

ARCHDIOCESE OF BALTIMORE

Liability Waivers Frequently Asked Questions

For many organizations, particularly religious organizations, balancing the need to take prudent action to protect assets while treating those we serve pastorally can be difficult. On the one hand, we have an obligation to protect church resources against loss to ensure those funds are available to support ministries and works as intended by our donors. On the other hand, requiring the use of such documents can appear as though the Church is unwilling to assume any social or legal responsibility to compensate an injured party.

With the introduction of COVID-19 and the risks associated with the virus, the Office of Risk Management is encouraging parishes to begin implementing the use of a second document. The document is a statement of assumption of risk. The purpose of this document is to ensure those participating in or volunteering to carry out these activities and ministries understand that their participation carries with it a certain level of risk that cannot be completely managed by the parish. The statement, which is to be reviewed, signed (acknowledging receipt), and returned, does not in any way ask the individual to waive any rights. It simply reminds the individual of possible risk associated with his or her involvement in the activity.

The introduction of this second document will require two basic changes relative to administering waivers. First, for those individuals for whom waivers are currently required, minors and adults who are participating in programs and activities involving higher risk of injury or property damage, an assumption of risk statement is to be secured as well. For convenience, both forms are included in a single document. Second, it is strongly recommended that the assumption of risk statement be provided to (and received signed from) volunteers.

Following are FAQ's that will provide additional guidance on the administration of waivers, which essentially is unchanged, along with guidance as to the administration of the newly introduced assumption of risk statement.

Q: What is a liability waiver?

A: *A liability waiver (sometimes referred to as a release of liability) is a legal document between a parish or other entity of the Archdiocese as the provider of services and a participant that is signed prior to the participant engaging in an activity. By signing the document the participant, or the legal guardian in the case of a minor, is acknowledging the risk involved in participating in an activity and agrees not to sue the parish, school, or other entity providing the services as well as the Archdiocese. Through the agreement and the promise not to sue, the parish, school or other entity is seeking to limit their potential legal liability resulting from any injury, loss, or other damages arising out of the activity.*

Q: What is an assumption of risk statement?

A: *Assumption of risk refers to situations in which an individual acknowledges the risks associated with any activity but chooses to take part anyway. If a participant is injured or sustains any loss or other damages as a result of participating in the activity, "assumption of the risk" is an affirmative defense where the parish, school, or other*

entity of the Archdiocese asserts that the injured party knowingly exposed him- or herself to the hazards that caused injury or damages.

Q: Many of the legal documents include language regarding possible limitation as to the impact of a waiver under Maryland law. Does Maryland law limit or otherwise impact the effectiveness of a waiver?

A: *Yes. Maryland's highest state court has recognized three circumstances in which waivers are not enforced.*

- 1. The parish, school, or entity will not be permitted to excuse its liability for intentional harms or for the more extreme forms of negligence, i.e., reckless, wanton, or gross.*
- 2. The signed waiver cannot be the result of grossly unequal bargaining power between the two parties.*
- 3. Public policy will not permit waiver agreements in transactions affecting the public interest. Transactions affecting the public interest include performance of public service obligations such as public utilities. What constitutes the public interest depends on the totality of the circumstances and societal expectations at the time. So, it is hard to predict what a court might find within the public interest.*

Q: When is a waiver to be executed for an adult participant?

A: *As a general rule, adult participants in any location-sponsored activities that are subject to a higher risk of personal injury or property loss should sign a release of liability. Typical higher risk activities include sports or physical activities, construction/maintenance activities or those involving the use of ladders, machinery, or the operation of a vehicle, and overnight trips and other special events. Waivers are not warranted where the nature of the activity is primarily sedentary with little to no risk of injury or property damage, such as a small-group Bible study or book club.*

Q: When is a waiver to be executed for a minor participant?

A: *Waivers involving activities for minor participants are more frequently required. Because these activities often involve greater physical activity and are often supervised by employees and volunteers when parents are not present, there is ordinarily greater risk inherent the activity and, therefore, greater potential for liability of the parish or school. For this reason, waivers should be secured for most activities for minors with limited exceptions. Such exceptions could include minors attending an event with their parents or for activities that are of low or no risk. Activities could include attending a Bible study, lecture series, or other activities that are primarily sedentary.*

Q: Are employees required to complete a waiver?

A: *No. Employees are not required to sign a waiver, as under Maryland law, employees' claims for work-related injuries ordinarily must be processed through the workers' compensation system except under very limited circumstances. Employees may not waive their right to file a workers' compensation claim, with very limited exceptions. Archdiocesan parishes and other sites hold insurance for potential workers' compensation claims through the Archdiocesan insurance program.*

