

SAFETY AND RISK MANAGEMENT

Overview

Operating snowmobiles can be exhilarating and fun. It is likely that renters may have an urge to go fast at some point during their outing to experience that exhilaration. And sometimes amongst that exhilaration there can be tendencies for renters to act up and perhaps push the limit of their abilities or proper behavior. Allowing customers to operate carelessly or recklessly is not good for the image of the business or the industry, despite what customers might think.

How should the business effectively deal with this type of behavior? Safety and risk management is about managing the risks associated with annoying and often dangerous behavior. Managing risk is also about protecting people and property from mishaps and personal losses while doing the best to keep the business and its employees safe, out of court, and away from costly legal battles.

For the business to be safe and secure in its future, it must manage its risk. And to properly manage its risk, it should have a comprehensive risk management plan that is in writing and shared with staff.

This chapter offers the rental/outfitter company ideas on how to safeguard against personal injury, property damage, and third party liability, as well as important items to consider to be prepared for an emergency. After reviewing the material presented in this chapter, it is urged that businesses consult with an attorney licensed in their area to review all liability concerns. It is recommended to seek advice from an attorney experienced in outdoor recreation law.

There will always be an element of risk present with the business of renting snowmobiles, regardless of what procedures and safeguards are in place. If a particular risk cannot be eliminated or avoided, it needs to be managed in order to reduce exposure to an acceptable level.

Safety and Risk Management

SAFETY AUDITS

A rental/outfitter company's risk management plan must be kept current. Performing regular safety audits can help assure this. A comprehensive safety audit should do checks and double-checks in all areas of the business's operation. Staff can perform many of these audits, while others are better left to professional service agencies who are experts in their respective fields.

Examples:

- ◆ Staff Qualifications. *(See Personnel, page 16)*
- ◆ In-service Staff Training. *(See Personnel, page 19)*
- ◆ Renter/Operator Education Core Subjects. *(See Customer Orientation, page 37)*
- ◆ Emergency Response Planning. *(See Safety and Risk Management, page 82)*
- ◆ Communications. *(See Operations, page 68)*
- ◆ Accident Reporting Requirements. *(See Customer Orientation, page 42)*
- ◆ Insurance Considerations. *(See Safety and Risk Management, page 96)*
- ◆ Grounds and Facilities Upkeep. *(See Operations, page 68)*
- ◆ Facility and Equipment Maintenance. *(See Operations, page 71)*

Safety audits performed by outside experts can help the business identify its weaknesses by taking its own bias out of the equation. This is yet another reason for developing strong links to the community and the various service agencies that are traditionally ready, able, and willing to lend their expertise. Some costs may be involved, but these costs can pay dividends to the rental business along the way. The rental business can never shield itself from all risk, but having a comprehensive risk management plan in place can help reduce its exposure substantially.

IN-SERVICE STAFF TRAINING

The company and staff will have serious legal difficulties if a lawsuit should arise and personnel were not qualified for a task they performed, whether instructing, guiding, or responding to an emergency. If the employee in question completed the certified training, but was not considered 'current' at the time of the alleged incident, the company and that person will have trouble. It is both the employer's and employee's responsibility to be certain qualifications and certifications are kept current. In-service staff training can provide a check and balance to help a business manage its risks and potential liability.

In-service training should be regular, thorough, and set up to review and practice many crucial aspects of the rental center's business operations. In a typical snowmobile/outfitter rental operation, there are many training topics to be considered: first aid, CPR, hazard analysis, teaching methodology, snowmobile handling, local area peculiarities, customer risks and stress, media relations, avalanche rescue techniques if in a mountainous area, etc. Repetitive practice drills can not only help individual staff reaction times, team work, and motor skills, but can also help minimize mistakes and forgetfulness often seen with emotionally charged persons in emergency situations.

Recertification of employee's emergency response credentials requires formal testing (e.g. CPR, first aid, etc.) and official approval from outside certification organizations such as the American Heart Association, Red Cross, and other qualified providers. Teaming up with these agencies can help the rental business implement and manage its safety and risk management plan. While emergency response and search and rescue functions are best left to professionals, it is a good idea to have core front line staff certified to provide basic first aid for first response.

