

# No Fun Until You Sign a Waiver!

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Recorded on: February 23, 2015



## Minors & Voidable Contracts

Except in very rare instances, a contract signed by a minor is voidable by the minor until he or she reaches the age of majority.

### What does voidable mean?

A “voidable” contract is legally binding on both parties unless the minor chooses to void the contract, at which time it will no longer be enforced.

## Those Rare Instances

1. when a minor enters into a contract to provide support for an illegitimate child
2. a contract with a bail bonds provider
3. student loan agreements
4. when the contract has been approved by a court
5. in some cases where the minor has received benefits per the contract.

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## Who's a minor?

- Children under the age of 18 in most states except Missouri and Alabama are considered minors for purposes of a contract.
- In most states, once they reach the age of majority, minors have a "reasonable time" in which to repudiate contracts made as minors.



## Risk Tips:

- It's never a good idea to ask a child to sign a contract you expect to be enforced, as necessary, by a court of law.
- Most leaders recognize this, and ask parents or guardians (and not children) to execute waivers on behalf of their children.
- These youth participant waivers ask parents to waive the right to sue the nonprofit for injuries their child sustains.



## Topics for this Webinar

- How state court rulings differ on the **enforceability of parental waivers**
- Key considerations in **careful waiver drafting**
- Using a **Participant Agreement** as an alternative to a waiver

## How State Courts Treat Waivers

1. **GENERALLY ENFORCE** to protect organizations against liability – e.g., schools, other nonprofit or public-serving organizations, or both nonprofit and commercial entities



**WHICH STATES:** Arizona, Alaska, California, Connecticut, Colorado, Florida, Indiana, North Dakota, Ohio, Massachusetts, Minnesota, and Wisconsin.

## How State Courts Treat Waivers

2. **CONSISTENTLY REJECT** waivers signed by parents on behalf of their minor children

**WHICH STATES:** Alabama, Arkansas, Hawaii, Iowa, Illinois, Louisiana, Maine, Michigan, Montana, New Jersey, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington and West Virginia.

## How State Courts Treat Waivers

### 3. INCONSISTENTLY – hard to predict

**WHICH STATES:** Delaware, Georgia, Idaho, Kansas, Kentucky, Maryland, Missouri, Mississippi, North Carolina, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Vermont and Wyoming.

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S Simple

## Risk Tips:

- **Use a proper title** — Always use the term “Waiver” or phrase “Waiver and Release of Liability” as the title of your form. Never use a misleading title such as “sign-up sheet.”
- **Keep it simple** — Limit the purpose and content of the waiver to your request that a parent waive the right to sue for injuries suffered by their child while participating in a program or activity sponsored by your nonprofit. Waiver language buried in a longer document covering a multitude of topics increases the likelihood of disfavor by a reviewing court.

**GOOD WAIVER**

Proper title

CHRISTIAN CHURCH

**CONSENT AND LIABILITY WAIVER FORM**

I, \_\_\_\_\_ hereby give permission to take \_\_\_\_\_ on the  
(parent/guardian) (name of youth)  
 following activity \_\_\_\_\_.

In consideration of the attendance of my child at the above named activity by Westside Christian Church in Roseville, California, and for allowing my child to participate in this activity, I do hereby release and discharge Westside Christian Church and all of its pastors and adult leaders acting officially or otherwise from any and all claims, demands, actions, or causes of action on account of any injury sustained by my child during said above named activity. I hereby authorize any pastor or adult leaders of Westside Christian Church to obtain emergency medical treatment for my child at any time during the above named activity. I understand that an attempt will be made to notify the parents

**NOT-SO-GOOD  
WAIVER**

Misleading title

**Youth Permission Slip**

Please read this slip carefully, fill out completely, sign and return by day of activity. Your child / children **MUST** have a signed permission slip in order to attend.

Thank you.

NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ D.O.B.: \_\_\_\_\_

I, \_\_\_\_\_ as parent / guardian of the above named child, give him / her permission to participate in the activities of \_\_\_\_\_ I release the church and its representatives from any liability in the event of an accident enroute, during, or returning from an activity. I also authorize them to obtain any emergency medical attention that may be required during my child's attendance.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

Parent / Guardian



## GOOD WAIVER

### Simple

#### LIABILITY RELEASE FORM

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, intending to be legally bound hereby, the undersigned agrees and does hereby release from liability and to indemnify and hold harmless Franciscan University of Steubenville, and any of its employees or agents representing or related to the University as regards to Campus Guest Visitation and Overnight Housing. This release is for any and all liability for personal injuries (including death) and property losses or damage occasioned by, or in connection with any activity or accommodations for this event. The undersigned further agrees to abide by all the rules and regulations promulgated by Franciscan University and/or its affiliate groups and vendors throughout the Campus Visit.

Guest Name (please print) \_\_\_\_\_

Date Signed \_\_\_\_\_

### Teams Challenge Course, Paintball, Zip Line and Climbing Wall & other Activities Acknowledgement of Risk and Assumption of Responsibility / Liability Waiver / Hold Harmless

LGYC/CC "Stronghold" adventure programs involve a variety of activities that often include warm ups, exercises, activities, group initiative problems, low element challenges and high element challenges like the zip line and climbing wall, among other activities. Participants engage in stronghold adventure activities always by their own choice, so the individual must assume the risk of injury. We do not want you to engage in activities that would be detrimental to your health or which might be opposed by your physician because of illness, injury or surgery. We ask you for the following information so we can be aware of potential problems to better help you safely enjoy your experience. Thank you for your assistance!

Participant's name: _____	Group name: _____
Gender: M or F Birth Date: ____/____/____	Age: _____ Height: _____ Weight: _____
Address: _____	
In case of emergency notify: _____	
Relationship to you: _____	
Home Phone: ( ) _____	Numbers for emergency contact: ( ) _____
Business Phone: ( ) _____	( ) _____

Please Circle:

Yes No Do you have allergies? (insect stings, drugs, etc.) \_\_\_\_\_  
 Yes No Do you take or carry medication? \_\_\_\_\_  
 Yes No Medical Conditions? (epilepsy, diabetes, asthma, etc.) \_\_\_\_\_  
 Yes No Any physical conditions that will hinder your participation? \_\_\_\_\_

Specify:

\_\_\_\_\_

Challenge Course, Paintball, Zip Line or Climbing Wall, may be exposed psychologically and physically to risk. Although the program has taken precautions to protect participants, it is impossible for the program to eliminate all risks. I appreciate that there are a number of inherent risks in the camp or its staff and agree to personally assume the risk of injury or safety and I assume that responsibility. Further, I agree to indemnify and hold harmless the employees as a result of my participation in the activity. I agree to comply with all instructions and directions of Lake Geneva Youth Camp & Conference Center staff during my participation.

Participant's Name (please print): _____	Date: _____
Participant's Signature: _____	
Parent/Guardian Name (please print): _____	Date: _____
Parent/Guardian Signature: _____	
(Signature of Parent or Legal Guardian required for participation)	



## Risk Tips:

- **Be truthful and tell it like it is** — Make certain that your waiver contains no fraudulent statements or misrepresentations. For example, don't indicate that participants may inspect your equipment and facilities if there is no opportunity to do so. Don't tell parents there is no insurance for the event, if, in fact, there is.
- **Clearly describe the specific activity** in which the participant will be involved.
- **Don't use one waiver for multiple activities.**

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## GOOD WAIVER

Describe the specific activity  
and inherent risks

### YOUTH LIABILITY WAIVER

#### Acknowledgment of Risks

I acknowledge kayaking, even in still water, entails known and inherent risks, as well as unknown/unanticipated risks which could result in illness or injury, including permanent disability, trauma, paralysis, death, drowning, mental or emotional injury, and severe social and economic losses which might result not only from own actions, inactions, or negligence, but also the actions, inactions, or negligence of others, the rules of play, or the condition of the premises or of any equipment used.



