

CONTRACT REVIEW FOR YOUR STUDIO

As a fitness instructor, you may at some point in your career decide to rent or lease space to open your own studio. Or, you may already have a studio, and your lease is ready to renew. Understanding the terms of the lease agreement being presented to you by your landlord or potential landlord will assist in this venture. The following information is not intended to provide legal advice, as you should always consult with an attorney before executing any contracts, however it can help to simplify the process, and actually save you in legal fees if you do the preliminary work before presenting to your attorney.

A contract is a **legally binding agreement** between two competent parties who have each exchanged something of value. For your purposes, the owner of the property is exchanging his/her interest in the property to you, the studio owner. In exchange for the use of the property, the owner requests certain consideration, often monetary in nature. There is much that can be done to understand these documents prior to review by an attorney and before actual execution.

The information contained in this report is offered as an aid to assist in identifying what to look for, and what alternatives exist once you have identified certain aspects of the contract/agreement. **This does not, and should not be relied upon in lieu of competent legal representation. We recommend that you consult with an attorney with respect to any contract.**

The following sections will be reviewed, and discussed in greater detail in this report:

1. **REVIEW THE CONTRACT:** This step will help to make certain that the property is correctly named, and the dates of occupancy or use are correctly identified. Additionally, verify the cost associated with the use of the property. Determine who is to sign the agreement, when it is to be effective and when it is to be fully executed.
2. **IDENTIFICATION:** This step will help identify the provisions, which will be the most significant from a Risk Management perspective. Items to look for include provisions which reference "insurance", "hold harmless", "indemnification" and "negligence". These provisions tend to be the ones which provide the most problems, and for which additional negotiations will be in order.
3. **REVIEW:** This step will help in your understanding of what was previously agreed upon. If you expect to assume responsibility, and this is properly stated in the contract, then that section will be accepted. If you did not anticipate assuming responsibility for an area, which the agreement clearly states you are responsible for, then further examination will be necessary. Determine the impact of these specific provisions. It will be necessary to identify if insurance is available for the areas you are assuming (through your General Liability Insurance coverage) and if you are being required to indemnify another for losses, which is a direct and proximate result of another's actions, errors or omissions. Please keep in mind, many liability insurance policies now have "negligence only" wording, meaning they will respond only if the allegation of bodily injury or property damage is a direct result of your own negligence.
4. **RESPOND:** This step will assist you if it appears that changes to the contract/agreement need to be made, a recommendation of alternate wording should initiate continued discussion.
5. **EXECUTE:** This step will help finalize the execution of the agreement. Once all the provisions accurately and fairly represent your intention and the understanding with respect to the responsibility of both parties, it will be time to sign the contract. Be sure the other party signing the agreement has the authority to do so (i.e.-owner, officer or agent of the property)



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COMMON DEFINITIONS:

- **NEGLIGENCE:** This term often refers to the failure to use the care that is required to protect against a reasonable chance of harm. The general liability policy provides coverage for sums, which the organization/individual may become legally obligated to pay as a result of their own actions and/or negligence. When entering into a contract, it is important to identify which party becomes responsible for the negligence associated with injury or damage. Many times, the contract will ask that you assume full responsibility for all acts and losses whether they are a direct cause of your actions, or for actions of others. Legal representation can assist in determining those applicable statutes or regulations in your jurisdiction (state) which will permit or prohibit how negligence, including gross negligence are addressed.
- **HOLD HARMLESS:** This term is usually easily identified in the contract. The concept of holding another party harmless is to protect them or make them whole as a result of a loss or damage. While it may be practical and appropriate to hold the other party harmless for losses that result from your actions, often times, they are asking that you hold them harmless for losses resulting from their actions, or the actions of others, beyond your control. This is not recommended.
- **INDEMNIFICATION:** The words indemnify and indemnification refers to protection against damage or loss. When a contract requires that you indemnify the other party, the agreement is stating that you will reimburse them for any loss or damage they suffer as a result of the agreement.
- **WAIVER OF SUBROGATION:** This term is simply the "right to recover losses paid". In a contract, the other party is attempting to negate you, or your insurer from being able to come back to them to recover for losses paid. It is important to note that only your insurance company can waive their right to subrogation, and any time this term is used, the insurer should be made aware of the intent.