CUSTOMER EDUCATION

Many court challenges have been based on an alleged failure to inform. In addition to providing the right information to renters through qualified instructors, having the right mix of educational tools and visual aids as a backup is imperative if proof is ever required that adequate information was delivered.

The effectiveness of the business's release and waiver form could depend on both the instructor's presentation and on how that information was supported with visual aids. Educational posters displayed in strategic locations can be useful, as

can the use of snowmobile safety videos. Both are available through the IASA and ISMA.

The use of a rental safety video(s) is strongly encouraged by IASA. The video(s) should be comprehensive and available for all rental customers (*operators and passengers*) to view. Use the type that is continuous and automatically loops back to the beginning when it ends so staff doesn't have to take time away from other tasks to repeatedly rewind and start it. Have renters view the video at the beginning of the learning exercise while students are more likely to be attentive. An information video shown early can spawn questions and stimulate inquiries throughout the learning exercise that might not otherwise be asked.

REMEMBER: *Even excellent instructors can have bad or too busy days. It can be hard to document whether a topic was covered if it ever comes down to the renter's word against the instructor's. By always offering the viewing of a video and/or written materials, there will never be a doubt that the topic was presented, which will help the business should a lawsuit ever occur.*

THE RENTAL AGREEMENT

When an individual(s) enters the business to inquire about renting a snowmobile or taking a guided tour, it is a matter of choice for the company whether or not the rental is in fact transacted. There are several things personnel should keep in mind when considering an application to rent a snowmobile.

MINIMUM AGE AND MATURITY TO RENT A SNOWMOBILE

IASA recommends that rental customers be at least 18 years of age to be eligible to rent a snowmobile. While maturity level is an issue, this recommendation is also driven by the fact that persons must be of legal age to sign and contractually bind a legal agreement. If they are not at least 18, they must have a legal guardian sign on their behalf. Regardless of state, provincial, or insurance requirements, many experts feel the minimum rental age of 18 years should be the norm, not the exception. A sample waiver for minors has been included as an appendix to this chapter. A related parental waiver is also included.

CUSTOMER RISK AND STRESS FACTORS

There are many factors that could limit a customer's ability to safely operate or ride as a passenger on a snowmobile. Since they can be medical, physical, or stress related in nature, customer screening is very important, and yet another issue the business must consider. It will typically be left entirely to the discretion of the business's personnel to identify and assess customer risk, so a process to help easily identify those factors is important.

The rental application and release form provide an opportunity for each customer to disclose relevant personal information in a discrete and private manner. These forms are yet another opportunity to relate to the applicant that it is their responsibility to notify the rental/outfitter company of any personal problems that might limit their ability to safely participate in the activity. Regardless of what methods are used, it is also the rental/outfitter company's responsibility to ensure that business attitudes, procedures, and rental decisions are in compliance with laws pertaining to discrimination, disabilities, etc.

The following is a short list of factors staff should pay attention to prior to and throughout the duration of a snowmobile rental:

- ◆ The customer's age and level of maturity.
- ◆ Personality type and behavior.
- ◆ Apparent temperament and obvious mood swings.
- ◆ Observable fatigue.
- ◆ Physical well being.
- ◆ Suspected use of alcohol and/or drugs.
- ◆ Use of over-the-counter or prescription drugs that could adversely impact physical control and mental capacity of the individual.

PASSENGERS ARE CUSTOMERS, TOO

The rental/outfitter business must remember that their customers include both operators and passengers, and concern for such things as personal safety and third party liability must be extended to all throughout the rental process. Risk, behavior, and stress factors must be evaluated and monitored on an ongoing basis for everyone in the business's care.

Every rental/outfitter customer should receive activity specific orientation, be supervised, and have read, completed, and signed the appropriate waiver(s), assumption of risk form, and related rental business documentation.

