

# South Dakota Public Assurance Alliance

## Waivers of Liability Recommendations

Certain high risk activities of individuals and outside organizations taking place in local government facilities or at a special event sponsored by a local government may require the use of Waivers of Liability signed by participants. Examples of such activities are water recreational activities, athletic events, use of certain inflatable devices, and summer recreation program activities.

SDPAA is providing two **Release and Waiver of Liability, Assumption of the Risk and Indemnity Agreement and Consent to Medical Treatment** forms; one for adults and one for minors. The forms were written to comply with a 1994 South Dakota Supreme Court Opinion which stated:

- Pre-injury releases are much more likely to be deemed valid and enforceable when they are written on a separate document – that is, not imbedded in an application, rental agreement or sign-up sheet;
- Unless the intention of the parties is expressed in unmistakable language, an exculpatory clause will not be deemed to insulate a party from liability for his own negligent acts....what the law demands is that such provisions be clear and coherent;
- The more inherently dangerous or risky the recreational activity, the more likely that an anticipatory release will be held valid.

The form can and should be modified to specifically identify the activity involved. In the case of a particularly dangerous activity, the level of risk involved should also be stated. For example, it may not be sufficient to name the activity “water skiing stunts”. The release form should specify the level of difficulty of the stunts.

[SDPAA Release and Waiver of Liability Form for Adults](#)

[SDPAA Release and Waiver of Liability Form for Minors](#)