tackle football, flag football, cheer, tball, soccer, basketball, or volleyball

## NOT-SO-GOOD WAIVER

Try to include  
multiple  
activities

### Player Waiver, Release Liability, and Indemnification Agreement

I, the undersigned player, acknowledge, agree and understand that:

1. Voluntarily and of my own free will, I elect to participate in Infinity Youth Sports League. Furthermore, I agree that I am in good health and proper physical condition to participate in one of the following sports: tackle football, flag football, cheer, tball, soccer, basketball, or volleyball.
2. I understand that there are certain risks and hazards involved in participating in tackle football, flag football, cheer, tball, soccer, basketball, or volleyball may result in injury or death to me or other players including, but not limited to those hazards associated with, playing conditions, equipment, and other participants.
3. I understand that participating in the tackle football, flag football, cheer, tball, soccer, basketball, or volleyball is dangerous to me and to other players and may result in serious injury or death.
4. I understand that the very nature of tackle football, flag football, cheer, tball, soccer, basketball, or volleyball is hazardous and risky, including, but not limited to, the acts of running, jumping, stretching, sliding, diving, skating and collisions with other players and with stationary objects, all of which can cause serious injury or death to me and to other players.

## Risk Tips:

- **Note and describe inherent risks** — Include a separate paragraph in the waiver alerting the participant to the inherent risks of the activity. Draft a representative list of inherent risks associated with the specific program or activity covered by the waiver.
- **Note the special risks pertinent to the activity, outdoor/indoor location, or type of facility.** Remember that your nonprofit is in the best position to describe the terrain, conditions, physical fitness required, etc., as well as the dangers or unpleasant conditions associated with the activity.





- **Include an assumption of risk statement** that affirms the participant's voluntary participation. For example: "I acknowledge and accept the inherent and special risks associated with hiking Big Mountain and certify that I am voluntarily participating in the hike on June 10th."
- Use **readable type** — While it's okay to use boldface, underline and italics to highlight key terms, don't make the mistake of putting important or lengthy sections in ALL CAPS, WHICH ARE HARD TO READ.

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## GOOD WAIVER

Easy to read

### Release of Liability

I, the undersigned, hereby release the [REDACTED] YMCA (The Y) and all affiliated with the Y from any liability or claims for injury, illness, or property damage that I sustain and/or cause during my participation, or sustained by my son/daughter/minor in my care participating in this event, program or other which is in any way related.

I expressly accept and assume all of the risk inherent in this activity or that might have been caused by the negligence of Releasees. Releasees are defined as partners, sponsors, officers, members, agents, employees and any other organization, entities, and individuals who are serving The Y including all volunteers assisting with programs, events or other Y activities.

I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Releasee from any and all claims, demands, or causes of action which are in any way connected with my participation in this activity, or my use of their equipment or facilities, arising from negligence. This release does not apply to claims arising from intentional misconduct.

Player Name (Print): \_\_\_\_\_

Parent/Guardian Name, if under 18 (Print): \_\_\_\_\_

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## NOT-SO-GOOD WAIVER

Hard to read

### WAIVER:

I, \_\_\_\_\_, DO HEREBY RELIEVE, AND ABSOLVE THE COUNTY OF DES MOINES, CONSERVATION DEPARTMENT FOREVER, THE ALDO LEOPOLD CHAPTER #271 OF PHEASANTS FOR EVER, STATE C DIRECTORS, VOLUNTEERS, AGENTS, ASSIGNEES, AND OTHER DULY AUTHORIZED F OF ANY AND ALL CLAIMS ARISING OUT OF PARTICIPATION IN THE YOUTH JAMBO SAID PHEASANTS FOREVER AND THE CONSERVATION DEPARTMENT OF DES MOIN FULLY UNDERSTAND THAT FIREARMS, WHEN MISHANDLED, CAN BE DANGEROUS UNDERSTAND THAT IT IS INCUMBENT UPON ME TO USE THE UTMOST CARE IN TH HUNTING SAFETY AND FIREARM SAFETY. I INTEND TO DO SO, AND REALIZE THAT AFFIRMATIVE DUTY TO DO SO.