REVIEW THE CONTRACT:

The process of initially reviewing the contract will assist you in identifying details that may be overlooked in an effort to concentrate on the larger and seemingly more significant provisions. The following are the steps you should take in your initial review:

- **IDENTIFY THE PARTIES TO THE AGREEMENT:** The parties to the agreement should be "you", which will include you and any business names (Corporation, LLC, and Partnership). The other party to the contract should be the entity or organization you intend to contract with (property owner). Be sure that "you" are designated correctly. Both parties should always use their formal legal names so that if a dispute arises later, you are able to identify the proper party.
- **VERIFY THE DATES OF OCCUPANCY AND/OR USE:** It is important that if the contract stipulates the dates you will be occupying the premises, that these dates are correctly stated. Errors may occur, and this would be the time to correct those errors.
- **IDENTIFY "WHO" IS TO SIGN THE CONTRACT:** Make sure that your representative (if not you) has the authority to enter into the agreement. Additionally, be certain the individual representing the other party also has the authority to enter into the contract. If the person representing the other party is unknown to you, be sure to obtain some type of authorization that this person has authority. If questions arise in the future, you will know with whom they need to be discussed.
- **OBTAIN AN ORIGINAL COPY OF THE CONTRACT:** Make sure the copy of the contract you receive is an original copy, with clear, legible language. When contracts are copied multiple times or sent through fax machines, often times the language becomes difficult to read, or parts are illegible.
- **BE SURE YOU HAVE A COPY OF THE COMPLETE AGREEMENT:** If the contract is larger than one page, it may be possible to be missing a page or pages. Be sure you know how many pages the contract is, and count to be sure each and every page is there. In the absence of numbered pages, scan the document to be sure that the first paragraph on each succeeding page completes the thought of the last paragraph on the preceding page.

REVIEW THE AGREEMENT:

Once the contract has been presented to you, **it is recommended that you have your attorney review.**

The primary objective during the review process is to be certain that the agreement properly defines your responsibility and objectives. Be sure that the dates, location and incidental details are identified and correct. Also review the items such as the condition of the premises when returned, and what authorities you have are clearly included. This is the time to make certain that there is a clear distinction of who is responsible for what, and that you are not assuming responsibility or agreeing to perform functions that should belong to the other party.

It is important to be certain that you are not being required to provide for losses for things which are not covered by insurance. The general liability policy excludes coverage for property in your care, custody and control. This would be property for which you have been given responsibility and authority and over which you exercise control.

Once you (and your attorney) have completed the review phase, you should have a very thorough understanding of exactly what the proposed contract demands of each party, and what responsibilities each are assuming.



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RESPOND TO THE CONTRACT:

After reviewing the contract, it is time to meet with the other party to propose changes. The recommendations developed by you and your attorney should develop some rewrites to the contract, and possibly extended negotiations. Remember, the overall objective is to have a contract, which is appropriate for both parties and which accurately address all areas of responsibility.

Be sure that you identify those provision in the contract with regard to negligence, and attempt to be consistent (negligence, hold harmless, indemnification, waiver of subrogation) throughout the contract.

Be prepared that the other party may have a lack of understanding of what your attempts to change mean, and their ability to effect a modification or change to the contract.

EXECUTING THE CONTRACT:

Once the negotiations have been concluded and a final document prepared, all that remains is to sign the contract. In the execution process, always date the document when you sign it, even if this means writing in the date after your signature when there is no designated place for a date. You should also include a title under your signature (owner, president, etc.) making it clear that you are authorized to execute the agreement. The signature page should not be a page by itself, but rather, should be included with the end of the text. When a signature page is the only page and when pages are not numbered, it is possible for an unintended page to be inserted without your knowledge. Most contracts, if the text does not extend throughout the entire page will have language that indicates "the remainder of the page has been intentionally left blank". You should review all pages of the contract to ascertain that language on each page fills the page, and if not that language regarding "blank space" exists.

EXAMPLE OF MUTUAL HOLD HARMLESS AND INDEMNIFICATION LANGUAGE:

"Party One" (either the property owner or the Lessee) shall indemnify, defend and hold "Party Two" (the other party to the contract), it's officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys fees, or claims for injury or damages arising out of the performance of the Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of "Party One", it's officers, agents or employees.

The exact same language substituting "Party One" for "Party Two" where applicable, and "Party Two" for "Party One" where applicable will effectively provide the mutual language.