

## CAPITAL INSURANCE AGENCY OF WISCONSIN

Are You Watching What You're Waiving?

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What's A Waiver?

Webster's Encyclopedic Unabridged Dictionary defines "waiver" as 1. an intentional relinquishment of some right, interest, or the like; 2. an express or written statement of such relinquishment. Actually it is appropriate that waive rhymes with wave, because whether you're waiving or waving, you're saying goodbye. In the case of a waiver, you may be "saying" farewell to a right to hold another party accountable for their acts.

Today waivers are being used with increasing frequency. The use of a waiver is for the primary benefit of the party requesting it. A common rationale for using a waiver is that the possible legal consequences of sponsoring an activity or event would be too great to pursue without either special protection (such as insurance) or a waiver. Here are some examples:

Playing school sports  
Playing community league sports  
Church related sports groups  
Intramural sports  
Sports clinics  
Taking sky-diving classes  
Giving permission for your child to go on an out-of-state trip  
Joining an aerobics class.

What Happened To Permission Slips?

Permission slips are still around, but they're generally just used when the consequences are quite low. Example: "Please sign this form to indicate your permission for your son/daughter to walk from their classroom to the library." The use of permission slips has decreased along with the willingness to assume responsibility for a given activity. Of course, the reduced willingness is, at least partially, due to waivers. Waivers do make sense when the threat of being sued exists alongside a valid reason for not assuming the risk of a lawsuit. As permission slips were found to be inadequate in the face of an increased likelihood of lawsuits, such slips began to follow a type of evolutionary path:

1. Permission slips allowing participation in an activity or event
2. Permission slips including authority to act in emergencies (but the party may still be accountable for their action)
3. Permission slips waiving any right to sue for actions occurring during an emergency
4. Waiving any action arising from both the routine and emergency aspects of an activity

6. Waiving any action arising from both the routine and emergency aspects of an activity and agreeing to assume the liability for the actions of another party.

### Better Waived Than Sorry?

Under certain circumstances, waivers are very similar to advertising . . .they're sometimes only effective when you believe in them. For instance, the person signing the waiver may add a comment that he or she has only signed the waiver as a formality, or under duress or protest. Often there are flaws connected with the waiver, such as the wording being incorrect or even illegal. An example of the latter is having a parent sign a waiver concerning injuries to his or her child, when that state's law doesn't permit a parent to waive a minor's rights. Another example is when state law may hold one party strictly liable for certain acts, regardless of any attempt to waive their responsibility. Further, there are other elements that affect the enforceability of waivers such as:

- \* Who is sponsoring the activity (profit or non-profit organization)
- \* The age of the persons being required to waive their rights (minors, adults, seniors)
- \* The nature of the activity (short trip to museum or horseback riding)
- \* The ability of the person waiving their rights to understand their actions
- \* The details of any injury (is the injury connected directly to the activity?; is some degree of carelessness involved?)
- \* Whether the parties affected by the waiver benefit equally from its use (for instance, a dangerous team-building exercise where an employee is required to participate or face termination)
- \* The qualifications of the staff holding the event

### Proceed With Caution

Waivers are sometimes unavoidable, unless you choose to skip the event or activity. And, sometimes, waivers are inconsequential, being used under circumstances where they are unnecessary. The problem is in that wide, murky, middle-ground. It's in such instances that you should take the time to read and understand a waiver before agreeing to its conditions. Perhaps you can't avoid assuming some risk or giving up your rights, but at the minimum, read before you sign so that you understand what could happen. So look before you waive