I FURTHER WAIVE ANY AND ALL CLAIMS FOR ANY NEGLIGENCE, REAL OR ALLEGED MEMBER, OFFICER, AGENT, OR ASSIGNEE OF THE ALDO LEOPOLD CHAPTER #271 AND THE DES MOINES COUNTY CONSERVATION DEPARTMENT ARISING OUT OF ASSOCIATED ACTIVITIES, AND WAIVE ANY AND ALL CLAIMS AGAINST SAME FOR ANY PREDICAMENT, PHYSICAL, MENTAL OR SOCIAL, ARISING OUT OF MY VOLUNTARY ASSOCIATION WITH SAID ORGANIZATIONS.

I FULLY UNDERSTAND THAT THIS IS A WAIVER OF LIABILITY AND SIGN SAME OF MY OWN FREE WILL.

### WAIVER OF LIABILITY AND HOLD HARMLESS AGREEMENT

1 IN CONSIDERATION for participation in Lexington Youth Theatre's production and other valuable consideration, I hereby RELEASE, WAIVE, DISCHARGE AND COVENANT NOT TO SUE Lexington Youth Theatre, its Board of Directors, officers, servants, agents, and employees (hereinafter referred to as RELEASEES) from any and all liability, claims, demands, actions and causes of action whatsoever arising out of or related to any loss, damage, or injury, including death, that may be sustained by me, or to any property belonging to me, WHETHER CAUSED BY THE NEGLIGENCE OF THE RELEASEES, or otherwise, while participating in such activity, or while in, on or upon the premises where the activity is being conducted or in transportation to and from said premises.

2. To the best of my knowledge, I can fully participate in this activity. I am fully aware of risks and hazards connected with the activity, including but not limited to the risks as noted herein, and I hereby elect to voluntarily participate in said activity, and to enter the above? named premises and engage in such activity knowing that the activity may be hazardous to me and my property. I give my permission for the use of my name and likeness to be used for informational and publicity purposes. I VOLUNTARILY ASSUME FULL RESPONSIBILITY FOR ANY RISKS OF LOSS, PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, that may be sustained by me, or any loss or damage to property owned by me, as a result of being engaged in such an activity, WHETHER CAUSED BY THE NEGLIGENCE OF RELEASEES or otherwise.

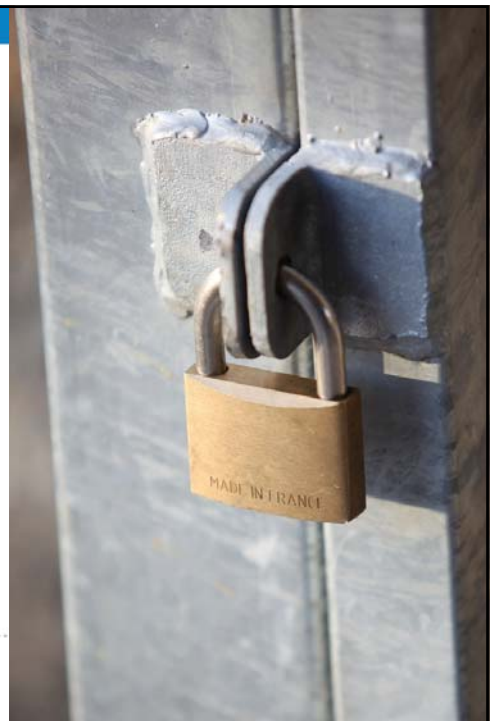
3. I further hereby AGREE TO INDEMNIFY AND HOLD HARMLESS THE RELEASEES from any loss, liability, damage or costs, including court costs and attorney's fees, that may incur due to my participation in said activity, WHETHER CAUSED BY NEGLIGENCE OF RELEASEES or otherwise.

