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## What's in a Good Waiver?

Jason N. Miller, Esq.

In an effort to minimize the risk of liability or to avoid costly lawsuits, many organizations, including nonprofits, require participants such as volunteers to sign a liability waiver or release prior to taking part in hazardous or potentially hazardous activities. A liability waiver is a contract between an organization/entity and a participant in which the participant agrees to excuse or absolve the other party from liability for damage or injury arising out of a particular activity. Liability waivers come in all shapes, sizes and forms, so it is important for organizations to recognize the characteristics of a good waiver.

In Arizona, liability waivers are legal and enforceable contracts. Having a waiver is definitely better than not having one. However, Arizona courts traditionally look upon such waivers with disfavor and tend to construe the waiver strictly against the party relying on it. Further, the Arizona Supreme Court, interpreting a provision in the Arizona Constitution, has stated that the waiver issue is a question of fact that must be submitted to a jury. This ruling precludes most pre-trial motions to decide this issue and requires most cases involving waivers to go to trial.

Although a liability waiver may not end a lawsuit in its early stages, it is still a helpful legal tool and should be utilized by organizations wishing to limit their liability exposure. In many instances, the type of waiver needed will vary based on the particular activity, but well-drafted waivers share many of the same five basic characteristics.

1. A well-drafted waiver should be easy to read and understand. Lengthy documents with exculpatory language hidden in small font on the back page are not likely to hold up in court.
2. A well-drafted waiver should include a section in which the participant acknowledges that he or she is assuming the risks inherent with the particular activity, e.g. a volunteer that agrees to paint would acknowledge assuming the risk of working on scaffolding or a ladder.
3. A well-drafted waiver should include a section in which the participant agrees to waive or release any and all claims, including claims based on the negligence of the released party.

4. A well-drafted waiver should, in some cases, include a section in which the participant agrees to indemnify, defend and hold the released party harmless from claims made by third parties that arise out of the particular activity, as well as claims made by the participant.
5. A well-drafted waiver should include a section in which the participant affirms that he or she has read and understood the waiver, understands that he or she is relinquishing substantial legal rights, and that he or she is voluntarily signing the agreement with the intent of waiving liability.

Waivers of liability that meet these five criteria stand a good chance of being legally enforceable.

If you have any questions about waivers of liability or would like assistance reviewing or drafting a waiver or release, contact Jason Miller or any other attorney at Carpenter, Hazlewood, Delgado & Wood, PLC.