

Title: Waiver Form Policy for Added Named Insured	Policy No.: B.07-01
Section: 14	Page No.: 1 of 5

Legislation Reference:	Jubilee Insurance Agencies Ltd.
-------------------------------	---------------------------------

Purpose:	A Waiver Form is an effective risk management tool to protect community groups and the municipality of “Release of Liability” that engage in special events or activities that may arise to exposures for participants’ injuries.
-----------------	---

Policy Statement and Guidelines:

1. DEFINITION:

A Waiver: is a legal contract between two parties in which one party (the participant) gives up the right to sue the other party (the community organization, municipality, and their representative) under specific circumstances. In return: the participant receives a benefit, usually the right to participate in an activity.

2. OBJECTIVES:

- 2.1 A waiver is considered by the courts to be a very demanding contract for the participant. By entering into this contract, the participant agrees to accept the physical risks of the activity (the dangers that are part of the activity), as well as the legal risks, such as the negligent behavior of the organizers.
- 2.2 A waiver provides protection to community groups and the municipality with clear assignment of responsibility, broad indemnity language and release of liability with respect to claims.

3. CHARACTERISTICS OF ENFORCEABLE WAIVERS:

Each liability claim and Court case has its own unique circumstances. The following factors have been present where waivers have been found to be enforceable in recreation-based lawsuits:

- 3.1 The physical risks and dangers related to the activity have been pointed out in advance of the person making the decision to participate.
- 3.2 The participant knew in advance that he or she would be required to sign a waiver in order to participate in the activity.
- 3.3 The waiver language was clear and easy to read.
- 3.4 The waiver was specific to the activity and outlined the physical risks involved, and the legal rights to be given up.

Title: Waiver Form Policy for Added Named Insured	Policy No.: B.07-01
Section: 14	Page No.: 2 of 5

E

Policy Statement and Guidelines:	
3.5	The waiver and its effect was brought to the attention of the participant at the time he or she was requested to sign it and was given ample time to read it.
3.6	The person signing the waiver was capable of understanding its intent and effect.
4. WHEN TO USE WAIVERS:	
4.1	Jubilee Insurance Agencies Ltd. recommends using waivers for various events that are considered to present a moderate or high risk of participant injury and organized by your organization. Policy 14-03-01: Criteria for Pre-Qualifying Added Named Insured Organizations – <u>Schedule “B”</u> specifies the activities that require a waiver form to be executed.
4.2	Two versions of a standard Waiver Form: “Release of Liability, Waiver of Claims, Assumption of Risks and Indemnity Agreement” to be signed by individuals that engage to participate in special events or activities that may rise to exposures for participants’ injuries. Schedule “A”: <u>Adult Participant - Version.</u> Schedule “B”: <u>Adult / Child Participant - Version.</u> Where a waiver is sought from an individual under the age of 18 years, the consent of the parent(s) or guardian should be obtained.
4.3.	To ensure that the waivers are administered properly and consistently, Schedule “C”: <u>Administering the Waiver,</u> recommends a standard procedure to be followed.
Waiver Forms will be documented as per Policy Statement No. 14-B.04-01: Added Named Insured: Record Keeping Guidelines.	

	Date	Resolution Number
Approved	February 19, 2009	# 256-09 - Page # 8880
Amended		
Amended		



SCHEDULE "A"



RELEASE OF LIABILITY, WAIVER OF CLAIMS, ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT

WARNING: BY SIGNING THIS DOCUMENT YOU WILL GIVE UP CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE, CLAIM DAMAGES, SEEK COMPENSATION.

This document is to be signed by the participant in order to participate in the following: (Insert Description of the activity)

and related events and activities (collectively referred to as the "Event"),

I, _____ (the "Participant"), am 18 years of age or older, and I am aware that the Event involves inherent risks, dangers and hazards, involving all manner of injury or loss, including potentially serious or life-threatening injury and death, including, but not limited to:

- a. the use of equipment, materials or facilities related to the Event;
- b. the actions or negligence of myself or other participants in of the Event;
- c. the actions or negligence of the _____ or its directors, officers, employees, volunteers, agents, invitees, or representatives of any kind (collectively referred to as the "Organization");
- d. the actions or negligence of the _____ or its councillors, officers, employees, agents or representatives of any kind (collectively referred to as the "Municipality"); and
- e. additional risks arising out of the Event and related events and activities.

I, the undersigned Participant, freely accept and assume all such risks, dangers and hazards and the possibility of injury, death, property damage, property loss or any other loss or expense resulting to myself.

I, the undersigned Participant, hereby agree as follows:

- a. TO WAIVE ANY AND ALL CLAIMS of every nature and kind of law or equity or under any statute that I have or may have in the future against the Organization and/or the Municipality;
- b. TO RELEASE THE ORGANIZATION AND THE MUNICIPALITY from any and all liability for injury, death, property damage, property loss or any other loss or expense that I may suffer or that my next of kin or legal representatives may suffer as a result of participation in or use of the Event, due to any cause whatsoever, including negligence on the part of the Organization and/or the Municipality;
- c. TO HOLD HARMLESS AND INDEMNIFY THE ORGANIZATION AND THE MUNICIPALITY from any and all liability for injury, death, property damage, property loss or any other loss or expense to any party, including myself, as a result of participation in or use of the Event, or other financial loss or expense including, without restriction, legal expenses and costs on a solicitor-and-his-own-client full indemnity basis in defending against such claims or enforcing the terms contained within this document; and
- d. THAT THIS AGREEMENT WILL BE EFFECTIVE AND BINDING UPON myself, and my heirs, next of kin, executors, administrators and assigns.

