

TO SIGN OR NOT TO SIGN: UNDERSTANDING YOUR CHILD'S PRE-ACTIVITY WAIVER

With the start of the school year, I have received numerous requests from my children to attend birthday parties of classmates and join in various extracurricular activities such as sports and arts programs. Many of these events are held at commercial facilities that offer activities such as trampoline jumping, laser tag gaming or involve sports activities that hold a degree of risk as to concussion or other physical injury to the child. In order to participate in the activity, I am required as the parent to execute a waiver that release the commercial provider from liability of injury to my child due to the activity. Sadly, no signed waiver usually means no participation and that creates a household of unhappy children. As other moms may tell you, unhappy children equal an unhappy mom.

I began to review the various waivers I have been asked to sign and wondered are these waivers enforceable? What would happen if one of my children suffered a severe or catastrophic injury while participating in the activity? Would I be able to sue the provider who asked me to sign the waiver? What if I refused to sign the waiver, would my child be able to participate in the activity? These questions prompted me to review the law and develop an action plan so my children were able to participate in the activity but that any waiver I signed did not serve as complete bar to filing a lawsuit in the event of my child's injury or death.

In summary, Florida is in a minority of states that allows a natural guardian of a child to sign a pre-activity waiver on behalf of the child and if these waivers are executed in accordance with Florida law, they are enforceable. These waivers release in advance any claim or cause of action against a commercial provider which may happen to the child from participation, including personal injury, death or property damage arising from an inherent risk in the activity.¹

Florida law defines inherent risk as dangers or conditions, known or unknown, which are characteristics or an integral part of the activity and which are not eliminated even if the activity provider acts with due care in a reasonably prudent manner.² Under Florida law, inherent risk includes the risk that another participant or your child may act in a negligent manner and contribute to the injury or death of your child.³

While the waivers are enforceable, they do not allow a commercial provider to waive off a reasonable standard of due care. In addition, Florida law prescribes what language must be in the waiver to be enforceable and includes specific requirements as to how the waiver is presented to the natural guardian including font size and location in the waiver. However, Florida law states that if the waiver is in compliance with Florida

¹ Fla. Stat. § 744.301(3)

² Fla. Stat. § 744.301(2)

³ Fla. Stat. § 744.301(3)(a)(2)

Statute and if a natural guardian refuses to sign it, the provider has the right to refuse to let your child participate if the natural guardian does not sign the form.⁴

So what is a parent to do? I know my children are thrilled when they are invited to a party at our local trampoline jumping facility or get to go zip-lining to celebrate a classmates' birthday. How can I balance the need to have my children participate in activities with the need that they remain safe while doing the activity. I know in our household that me not signing the waiver is not an option. Mutiny would abound and as their mom, I want them to experience life and not live in a bubble.

To respond to this parent dilemma, I have developed the below listed action plan, known as **RAAMD**, to find the balance between the release of liability by signing pre-activity waivers and my desire to protect my children when participating in activities which hold inherent risk.

1. **R- READ THE WAIVER**

Yes, I know you have twelve loads of laundry to do and dinner to make but it is important for you to take the time to read through the waiver that you are asked to sign. Many times commercial providers will direct you to sign an on-line waiver and instead of reading. Often time parents, including me, scroll down and hit the "I agree" button without even reading.

Florida does not require commercial providers to use a state approved standard waiver form. Instead, pre-activity commercial waivers vary both in scope and wording with some being very broad in what they ask you to waive and others being very general. It is important that you as the parent understand the risks you are asking to waive. The wording in the document should be clear and understandable so you as the parent understand what you are being asked to waive and the risks involved. If you do not understand the waiver, don't sign it. Do not be afraid to ask the commercial provider for more information or consult with an attorney.

