

Facilities Use Risk Transfer Guide

Public entities often lease, rent, or make available their meeting rooms, park facilities, and other facilities to the public.

Examples include renting out gymnasiums or ball fields for sports recreation leagues, leasing meeting room space to youth organizations, special events, fundraisers, or long-term leases of offices and classrooms for special education programs in schools.



This guide is intended to help outline the steps needed to prevent or limit exposure to your entity regarding public use of facilities.

It is important to ensure that proper and consistent risk transfer procedures are in place to help protect your entity from damages and to transfer the risk back to the user of the facility or park. It is the user that is most likely to cause - or prevent damage - and should, therefore, be held responsible should an incident occur.

Risk Transfer Basics

All lease agreements, long term and short term, should include the following:

Certificates of Insurance (COI)

A COI from the user's insurance provider serves as evidence of what current insurance is in place. This helps ensure that their insurance policy will respond first.

Verify the COI contains the following:

- A signature from the user.
- The appropriate type of coverage is typically General Liability.
- Adequate policy limits and deductibles.
- Policy Period does not expire during the expected use/lease period, and they are required to notify you of any changes to the policy within 30 days.
- **Names your entity as an additional insured on their policy in the event their policy is canceled, and you did not receive notice.**

Risk Transfer Basics Continued

Hold Harmless Agreements

Hold Harmless Agreements or Indemnification Agreements are separate from a COI and are either separate documents or clauses in larger leases. The agreements help provide protection against claims that could arise from the negligence of the lessee.

State contract laws vary as to the specific language to make hold harmless and indemnification clauses enforceable. Some jurisdictions allow for exculpatory clauses which allow parties to contract away liability for their own negligence. Review by the entity's legal counsel is, therefore, a must.

Care must be given to ensure the language in the contract conforms to the state law paying close attention to:

- The Court required language to make the agreement enforceable.
- The parties to be held harmless/indemnified: The public entity and its directors (elected and appointed officials).
- Party providing the protection - The lessee.

Other Considerations:

Long-term leases should include who will be responsible for regular maintenance of your facility. Be as specific as possible to avoid any miscommunication. Include seasonal considerations such as roof snow removal or maintaining the heat during cold spells to avoid pipe freeze-ups. State requirements such as sprinkler or boiler inspection should be managed by your entity. Conduct periodic inspections to ensure they are following the agreement and to identify any preventative maintenance issues that need to be addressed.

Maintenance & Inspection Requirements:

The certificate may only protect the named insured and additional named insureds for the conditions and limits provided in the insurance policy obtained by the user. You may not be protected if the limits are not sufficient, the coverage is inadequate, the coverage is excluded under their contract, or for some reason, their policy of insurance was canceled. In that event, you may have to rely on the Indemnity and Hold Harmless Agreement. Without the Indemnity and Hold Harmless Agreement, you may then have to defend and pay any possible judgments.

Rules

Consider outlining any specific rules you may have for each space you plan to lease or rent out. Clean up procedures, emergency info, areas that are off limits, etc.

Alcohol

If you permit alcohol consumption on the property then you should require that only a licensed bartender serve and that they carry liquor liability coverage.

COI Retention

Retain the COI on file for the State's statute of limitations plus one year. For example, if the statute of limitations is two (2) years, keep COI on file for three (3) years. If a claim is involved, it should be kept with the claim indefinitely.

Steps to a Successful Risk Transfer Program

1. Develop a standard lease agreement

Work with your counsel to develop a standard lease agreement that includes the Certificate of Insurance, Indemnification and Hold Harmless provisions outlined above. This agreement should be reviewed by counsel at least annually to ensure it meets any recent changes in law.

2. Facilities Use Coordinator

Determine which department or employee/s will be responsible for coordinating the short-term leasing process. It is recommended that this process be centralized so that insurance requirements, waivers, etc., are being collected consistently. Counsel should review all new long-term contracts.

3. Create a standard facility use request form

Using a standard form for all facility use requests helps the coordinator to create a consistent process that all potential users must follow. This helps to ensure that there are no surprises or unplanned events. The form should include the name of the individual or organization responsible for supervising the event, how many people will be using the space, what the space will be used for, etc. You can also outline the insurance requirements on the form so that the user is aware ahead of time.

