk from accidents involving other people's activities on that owner's land? Are they worth having?

I generally say that a well-drafted and thorough liability waiver is worth having as ONE of a number of steps to manage and reduce risk. You need to have ALL of the following to avoid liability in case of an accident:

- safe premises,
- a safe activity,
- appropriate supervision of the activity,
- prior scrutiny of participants for their ability to participate, a well-written liability waiver signed by the participant before the activity starts
- correct procedure to get the liability waiver signed, and
- lots of liability insurance which covers the activity.

If the activity is a commercial activity—in other words, you're charging for people to participate—you must be doubly careful to meet all of these requirements.

And note also that no one can give a binding release for participation of an under-age child.

If there is an accident and you are sued, ideally you will have documentary evidence (apart from just your recollections) about the steps you have taken to have safe premises and to make the activity safe and well-supervised by qualified people. This is where a daily diary including notes of the safety checks, training, repairs, and inspections relating to the activity, can be invaluable if in fact it shows that you are diligently trying to achieve these objectives.

You will also need to show the court what steps you took to check out the participants in the activity to make sure that they were generally fit for the activity and could participate safely in it. You need to be able to show that you were prepared to exclude people who would not be able to participate safely, or that the activity could be—and was—safely modified to accommodate their needs, fitness, or skill level.

The procedure for getting a liability waiver signed includes:

- the participant must be aware when they say they want to join the activity, that a liability waiver must be signed before they participate in the activity
- ideally one person should be given the task of distributing the liability waivers before the event and at the latest at the sign-up point, and that person should have records about the process and the people participating, and of course the signed liability waivers
- the participant should be given the liability waiver to read, if the participant wants to read it, and an opportunity to ask questions about it
- the participant must sign the liability waiver before participating in the activity.

- keep the signed liability waivers and procedures records in a safe place. You never know when you'll need them.

The liability waiver document should be drafted by a lawyer who has experience with liability waivers so that the waiver adequately warns the participant of the dangers, and includes all of the potential bases for a claim.

And finally, you must disclose the activity or activities to your insurer to make absolutely sure that your liability insurance includes these activities. Again, that applies even more strongly if you are charging for the activity. Your insurer may set requirements for the insurance and if there are requirements, you have to comply with them and you have to be able to prove that you did comply with them.

My personal recommendation is five million dollars of liability coverage.

Are liability waivers "worth it"? Yes they are, but only along with all of the other protective steps listed above. Call it a "layered risk management strategy" or a "belt and suspenders" approach, but do them all and you'll sleep better at nights.

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