2. **A -ASSESS THE PROVIDER**

All commercial activity providers are not created equal. Many times as parents we are asked to sign a pre-activity waiver without full knowledge of the policies and procedures of the commercial provider, especially as to child safety. Before you sign the waiver, it is prudent to investigate the commitment of the provider to create and enforce an environment that promotes the safety of your child. Remember, the waiver is enforceable to "inherent risks" even if the provider acted with due care in a reasonable and prudent manner. Most activities in life have inherent risk; however, in terms of the pre-activity waiver, it is important that you as parent fully understand what actions has this commercial provider taken to act with due care in a reasonable and prudent manner. You may want to tour the

⁴ Fla. Stat. § 744.301(3)(a)(2)

provider facility ahead of time, ask what is the ratio of adult supervision to child, what is the policy if another child who is participating becomes a risk to other children and be sure to review any licensure or business complaints. Some commercial providers offer a safety session for your child before they may start the activity. As a parent, I like to attend these sessions to hear the information a provider is sharing and also to observe my child to determine if they understand the information provided.

As an example of this strategy, last summer my children participated in a zip line program in which the zip lining course was laid out to travel over a local zoo. The selling point of the commercial provider was having the child see the zoo from above by a zip-line course strung through a canopy trees over the zoo. The big attraction was the claim that one rope traveled over the alligator pit. What child could refuse an opportunity to zip line over the animals and of course as a parent, I was pressured by the children to pay the additional fee for the activity. Zip lining holds many inherent risks and I was asked to sign the dreaded pre-activity waiver. Before I paid my fee and before signing the waiver, I asked detailed questions about the process and procedures of the providers. I learned that prior to being allowed to enter the course, each child was required to complete a smaller scale rope course under the supervision of the staff. I also learned the staff to child ratio while on the course and what the protocol was in the event a child experience some panic once up in the trees. After my inquiry, I easily signed the waiver as based upon my investigation of the efforts undertaken to provide a safe environment, I knew this commercial provider had taken the time to develop programming to reduce risk to the children.

Remember before you execute any pre-activity waiver, a brief investigation by you as the parent as to the commercial providers commitment to the safety of your child is time well spent.

3. A- ASSESS THE ACTIVITY

Does your child really need to do this activity? Some activities are by nature inherently dangerous. No matter how many precautions taken by a commercial provider, the risks remain high. You as the parent know your children best and it is important to remember that each child will react differently when placed in a stressful situation. If you as a parent feel the activity is too dangerous, do not feel obligated or pressured by your children to undertake this activity. You can say no.

If you decide that your child really does need to do this activity and it is an activity that has high risk, such as high physical contact or risk of head injury, can you take additional steps to reduce risks? In the case of some sports, remember not all sports equipment is created equal and it is prudent to determine if additional protective sports gear can be purchased and worn during the activity.

4. **M - MODIFY - TAKE OUT YOUR PEN**

After reading, don't be afraid to modify the waiver. Many times these waivers are broad in scope and you as the natural guardian may seek to change the wording in the pre-activity waiver. However, be prepared that many commercial providers may not allow your child to participate if the waiver has been modified.

5. **D - DOCUMENT IF YOUR CHILD IS INJURED OR SADLY, KILLED**

In the event an injury or death should occur to your child, it is important to document as much as you can about the circumstances surrounding the injury or death. The documentation is helpful as it creates a record of the events at the time of injury or death so if you elect to challenge the pre-activity waiver; detailed records exist to help analyze the legal sufficiency of your case.

A popular phrase in sports language is the best offense is a good defense. When it comes to finding the balance between our children participating in activities and signing waivers to limit liability of commercial providers on these activities, education and knowledge before you sign the waiver is the best defense. A pre-activity waiver in Florida is enforceable. Using a waiver, a commercial provider asks you as the natural guardian of your child to release them from liability associated with the inherent risks of the activity your child will participate in, even if another child injures your child but they can waive their duty for a reasonable standard of due care. While under Florida laws these waivers are enforceable; they may be challenged under certain legal circumstances. In addition, not all waivers are created equal and it is important for parents to read them and understand what risk they are being asked to waive as to a child's safety. When asked to sign a waiver for your child, it is important to follow the RAMD action plan, READ, ASSESS, MODIFY, DOCUMENT, so you can make an informed decision as the parent if you are willing to sign the pre-activity waiver. ©

Next Month: Liability When You Drive for the Class Field Trip.....

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