4. Evaluate existing procedures

Make a list of each facility, ball field, park space, etc. where you currently lease, rent or make available that space for public use. Include one-time use situations and long-term leases. If you are a larger entity with many spaces available for use, consider creating a list by department. Use the sample table on page 4.

5. Make changes as needed

By creating a list of all current users, you can then determine where your gaps in protection may exist and remedy them moving forward. For those users who do not meet your requirements, consider asking them to up their limits or add you as an additional insured as needed.

6. Exceptions

In the event that your entity decides that the user of the space does not pose any significant risk, or the user cannot provide insurance, you should proceed carefully. Only the City/Town Manager or Superintendent should have the authority to allow users of your space without insurance protections in place.

7. Communicate your policy

Make sure all departments understand the facilities' use process. Ask them to refer any questions or requests for use to the Facilities Use Coordinator.

8. Maintain a master list

Be sure to maintain a list of all agreements, request forms, and copies of insurance in a file so that it can be accessed in the event of a lawsuit. Keep the records for your statute of limitations period plus one year.

SAMPLE RELEASE, WAIVER & INDEMNIFICATION AGREEMENT FOR LEASING PROPERTY

1. In consideration for receiving permission to use _____, ("the facility") on _____

I hereby release, waive, discharge, indemnify and covenant not to sue (THE ENTITY) the, its officers, agents and employees (hereinafter referred to as "releasees") from any and all liability, claims, demands, actions and causes of action whatsoever arising out of or relating to any loss, damage or injury, including death, that may be sustained by me, or to any property belonging to me, whether caused by the negligence of the releasees, or otherwise, while leasing the facility, or while in, on or upon the premises where the rental is being conducted, while in transit to or from the premises, or in any place or places connected with the rental of the facility.

2. I am fully aware of risks and hazards connected with being on the premises and participating in the rental of the facility, and I am fully aware that there may be risks and hazards unknown to me connected with being on the premises and participating in the rental of the facility, and I hereby elect to voluntarily rent the facility, to enter upon the above named premises and engage in activities knowing that conditions may be hazardous, or may become hazardous or dangerous to me and my property. I voluntarily assume full responsibility for any risks of loss, property damage or personal injury, including death, that may be sustained by me, or any loss or damage to property owned by me, as a result of my being a renter of a (THE ENTITY) facility, whether caused by the negligence of releasees or otherwise.

3. I further hereby agree to indemnify, save and hold harmless the Entity, visitors, employees, occupants of the building, releasees and each of them, from any loss, liability, damage or costs including attorneys' fees they may incur as a result of my rental of the facility and all activities therein, whether caused by the negligence of the Entity and/or any or all of the visitors, employees, occupants of the building, releasees, or otherwise.

4. It is my express intent that this Release, Waiver and Indemnification shall bind the members of my family and spouse, if I am alive, and my heirs, assigns and personal representative, if I am deceased, and shall be deemed as a Release, Waiver, Discharge, Indemnification and Covenant Not to Sue the above named releasees.

In signing this release, I acknowledge and represent that:

- A. I have read the foregoing Release, Waiver and Indemnification, understand it, and sign it voluntarily as my own free act and deed;
- B. No oral representation, statements or inducements, apart from the foregoing written agreement, have been made;
- C. I am at least eighteen (18) years of age and fully competent; and
- D. I execute this Release for full, adequate and complete consideration fully intending to be bound by same; and
- E. Have the approved and legal authority of my organization to sign this document.

In witness whereof, I have hereunto set my hand and seal this ____ day of _____, _____.

Participant Signature: _____

Name Printed: _____

Witness: _____

Witness Name Printed: _____



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RISK CONTROL: FACILITIES USE TRACKING FORM



Public entities often lease, rent or make available their facilities and parks for various events. When doing so it is important to ensure that proper and consistent risk transfer procedures are in place to help protect your entity from incurring liability and to transfer that risk back to the user of the facility or park. If possible, it is recommended that the management of all facilities use agreements be centralized so that insurance requirements, waivers, etc., are being collected consistently.

The form below is designed to help track your facilities use risk transfer requirements and to help you evaluate where you may be at risk.

Entity Name:			Employee Name:		Date Completed:			
Location	Address	Department	Dates in use	Certificate of Insurance?	Names of Additional Insureds	Hold Harmless?	Policy Limits	Policy Expiration Date

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