

Waiver

A formal statement in which someone gives up a right or privilege

Liability Waivers: A Primer for Dog Trainers

By Christina Schenk-Hargrove, Esq., CPDT-KA

I am looking right at him, and there is nothing I can do to stop it. It's Basic Manners Class, and Tom is in his 60s, with an oversized, exuberant, young Labradoodle named Georgie. One moment, Georgie is focused, working on his sit-stay, his leash firmly under Tom's foot, and then suddenly he is bounding off, leash dragging, to greet his neighbor – a little white Havanese named Lark. As I turn my head to see what the commotion is, I see Tom hurry after his dog, toward Lark and her owner Susan, who is crouched on the floor next to her. In my mind's eye, the next few seconds play in slow motion . . . Tom's feet are shuffling and his arms are reaching forward . . . he is wearing sensible shoes with rubber soles . . . Tom's right toe stubs the floor, the sole of his shoe sticking to the rubber-matted floor . . . his body pitches forward . . . and he falls right on top of Susan and Lark and crashes to the ground. Susan and the dogs are fine, but within minutes Tom's elbow swells to the size of a softball. It is broken and requires numerous pins and casts and several months to repair. Later, Tom confides to me that he has something funny to tell me – he is a lawyer but not to worry, he won't sue. I tell him that is funny – because I'm a lawyer, too!

Tom's injury was serious, and it's lucky we could laugh about it later, but his fall truly was an accident. There was nothing about the floor or the class that caused him to fall. Nothing that could be considered the school's fault or make us liable to him for his injury. (For

definition of liable and some other legal terms, see inset.) But it just goes to show you that whether you work on aggression cases, teach agility, or limit yourself to puppy kindergarten, working with dogs is a risky business. Dogs are animals, and so are humans, and animals act in unexpected ways. People (and dogs) can get injured. A smart business owner will use education, training, and good practices to reduce the risk of accidents, but you also need to protect yourself and your business in case something unforeseen happens and someone does get hurt. Insurance is one obvious answer, but another popular mechanism for managing risk, one that may even be required by your insurance company, is a liability waiver. The laws concerning liability waivers vary from state to state, so if you are considering using one, or want to know whether the one you are using is suitable, you should consult with a lawyer who is knowledgeable about the laws in your state. While I can't provide legal advice, I do want to share some general considerations to guide you:

A Liability Waiver Is an Exchange of Promises. When your client signs your liability waiver form, she is entering into a contract with you or your business. In exchange for being permitted to participate in the activity or class she agrees to pay you money and promises to release you or your business from liability for certain injuries or damage. That exchange of promises – you promise to let her participate, she promises to release liability – is necessary for the liability waiver to be effective. A liability waiver should include language reflecting that exchange of promises.

Liability Waivers Must Be Clear. To be enforceable, a liability waiver must clearly show that the client actually intended to hold your business harmless for injuries or damage to them even if you or your business were to be negligent. If the form is ambiguous, it may be construed to favor your client instead of your business. Because

A FEW DEFINITIONS

Entire books have been written about some of these legal terms, but for the purposes of this article, let's agree on the following:

- **Negligence:** the failure to use the care that a reasonably careful person would use.
- **Gross negligence:** a voluntary act or failure to act that is likely to result in grave injury.
- **Intentional tort:** an act taken with the intent to injure or cause damage.
- **Liable:** If you are negligent, grossly negligent, or commit an intentional tort and someone is injured or damaged, you may be "liable" to them for money damages.
- **Lawsuit/cause of action:** If you are liable to someone for an injury or damages, they may have a "cause of action" against you; if so, they can take you to court by filing a "lawsuit" against you.
- **Liability waiver/release of liability:** A legal contract intended to reduce the chance of a lawsuit being filed against you or your business, or to reduce the amount that can be recovered, by shifting liability for your negligence to your client.

the party who drafts the contract is in a better position to make sure it is clear, courts generally decide that any ambiguity should be construed against the drafter. So, if someone files suit against you and your release is not clear, a court may decide that the lawsuit against you can go forward.

Liability Waivers Must Be Obvious. Don't try to hide the release language, for example by putting it at the back of another contract or by using tiny print. Make it a separate document and have each person sign one. You will have a better chance of enforcing a liability waiver and avoiding a lawsuit if the client had a real opportunity to read, understand, and agree to the release.

A Liability Waiver Should Spell Out the Dangers. Don't try to hide the risk of injury from your clients; include a general description of the danger in the waiver form. By letting them know what the risks are, they can make the informed decision to accept responsibility for any injuries. You don't need to include a list of horrors; a general statement along the lines that training dogs involves a risk of injury is generally sufficient. Your lawyer will advise you how much detail is required.

A Liability Waiver Must Be Read, Understood, And Signed. Make sure your clients sign the liability waiver before engaging in the activity, and that they have the time to read and are able to understand it before signing, so they are informed and able to choose whether to proceed. This may require accommodating language, eyesight, or other differences. Electronic signing has become accepted in many jurisdictions and can streamline the process. Remember to give your employees permission to refuse service to a client who fails to complete a form.

A Liability Waiver Will Not Prevent All Lawsuits. A liability waiver can shift some liability for injuries from you or your business to the injured party, but it cannot always stop someone from filing suit or bringing a successful claim against you. In most states, a valid

liability waiver can protect you from ordinary negligence claims, but a client can still sue you for gross negligence or intentional torts (see inset for definitions). Also, depending on the state, a liability waiver signed by a parent or guardian may not protect you from a lawsuit by a child who is injured, or by a non-signing spouse. If you routinely have family members attending class along with the primary handler, you should talk to your lawyer about how to handle that additional risk. Still, a good liability waiver can discourage an injured party from filing suit for ordinary negligence claims, and if they do file suit, it may cut the lawsuit short. Liability insurance and incorporation are intended to protect you from the rest.

Liability waivers are not a cure-all, but a well-drafted form can provide your business with protection against a costly lawsuit. Developing a proper liability waiver does require an investment. You should take the time to think about the risks to your employees, your clients, and their dogs, and how you can minimize those risks. A good lawyer can guide you through the process of assessing your business risks, identifying ways to reduce those risks, and minimizing the damage when something does go wrong. The result will be a liability waiver with enough "teeth" to protect you.



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