I, the undersigned Participant, hereby acknowledge that I have read the foregoing, and have had the opportunity to ask questions and clarifications before signing. I acknowledge that I understand its content, import and meaning and hereby do agree, approve and consent to the above.

Date: _____

Participant Name (print) _____

Participant Signature: _____

Witness Name (print): _____

Witness Signature: _____



SCHEDULE "B"



RELEASE OF LIABILITY, WAIVER OF CLAIMS, ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT

WARNING: BY SIGNING THIS DOCUMENT YOU WILL GIVE UP CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE, CLAIM DAMAGES, SEEK COMPENSATION.

This document is to be signed by (print name) _____ (the "Participant") together with (print name(s)) _____, being the parent(s) and/or guardian(s) of the Participant, in order to participate in the following: (Insert Description of the activity)

_____ and related events and activities (collectively referred to as the "Event"),

We, the undersigned Participant and the parent(s) and/or guardian(s) of the Participant, are aware that the Event involves inherent risks, dangers and hazards, involving all manner of injury or loss, including potentially serious or life-threatening injury and death, including, but not limited to:

- a. the use of equipment, materials or facilities related to the Event;
b. the actions or negligence of the Participant or other participants in of the Event;
c. the actions or negligence of the _____ or its directors, officers, employees, volunteers, agents, invitees, or representatives of any kind (collectively referred to as the "Organization");
d. the actions or negligence of the _____ or its councillors, officers, employees, agents or representatives of any kind (collectively referred to as the "Municipality"); and
e. additional risks arising out of the Event and related events and activities.

We, the undersigned Participant, and the parent(s) and/or guardian(s) of the Participant, freely accept and assume all such risks, dangers and hazards and the possibility of injury, death, property damage, property loss or any other loss or expense resulting to the participant or myself/ourselves.

We, the undersigned Participant, and the parent(s) and/or guardian(s) of the Participant, hereby agree as follows:

- a. TO WAIVE ANY AND ALL CLAIMS of every nature and kind of law or equity or under any statute that I have or may have in the future against the Organization and/or the Municipality;
b. TO RELEASE THE ORGANIZATION AND THE MUNICIPALITY from any and all liability for injury, death, property damage, property loss or any other loss or expense that I may suffer or that my next of kin or legal representatives may suffer as a result of participation in or use of the Event, due to any cause whatsoever, including negligence on the part of the Organization and/or the Municipality;
c. TO HOLD HARMLESS AND INDEMNIFY THE ORGANIZATION AND THE MUNICIPALITY from any and all liability for injury, death, property damage, property loss or any other loss or expense to any party, including myself, as a result of participation in or use of the Event, or other financial loss or expense including, without restriction, legal expenses and costs on a solicitor-and-his-own-client full indemnity basis in defending against such claims or enforcing the terms contained within this document; and
d. THAT THIS AGREEMENT WILL BE EFFECTIVE AND BINDING UPON myself, and my heirs, next of kin, executors, administrators and assigns.

I, the undersigned Participant and the parent(s) and/or guardian(s) of the Participant, hereby acknowledge that we have read the foregoing, and have had the opportunity to ask questions and clarifications before signing, and have explained its meaning to the Participant. We acknowledge that we understand its content, import and meaning and hereby do agree, approve and consent to the above.

Date: _____

Participant Name (print) _____

Participant Signature: _____

Witness Name (print) _____

Parent/Guardian Name(print): _____

Witness Signature: _____

Parent/Guardian Signature: _____



SCHEDULE "C"



ADMINISTERING THE WAIVER – PROCEDURES

A standard procedure for the employees and/or volunteers to follow when obtaining a participant's signature on a waiver and provide basic training to the employees and/or volunteers on how to obtain signatures from the participants. The Courts have relied heavily on the evidence of the defendant's employees when obtaining a participant's signature on a waiver.

The following procedure can help ensure that the waivers are administered properly and consistently:

- ▶ Prospective participants should be given advance notice of the requirement to sign a waiver.
- ▶ The waivers should be signed by participants well in advance of the event.
- ▶ The identity of the participants should be confirmed using the participant's driver's license or other ID.
- ▶ The waiver signed in front of the witness and should be witnessed by a volunteer or employee.

The witness should observe the following points:

1. Ensure all parts of the waiver have been completed (i.e., the list of specific physical risks).
 2. Ensure the participant has signed and dated the waiver.
 3. Ensure that the participant has not changed or crossed out any wording on the waiver.
 4. The witness should be instructed to ask the participant : "Have you read and do you understand the waiver?". Ensure the participant responds affirmatively to the questions.
 5. Only after preceding steps have been confirmed should the witness sign the waiver.
 6. **Do not allow any individuals who appear to be intoxicated to participant in the activity.** If the witness suspects that the participant may be intoxicated or otherwise impaired, refuse to witness the waiver.
- ▶ The attitude and behavior of program or event staff towards the administration process can undermine the effectiveness of the waiver. Staff would be coached to take the process seriously and to make it clear to participants that the waiver is an important document.
 - ▶ Participants should not be rushed when they are reviewing and signing the waiver, and staff members should never downplay the fact that the participant is giving up his or her legal rights by signing the document. If the participant asks for an explanation of the waiver, your volunteer or staff person should respond as clearly and simply as possible, such as:

"This document you've been asked to sign is a release of liability and waiver form. It is a legal document. By signing this document, you give up your legal rights to sue if you become injured during the event".