

AORMA Recommended Waiver - Handbook

1. Introduction

Waiver of Liability, Promise not to Sue, Assumption of Risk, and Agreement to Pay Claims (Waiver) are legal forms under which one party waives the right to hold another party financially responsible for injuries and property damage. A properly administered waiver can protect the Auxiliary Organization and its employees from liability for injuries that occur to students or other individuals who participate in auxiliary activities on and off campus. A waiver is a valid and reliable legal tool under California law and should be used to provide a level of protection to the Auxiliary Organization from liability for accidents and risks in certain circumstances.

Auxiliary Organizations are responsible for conducting programs and activities in a manner that does not impose an unreasonable risk of loss or injury. If an Auxiliary Organization sponsors activities which involve risks of injury or damage to property and does not obtain a signed waiver, the Auxiliary Organization may be unnecessarily exposing itself to costly claims or lawsuits. The Auxiliary Organization might also be missing an opportunity to inform participants about the risks associated with an activity or event. Although these agreements are primarily legal tools, they also serve an educational purpose by making participants aware of potential risks. Often providing participants with this information is all that is necessary to avoid preventable accidents.

2. Waiver of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims

A. Purpose

The *Waiver of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* signed prior to participation is considered a contract in which the participant agrees to excuse the Auxiliary Organization and CSU from fault or liability for losses associated with the person's decision to voluntarily participate in an activity or event.

B. Elements

The AORMA Committee has developed the *Waiver of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* that contains the following elements:

- A *waiver of liability and promise not to sue* if any loss results from participation in the activity.

- An *express assumption of risk* where the participant acknowledges understanding the nature of the activity and the risks involved, and chooses voluntarily to accept those risks.
- A *hold harmless agreement* where the participant agrees to not hold the Auxiliary Organization or CSU responsible for any loss that may result from the person's voluntary participation in the activity or event.

3. Permission Slips

A permission slip requires a parent or guardian to give consent for a minor child to participate in an activity. Although permission slips provide a defense against claims that the Auxiliary Organization infringed upon the parent or guardian's authority over their child, permission slips alone do not absolve the Auxiliary Organization of liability if a loss occurs during the activity. The *Waiver of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* includes a separate section for the parent or guardian to sign which both acknowledges permission and provides a waiver of liability. Note, however, that due to the participant's status as a minor, a permission slip will not necessarily release the Auxiliary Organization if a loss occurs during the activity or event.

4. Informed Consent

The *Waiver of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* developed by the AORMA Committee should be filled in to identify the activity by name and description; dates; times; locations; premises; and facilities. Additionally, if there are particular actual or potential risks known to be associated with the activity or event, a separate list of those risks should be provided and acknowledged by the participant or the parent/guardian. The participant, parent or guardian who signs the *Waiver of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* acknowledges that he or she has read and understood the risks and agrees to not hold the Auxiliary Organization or CSU responsible for any harm that results from the risks listed.

5. Procedures/Strategies for Risk Management

While a waiver is an important risk management tool, it should not be relied upon solely to reduce the exposure to risk. The Auxiliary Organization bears responsibility for conducting its activities and events in a manner that reasonably protects the health and safety of students or other participants. For this reason, the following risk control measures should be utilized in addition to the use of a waiver:

- Conduct a risk assessment of the program/activity prior to the commencement of the activity.
- Inspect facilities and equipment for safety hazards frequently and take action to correct. Document actions taken.
- Train staff in emergency response procedures such as first aid and CPR.

- Train staff and participants on how to properly use facilities and equipment.
- Develop and enforce policies and procedures that minimize risk.
- Design programs that reflect the relevant safety standards of the given activity.
- Consider purchasing or requiring others to purchase appropriate insurance coverage as applicable.

A. Instructions

Those responsible for organizing an auxiliary-sponsored activity or event for which the *Waiver of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* is required should provide participants with the waiver sufficiently in advance of the activity or event to give each prospective participant a chance to read and consider the document. Use a separate waiver for each participant.

Before distributing the waiver, insert the time, location and description of the activity or event. Be very detailed. For example, if the activity involves two or more locations, write down each location such as “the Getty Museum in Los Angeles and Angel Stadium in Anaheim.” If the event consists of two or more activities, include each activity such as “swimming, biking and mountain climbing.” Providing more details allows participants to better understand the risks involved and provides additional protection to the Auxiliary Organization and CSU. If there are additional risks that are not obvious by the nature and description of the activity, they should be listed on a separate document that explains the risks and is signed to indicate acknowledgment by the participant/parent/guardian. Although the preference is that waivers should be signed on an event-by-event basis, participants may sign for multiple events over a period of time so long as each event is mentioned and described in the waiver and the risks presented by each event are similar.

Case law in California describes how waivers should be printed, including their layout and font size. For this reason, do not change the format of the waiver in any way without prior legal review. Waivers should not be incorporated in a larger publication such as a brochure. Our guidelines require that a waiver must be provided as a separate document. This separation makes it harder for participants to claim later on that they didn’t know what they were signing.

General language has been provided to inform the participant of the types of losses that may occur. Any additional information you wish to furnish about an activity such as expected weather conditions or any specific risks in addition to bodily injury, damage to property, liability to others, and/or damage to property of others associated with the activity should be presented separately from the waiver. However, do not make any representations to those signing the waiver concerning the legal effect of signing the document.

Anyone who refuses to sign a waiver should not be allowed to participate in the activity or event. The opportunity to participate is in exchange for their agreement to release the Auxiliary Organization and CSU from liability for injury or property damage that may

result from participation. Occasionally a person will sign the waiver after crossing out certain portions that they do not like or adding words to modify the waiver. This is not acceptable.

