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Client Alert: Businesses, Do You Have A Potentially Enforceable Waiver for a Minor?

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It seems like a straightforward question, but unless your waiver strictly follows the statutory requirements, your pre-injury participation waivers may not be worth the paper they are written on. Below, we will explore the statute and best practices for the construction of a pre-injury waiver for a minor child participating in sports and other activities.

Pre-Injury Waivers for Minors: What § 744.301 Allows (and What It Requires)

Parents are frequently asked to sign waivers for their children to participate in activities and/or sports. But are they enforceable? And if so, to what extent?

Florida Statute § 744.301 governs a minor's pre-injury waiver requirements by identifying who qualifies as a child's "natural guardian" and describing when parents may act for a minor without a separate guardianship appointment. Second, it authorizes natural guardians to sign certain advanced waivers for a minor's participation in potentially dangerous activities within a defined scope, but only if the waiver is drafted with strict compliance with the statute.

Who is a "Natural Guardian" under § 744.301(1)?

Generally, both parents are the natural guardians of their minor or adopted children during the child's minority, though this joint status can be affected by proceedings or family-law events.

The statute also addresses common life events. If one parent dies, the surviving parent remains the sole natural guardian, even if that parent remarries. If the parents' marriage is dissolved, natural guardianship belongs to the parent with sole parental responsibility, and if parental responsibility is shared, both parents continue as natural guardians.

The 2023 amendment to the statute revised the implications for children born out of wedlock, making the

mother the child's natural guardian. A father becomes a natural guardian once he has established paternity in the manner described by the statute. If paternity has not been established as required, the mother is treated as the child's natural guardian and is entitled to primary residential care and custody unless a court orders otherwise.

Pre-Injury Waivers for "Commercial Activity Providers" (§ 744.301(3))

Subsection three is the provision most often implicated by pre-participation releases signed for minors. It expressly authorizes natural guardians to waive and release, in advance, a minor's prospective claims (and related parental claims) against a commercial activity provider and its owners, affiliates, employees, or agents, when the claim would accrue for personal injury, including death, or property damage that results from an inherent risk in the activity.

Two practical limitations flow from the statute. First, the statute's authorization is not unlimited. It waives claims "resulting from an inherent risk," and the statutory definition of "inherent risk" is central to whether a waiver does what the provider hopes it will do. Second, strict compliance with the statute is required in the waiver's content and formatting. A parent's signature on a general liability waiver alone is not enough; the document must satisfy minimum statutory requirements to obtain the statute's enforcement benefits.

"Inherent Risk" Is Defined Broadly, But It Is Still a Boundary (§ 744.301(3)(A))

The statute defines "inherent risk" as known or unknown dangers or conditions that are characteristic of, intrinsic to, or an integral part of the activity and that are not eliminated even if the provider acts with due care in a reasonably prudent manner.

The definition expressly includes the provider's failure to warn the natural guardian or minor child of an inherent risk, and the risk that the minor or another participant acts negligently or intentionally and contributes to injury or death.

In practice, this definition is designed to capture the reality that you can do everything reasonably right and someone can still get hurt. It also signals that litigation will often turn on whether the injury-producing mechanism was truly characteristic of the activity, as opposed to something outside the inherent-risk category. In other words, this will often be considered an issue for the finder of fact, rendering summary judgment difficult.

Examples of non-inherent risks include equipment and facility maintenance issues. See *Elalouf v. School Board of Broward County*, 311 So.3d 863 (2021), where the dissenting judge noted that a concrete barrier dangerously close to a soccer field was not an inherent risk of participation in the sport; *Urban Air Jacksonville, LLC v. Hinton*, 415 So.3d 1212 (2025), a participant's slip and fall on liquid in a trampoline park restroom due to negligent maintenance and failure to warn was not an inherent activity risk.

Waiver Requirements: Statutory Notice (§ 744.301(3)(b))

To be enforceable under subsection three, the waiver or release must include, at minimum, a required "NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN" in uppercase type and in a font at least five points larger than, and clearly distinguishable from, the rest of the text. Below is the required language:

NOTICE TO THE MINOR CHILD'S NATURAL GUARDIAN

READ THIS FORM COMPLETELY AND CAREFULLY. YOU ARE AGREEING TO LET YOUR MINOR CHILD ENGAGE IN A POTENTIALLY DANGEROUS ACTIVITY. YOU ARE AGREEING THAT, EVEN IF (name of

released party or parties) USES REASONABLE CARE IN PROVIDING THIS ACTIVITY, THERE IS A CHANCE YOUR CHILD MAY BE SERIOUSLY INJURED OR KILLED BY PARTICIPATING IN THIS ACTIVITY BECAUSE THERE ARE CERTAIN DANGERS INHERENT IN THE ACTIVITY WHICH CANNOT BE AVOIDED OR ELIMINATED. BY SIGNING THIS FORM YOU ARE GIVING UP YOUR CHILD'S RIGHT AND YOUR RIGHT TO RECOVER FROM (name of released party or parties) IN A LAWSUIT FOR ANY PERSONAL INJURY, INCLUDING DEATH, TO YOUR CHILD OR ANY PROPERTY DAMAGE THAT RESULTS FROM THE RISKS THAT ARE A NATURAL PART OF THE ACTIVITY. YOU HAVE THE RIGHT TO REFUSE TO SIGN THIS FORM, AND (name of released party or parties) HAS THE RIGHT TO REFUSE TO LET YOUR CHILD PARTICIPATE IF YOU DO NOT SIGN THIS FORM.

For drafting, the take away is that Florida has effectively created a statutory "safe harbor" warning. If a business wants the benefit of § 744.301(3), it must include the notice as contained in the statute. If the waiver complies, the statute creates rebuttable presumptions in favor of the business owner.

The statute then specifies how those presumptions can be rebutted and the evidentiary burdens that apply. A claimant can challenge validity by showing, by a preponderance of the evidence, that the waiver does not comply with subsection three. Separately, to escape the presumption that the injury arose from an inherent risk, a claimant must prove by clear and convincing evidence that the injury was caused by something other than an inherent risk of the activity.

In effect, a compliant waiver gives the provider meaningful procedural leverage by assigning defined proof burdens before a claim can move outside the inherent-risk framework.

Noncommercial Providers Are Treated Differently (§ 744.301(3)(D))

Subsection three also contains a savings clause that states that nothing in the subsection limits the ability of natural guardians to waive and release claims in advance against a non-commercial activity provider to the extent authorized by Florida common law.

Therefore, § 744.301(3) is not presented as the exclusive universe of parental releases. Instead, it codifies a specific rule set for commercial providers and leaves non-commercial scenarios to common-law principles without expanding or restricting them through the statute itself.

Practical Bottom Line

If the waiver meets the statute's requirements, the business receives the benefit of a rebuttable presumption and defined burdens of proof that can materially shape later litigation over whether a minor's injury falls within the inherent risks of the activity.

For more information, please contact Jill Schmidt.

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