4. It is my express intent that this Release and Hold Harmless Agreement shall bind the members of my family and spouse (if any), if I am alive, and my heirs, assigns and personal representative, if I am not alive, shall be deemed as a RELEASE, WAIVER, DISCHARGE AND COVENANT NOT TO SUE the above named RELEASEES. I hereby further agree that this Waiver of Liability and Hold Harmless Agreement shall be construed in accordance with the laws of the State of North Carolina.

5. I UNDERSTAND THAT LEXINGTON YOUTH THEATRE WILL NOT BE RESPONSIBLE FOR ANY MEDICAL COSTS ASSOCIATED WITH AN INJURY I MAY SUSTAIN.

## Risk Tip:

- **Don't promise a safe environment or safe experience** — Although you should do your best to provide a safe and enjoyable experience for participants, it's never wise to promise safety.
- **WHY?** A reviewing court may regard a promise of safety as an express or implied warranty, or evidence that any harm suffered by a plaintiff participant must have resulted from gross, rather than ordinary negligence.



## Risk Tips:

- **Make the waiver section of the document clear** — Ensure that the waiver is clearly drafted and applies to injuries arising from inherent risks or from the nonprofit's ordinary negligence.
- **Remember "who" and "what"** — Reference which parties seek protection and refer to the negligence of the parties. Some states require that the word "negligence" appear in an enforceable waiver.



## Participant Agreements

### Benefits:

- Positive, versus negative spin.
- Explains the risks of a particular activity as well as your organization's important rules related to the activity.
- Provides parents the opportunity to make informed decisions about whether to allow a child to participate.





## Participant Agreements Reminders

- **No guarantee of safety**
- **Possible injuries**—Include a description of some of the injuries a participant could suffer.
- **Safety rules**—Include a list of specific rules the participant must follow.
- **Other requirements**—List other requirements and expectations of participants, such as that the participant must notify a responsible adult if they become aware of a hazard, broken or malfunctioning safety device, or violation of safety rules by a leader or other participant.

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## Participant Agreements Reminders (II)

- **Confirmation of ability to participate** — Ask the participant to affirm that they are capable of participating safely.
- **Permission to treat** — Ask the parent to specifically consent to the provision of emergency medical treatment and accept financial responsibility for such treatment.

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## Remember:

- **No autopilot:** Give thought to whether a waiver is appropriate for the activity.
- **Draft with care:** if you don't understand any of the words or references in your waiver, how can you expect your parents to understand what they are signing?
- Reach out for help!

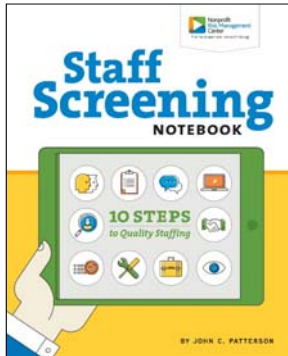


## Risk Resources:

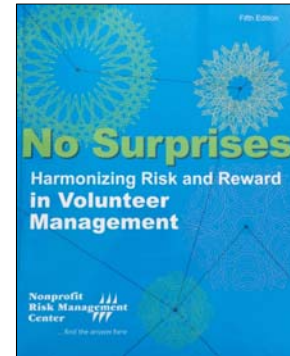
- Waivers and Young Participants:  
[www.nonprofitrisk.org/library/articles/Waivers%20and%20Young%20Participants.shtml](http://www.nonprofitrisk.org/library/articles/Waivers%20and%20Young%20Participants.shtml)
- Cotten, Doyice J. & Mary B. Cotton. *Waivers & Releases of Liability*. 8<sup>th</sup> ed. Statesboro, GA: Sport Risk Consulting, 2012.



## Other Resources:



[www.nonprofitrisk.org/store/pub\\_detail.asp?id=120](http://www.nonprofitrisk.org/store/pub_detail.asp?id=120)



[www.nonprofitrisk.org/store/pub\\_detail.asp?id=226](http://www.nonprofitrisk.org/store/pub_detail.asp?id=226)

## Questions?