- Q:** Are volunteers required to complete a waiver?
- A:** *No. Since volunteers are assisting in providing rather than participating in an activity, no waiver is required. While the waiver is not intended to be executed by volunteers, we do ask that all volunteers be provided a copy of the assumption of risk statement. It is also asked the statement is signed by the volunteer and returned acknowledging the volunteer's receipt and understanding of the notice.*
- Q:** Are those attending mass required to complete a waiver?
- A:** *No. The act of attending mass does not meet the threshold of participating in a higher risk activity.*
- Q:** When required, can a waiver form cover more than a single event?
- A:** *Yes. The recommended waiver and assumption of risk forms provided as part of these materials can be completed in such a manner as to allow for a single waiver to include a number of scheduled activities. It is important to note that so long as the activities are essentially the same relative to level of risk, it is fine to cover a period of events or activities with a single waiver. A waiver should not, however, extend beyond a year or, in the case of sport participation, beyond a single defined season. For example, a waiver can apply to an entire season of practices and games for a parish-sponsored softball team. Please remember that waivers are more likely to be enforced when the activity and risk are defined with specificity – so, the more detailed you can be about the activity, the better.*
- Q:** How long should a waiver be kept on file?
- A:** *The location sponsoring the activity must keep waivers and releases for at least three years after the activity ends. Releases signed by a parent or guardian on behalf of a minor must be retained for at least three years after the activity ends or until the minor turns 21, whichever is longer.*
- Q:** What should I do if someone attempts to modify the release?
- A:** *Occasionally, someone signs the release after crossing out certain portions that they do not like or adding words to modify the release. You must not accept an altered release.*
- Q:** What should I do if a participant required to complete a waiver refuses to sign the document?
- A:** *If the participant or the parent or guardian of the participant refuses to sign a waiver when requested, the participant should be denied the right to participate.*
- Q:** Should the waiver include specific information about the type of activities that are included under the terms of the waiver?
- A:** *Yes. The language of the waiver must inform the participant of what the activities will entail, the risks involved, and the types of injury, loss, or damages that may be sustained. If you would like to provide further information about the risks associated with the activity, you may do so in an appendix, addendum, or cover letter to the waiver.*

- Q:** Are those attending activities sponsored by a third party user of our facilities, such as Knights of Columbus, Boy Scouts, and Girls Scouts, required to complete the waiver?
- A:** *No. Third party groups such as the Knights of Columbus, Boys Scouts, Girls Scouts, and other groups using our facilities are to have signed a lease, license agreement, or special use agreement with the parish or school. Within these agreements the responsibility for running the activity and responsibility for any liability arising out of the activity has been transferred via the agreement to the third party. The third party may elect to execute and use their own waivers. It is recommended, but not required, if the third party does secure their own waivers, that they include the parish or school where the event is held in the waiver. For third parties reluctant to include the parish or school in the waiver, simply remind them that any claim brought as a result of their activity will be presented back to them to address under the terms of the use agreement they have signed in order to use the facilities, so it is in their best interest to include the parish or school on their waiver as well.*
- Q:** Are those who participate in third party special events such as wedding receptions, birthday parties, and reunions required to complete a waiver form?
- A:** *No. Similar to other third party users, those individuals or organizations hosting special events on parish or school property should have been required to enter into a special event use agreement. Under this agreement responsibility for any liability arising out of the activity held on the parish or school property is transferred to the host of the event under the use agreement. It is not customary for those hosting such events to secure waivers. However, if a parish or school should learn the host of the third party event is securing a waiver, it is suggested you seek to have the parish or school named as a released party under that waiver as well.*
- Q:** Are third party users of our facility such as AA, Al-anon, and other similar groups required to complete the waiver form?
- A:** *No. These groups face a number of unique challenges when it comes to whether or not to require waivers. Given the nature of many of these groups, the desire for their attendees to often remain anonymous and given the lack of a formal organizational structure and absence of insurance coverage, waivers are typically not required of participants in these groups.*
- Q:** Has the evolution of the risks associated with COVID-19 resulted in any changes to use of waivers or assumption of risk documents?
- A:** *Yes. Given the imposition of COVID-19 in our daily lives, along with the many challenges associated with limiting the spread of the virus, the Office of Risk Management is now encouraging parishes and other entities of the Archdiocese to provide to participants and volunteers an assumption of risk notification. A recommended draft of this communication is attached as an appendix. It is recommended that you have participants and volunteers review the document and sign to acknowledge they have read the document and understand that there is a level of risk inherent to the activity of contracting COVID-19 that did not previously exist and that the parish or other Archdiocesan entity cannot control. The document is in no way intended to serve as a waiver or release. Rather, it is intended to ensure all participants*

and volunteers understand that while the parish or other Archdiocesan entity is doing its best to implement appropriate precautions and measures and comply with current guidance for infectious disease control, it is not possible to completely eliminate the risk. Parents or guardians should also complete the assumption of risk form for their minor children.

Q: With respect to the updated waivers and the newly introduced assumption of risk form, when must these be completed?

A: *For participants, whether adults or minors, every effort should be made to provide the updated waiver and assumption of risk notification at the beginning of the resumption of any programs or activities wherein a waiver is appropriate. (Please see guidelines above as to when a waiver and assumption of risk notification are to be used.) For volunteers, the assumption of risk notifications should be forwarded to them as soon as reasonably possible. Ideally, it would be beneficial to have these notifications in the hands of volunteers prior to their volunteering on any number of future occasions.*

Q: Is there ever a circumstance where a parish would secure solely a statement of assumption of risk from a participant who otherwise is not required to sign a waiver (other than for volunteers)?

A: *A parish may, if they wish, secure an assumption of risk statement from a participant of an activity or ministry that is low risk and does not require a signed waiver for participation, such as a Bible study or book club. If, in the determination of the parish, the participant will be spending an extended period of time in a parish activity or on the parish campus, the parish is free to have the participant complete only the assumption of risk statement. However, there is no such expectation that parishes do so.*