B. Electronic Signatures

Electronic signatures and acknowledgements can only be used if Government Code §16.5 and California Code of Regulations §22000 are adhered to and the student's / participant's signature and acknowledgement can be authenticated and a copy of the authentication and process can be produced upon request. It is recommended that Auxiliary Organization utilize existing security applications and access protocol when establishing an electronic signature process.

The use, acceptability and validity of electronic or e-signatures in California are governed by the Uniform Electronic Transactions Act found at California Civil Code sections 1633.1 – 1633.17 (UETA). In general, in order for e-signatories to be valid and enforceable four (4) requirements must be met.

- **First**, the signatories must demonstrate a clear intent to sign.
- **Second**, the signatories must demonstrate a clear and voluntary intent to engage in the underlying transaction electronically.
- **Third**, there must be clear signature association. This requires a clear and detailed audit log or trail that one can use to link or associate a signature to the person signing.
- **Fourth**, the records for the e-signatories are retained and producible if required.

Although the required elements for a valid and enforceable e-signature appear to be straightforward and simple, they are not. If you intend to utilize e-signatories, it is extremely important that you confirm that the process, procedure or service being used complies with California laws.

Electronic signatures and acknowledgements can be used for minors. Waivers signed by parent/guardians, can include either a “wet” signatures or can be signed electronically. California allows an agreement to waive liability claims, and this includes an allowance for the release of claims on behalf of a minor. Such waivers are allowed to the same extent as they are for adults.

As detailed above, the electronic signature or acknowledgement must be stronger than simply clicking “I Agree”. It should require the full name of the participant, or parent/guardian, that is signing along with an acknowledgement that by clicking/checking the subject electronic signature button, that they have read, understood and are accepting the waiver.

If these additional electronic safeguards can't be initiated, then the use of a paper waiver / waiver with a "wet" signature must be used.

Waivers sent with an electronic signature or acknowledgement should be stored in electronic form. It is sensible to regularly backup or store waivers that are in electronic form on other media (i.e. burning to a CD) in case of hard drive failure.

C. Minors

Participants under 18 years of age must obtain their parent/guardian's signature prior to participating in an activity. Because the participant's parent or guardian signs the waiver, there is no requirement to also have the participant sign the agreement, however a good practice would be to have the minor read and sign the waiver as well.

D. Foreign Language

Following collaboration with the Office of General Counsel, the decision has been made to allow for the use of a Waiver of Liability to be translated into a foreign language. Use of an interpreted Waiver is allowed with caveats.

1. A campus or auxiliary organization must use the interpreted Waiver documents that have been provided (attached).
2. Initial Languages are as follows:
 - Spanish
 - Tagalog
 - Vietnamese
 - Chinese (simplified & traditional versions)
 - Korean
3. If the language needed is not one of the approved interpreted waivers, campus counsel must be contacted for consideration before the waiver is interpreted by a qualified provider.
4. The allowance for interpretation for waivers is limited to waivers and not applicable to contracts, agreements, official correspondence etc.
5. Interpreted waivers should be provided only to individuals who are not students or employees of CSU. Students and employees should sign only the approved English version.
6. Electronic signatures on interpreted waivers are allowed so long as authentication methodology adheres to federal law (ESIGN Act), with the State of California adopted the Uniform Electronic Transaction Act (UETA) and CSU's guidance for electronic & digital signature authorization (ICSUAM 8100 and 8100.S01).

7. Verbiage is included in the interpreted waivers that will inform the signor that should there be any dispute as to the denotation, connotation or intent of the waiver, the English waiver is the governing document.
8. Attach the English version to the translated form.
9. Attached is an updated English waiver as well. It is suggested the updated version be used and Systemwide Risk Management will work on updating EO 1051 to reflect the updated waiver must be used.

E. Length of Time

Waivers can be effective for any length of time, as stated under their own terms. However, a waiver for one particular event or one particular time period would have no application to other events or even to similar events taking place on a date not specified in the waiver. The *Waiver of Liability, Promise Not to Sue, Assumption of Risk and Agreement to Pay Claims* is valid for the particular activity identified and can cover multiple activities or dates, but only if specifically listed. Therefore, care should be taken to accurately describe the activity and the dates and times for the activity. Any different activity or different dates/times for the activity requires a new waiver.

F. Verification of Signature

Properly obtained electronic signatures will be verified by some type of evidence, such as an authentication program, intended to specifically identify the person executing the signature. See Civ. Code §1633.9. For wet signatures, the best option is to obtain the signature in person with verification of identification, so that the agency has a witness to who signed the document.

If the entity delivering the waivers is a non-CSU entity, such as a school district, the Auxiliary Organization should require an accompanying declaration or affidavit from that entity stating that the waivers are true and correct copies of the originals executed by the persons authorized to provide the waivers.

G. Retention and Storage

Waivers must be stored for at least three years after an activity ends. Documents signed by a parent or guardian on behalf of a minor must be retained for at least three years after an activity ends or until the minor turns twenty, whichever is longer. Departments or units who sponsor an activity requiring a waiver should store the waiver by activity date in alphabetical order by participant name. Doing so greatly expedites retrieval if a waiver is needed for a legal proceeding. Waivers can be stored electronically as long as the Auxiliary Organization has a centralized record-keeping system and can reasonably and promptly access the waivers.

6. Conclusion

Waivers of liability and informed consents represent a complex area of contract law. This handbook is general and is intended only to provide basic information. Your Auxiliary Organization should consult its counsel to respond to any questions or to assist in the use of waivers and informed consents as part of the risk management process.