

Definitions

Informed Consent - An agreement intended to ensure that both parties understand the activities being undertaken and the risks associated with them. Often used in conjunction with a waiver or hold harmless and indemnifying agreement.

Contracts - A way to make a promise legally enforceable.

Hold Harmless Agreement - A legal agreement where one party assumes responsibility for the actions of another.

Waivers - Intentionally giving up a right. A waiver can also be a document or a clause in a document that states that rights are being given up or waived.

Legal Liability

When using contracts or agreements, have a lawyer:

- Explain your legal rights and obligations.
- Ensure you have effectively transferred liability.
- Determine if you have a properly worded legal document.
- Witness the transaction.

Risk Management

1. Use signs. Signs may be used to warn of hazards and provide information. They should be used as a way to possibly prevent losses, but should not be relied on to deflect liability.
 - Keep signs simple and easy to understand.
 - Make sure signs are placed in visible areas.
 - Use universally recognized symbols.
 - Ensure size and colours are appropriate and visible.
 - Use all common languages.
2. Use contracts. The contract must be legally enforceable:
 - Both parties must intend to create a legal relationship.
 - There has to be an offer -- a promise to buy/sell/exchange something of value (a good or service) subject to a condition.
 - There must be an acceptance.
 - Both parties to the contract must receive something of value. For example, a person who leases his/her premises receives money for the rental and the person who is leasing the property receives use of the property, as set out in the contract.
 - Both parties must have the capacity to contract. Special considerations exist for minors, intoxicated persons, insane

Key Point

A lawyer should be consulted to draft or review a contract to ensure that it is legally enforceable, and that it offers the protection from liability that you expect.

persons and bankrupt persons.

- The contract must be legal. For example, a contract to purchase stolen goods or perform other illegal acts is not enforceable. Contracts contrary to public policy or public interest may also not be enforceable.
- Certain contracts must be in writing to be legally enforceable, including contracts concerning the sale of land and contracts lasting for a period of greater than one year.

3. Use waivers and hold harmless agreements.

- A waiver is a clause that states that users, customers, etc. waive their right to make claim or sue the waived company for a specific activity.
- Hold harmless and indemnifying agreements are usually clauses in contracts or agreements where one party agrees to protect the other party from legal action arising out of the contract or agreement.
- Waivers and hold harmless agreements may deflect and transfer liability if they are properly worded.
- Always obtain legal advice when drafting waivers or hold harmless agreements.
- Use consent forms if waivers cannot be used.

Key Point

Although waivers and hold harmless agreements might be effective to deflect liability, do not rely solely on them, there is no substitute for prudent and reasonable

4. Require insurance certificates. An insurance certificate should be required from people and organizations that you enter into agreements with or who supply products and services to you. Consult your insurance representative for guidance, but generally if you are at risk for the actions of someone performing a service for you, then that person should provide you with an insurance certificate.

- An insurance certificate is proof of insurance coverage, but it can also confer certain rights to the certificate holder.
- A certificate contains all the relevant information that a contracting party might need to know about the other's insurance
- If someone requests this of your organization, forward the request to your insurance representative with all the relevant information, and he/she will issue the certificate.

Key Point

Forward requests for insurance certificates to your insurance representative.

Additional insured:

- When providing an insurance certificate to an organization, or when requesting one, the requesting party requires that he/she/it be named as an "additional insured" on the other party's insurance.
- An additional insured is provided with certain rights under the other party's insurance policy. Essentially, as an additional insured you are covered under that policy as if you were the primary named insured. Consult your insurance representative for specific details relative to your situation.

Key Point

Make sure the certificate lists your organization as an additional insured.

Cross-liability clause:

- This clause means that, should a loss occur, all insureds under the policy, including additional insureds, are treated as though separate policies exist for each. It is important to have a cross liability clause added to insurance certificates that you are requesting for liability insurance. It is meant to protect you if there is a conflict between the parties and one has to defend against another.

Key Point

Remember to get new certificates before they expire.

Notice of cancellation clause

- When requesting an insurance certificate, it is important to require a notice of cancellation clause. This means the insurer will notify you if the policy for which the insurance certificate was issued is cancelled. You can request the amount of notice you need.

Coverages and limits

- When requesting a certificate, or having one issued, consult your insurance representative on the coverages and limits that are appropriate for the situation.

Key Point

Keep old insurance certificates forever, just as you would your own insurance policies

Effective dates

- Check the effective dates, or policy term, on the certificate to make sure the dates cover the activities in question. Any time an activity or relationship will outlast the expiry date on the certificate, make sure to request a new one prior to expiry.

Operations

- If the operations or activity is unusual, such as fireworks or blasting, it's a good idea to have the activity listed as an insured activity.

Sample Certificate of Insurance

To: Your organization's name and address here	From: Insurance company's name and address here
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Name of Insured:					
Address of Insured:					
Location(s) to Which This Certificate Applies:					
Operation(s) to Which This Certificate Applies:					
Kind of Policy/Coverages	Insurer	Policy Number	Policy Period dd/mm/yy to dd/mm/yy	Limits of Insurance	
1. Comprehensive General Liability	Y/N			1.	
a. Products b. Completed Operations c. Tenants Legal Liability d. Host Liquor Liability e. Non-Owned Auto f. Personal Injury g. Other				a. b. c. d. e. f. g.	
2. Automobile				2.	
3. Property				3.	
4. Other				4.	

I acknowledge, as required by [name of company], that:

1. All liability policies described above contain a cross-liability clause.
2. [Name of company] will be given 30 days notice of cancellation of any of the above policies.
3. [Name of company] is added as an Additional Insured to all of the policies described above with respect to the location(s) and operation(s) described above.

Authorized Signature: _____ Date Signed: _____