



# LOSS CONTROL

## RECOMMENDATIONS FOR CONSTRUCTING A COMPREHENSIVE WAIVER OF LIABILITY

**\*\*NOTE: Separate legal counsel should ALWAYS be consulted for state specific issues that may require additional consideration\*\***

1. The release, if possible, should be in a separate document. If it is in a contract (such as a health club membership agreement) it should be in at least as large print as the rest of the document, and set off with a heading in large bold print. It is also a good idea to reference the release immediately above the signature line in large, bold print. Something like "WAIVER & RELEASE OF LIABILITY - THIS MEMBERSHIP AGREEMENT CONTAINS A WAIVER & RELEASE OF LIABILITY AND INDEMNITY AGREEMENT IN SECTION "IV" ON THE REVERSE SIDE OF THIS DOCUMENT TO WHICH YOU WILL BE BOUND, AND UNDER WHICH YOU WILL BE WAIVING IMPORTANT LEGAL RIGHTS. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT." This goes to the conspicuousness issue.
2. It should be in plain enough language that it can be understood by a layperson. It should clearly inform the reader that he or she is waiving any claim for personal injuries, including those arising out of the negligence of the releasee, its employees, agents, owners, etc .
3. While perhaps not necessary, in light of some recent decisions, it may be wise to expressly exclude from the release claims for gross negligence, recklessness, and intentional acts.
4. The release on the one hand, and the express assumption of risk on the other, while having similar language, should be distinct sentences so that it is clear that the releasor is both releasing/waiving claims and assuming the risk. This is important in the event of a wrongful death claim.
5. It should be signed by every potential plaintiff. While cases are usually won where the release was signed by someone other than the plaintiff, it can throw a wrench into what would otherwise be a straightforward defense.
6. It is recommended to have the release in the primary language of the signor.
7. There are other items that should also be considered for inclusion such as addressing potential product claims, use of likeness issues, provision of medical care, etc.,
8. Ensure you have an express assumption of risk. The assumption of risk relieves the defendant of a duty of care to the decedent.

### Recommended Waiver Agreement Phrases

- "The Club recommends that you seek the advice of your physician before commencing any exercise routine".
- "The member assumes any and all risks of injury associated with or in any manner related to his or her use of or presence upon the health club premises".
- "The member assumes any and all risks of injury associated with or in any manner related to his or her use of any exercise equipment (including, but not limited to, treadmills, weight machines, free weights, stair climbing machines, swimming pools, etc.) located within the club's facilities".
- "This waiver applies regardless of whether you are using exercise equipment at the time of the injury or whether your injury occurs as a result of your presence upon the premises regardless of purpose or activity at the time of the injury-causing incident".
- "Member agrees and covenants not to sue or otherwise attempt to hold the club liable for any injuries regardless of the cause".
- "Member agrees to indemnify and hold the club harmless against any and all claims arising out of the member's presence upon the club's premises, including the use of the premises by any family member or guest of the club member regardless of cause".
- "This waiver and release agreement is intended to be as broad as is allowed under the applicable law and applies to any and claims for damages, regardless of whether they are allegedly caused by the negligence of the club or its employees".
- "This waiver and release agreement applies to all injuries including, but not limited to, slipping in the facility, injuries caused by malfunctioning equipment..."

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