Rental Guidelines and Recommendations

ALL PASSENGERS AND OPERATORS

All rental/outfitter customers should understand and acknowledge the following guidelines and/or have performed the following procedures before their rental proceeds. Each should be covered in the waiver and release form:

- ◆ Have read and completed a questionnaire to assess the proposed activity skill level, current physical condition, and willingness to comply with safe and responsible snowmobile operating practices.
- ◆ Have read, viewed, and understood all the educational material provided.
- ◆ Know how to respond to an emergency or mishap (*e.g. crashes, stuck in deep snow, knowing where they are, etc.*).
- ◆ Are fully aware of all assumed risks and consequences associated with the activity.
- ◆ Understand and have taken legal responsibility for their own behavior.
- ◆ Understand and acknowledge that situations may arise due to: decisions they make themselves, actions of others, or are caused by natural events that are totally out of the control of the rental/outfitter company and its employees.
- ◆ Understand and agree to adhere to the conditions of the rental agreement and to follow all rental center instructions.

THE OPERATOR

In addition to the above, every individual authorized to operate a rental snowmobile should also have acknowledged, adhered to, and/or performed the following. Each of these should be covered in the waiver and release form:

- ◆ Agreed to operate the rental unit according to and be guided by the hazards peculiar to the area, to the law, and to the rules and regulations of the public land manager or private landowner.
- ◆ Have read all the educational materials provided and viewed the snowmobile operations and safety instructional materials.
- ◆ Have an understanding of the regulatory and contractual necessity of proper snowmobile handling.
- ◆ Participated in a demonstration to confirm ability to operate a snowmobile.
- ◆ Permitted to operate it unless duly authorized by the business.

- ◆ Taken full responsibility for how their operation of the snowmobile may affect other winter trail users, other snowmobilers, landowners, the environment, etc.
- ◆ Taken responsibility for their own behavior as well those passengers in their care.
- ◆ Agree that they will be the only operator of the rental snowmobile for the duration of the rental period and that absolutely no one else will be permitted to operate it unless duly authorized by the business.

TIPS FOR MANAGEMENT AND STAFF

Management and staff should be qualified, attentive individuals since they are the primary link to both customer safety and effective risk management practice.

The following are a few staff related guidelines for the business to help reduce risk:

- ◆ Staff should be hired for their experience and credentials in snowmobile safety education, instruction, snowmobile handling ability, customer and community relations, and risk management.
- ◆ Front line staff should receive ongoing training to both maintain and improve safety and risk management skills.
- ◆ Staff who have successfully completed an IASA approved safety certification course should be used to deliver training to rental business customers.
- ◆ Management and staff should always lead by example.
- ◆ Staff should be satisfied that customers have properly demonstrated that they fully understand and accept the risks associated with the rental activity.
- ◆ All personnel should always promote zero tolerance for annoying and dangerous behavior, without exception.

The Equipment

The customers rightfully assume that their rental units will function properly and are in safe operating condition. Since faulty equipment could easily lead to injury and lawsuits, all rental and guide equipment must always be maintained and serviced according to manufacturer's specifications before being placed into active service. *(See page 71, Operations)* Records of maintenance and service should be kept for all units.

Emergency Planning: Situation Specific Procedures

Medical emergencies can occur at any time with little or no warning (e.g. seizures, heart attacks, frostbite, altitude sickness, hypothermia, etc.). If specific procedures are developed before hand, kept up-to-date, and routinely practiced, the business and staff can be better equipped to handle potential situations properly, thereby reducing the risk both to themselves and to others.

STAFF PRE-PLANNING

- ◆ Individual staff emergency response roles identified.
- ◆ Staff emergency response training skills kept current and up-to-date.
- ◆ Practice drills conducted regularly and response times noted.
- ◆ Emergency equipment checked and rechecked for quick, easy deployment.

PROCEDURES FOR GETTING HELP

- ◆ Staff know what to do, and in what order.
- ◆ Staff know who to call, and in what order.
- ◆ Situation procedures, contacts, and emergency telephone numbers are kept current and readily accessible.

In the event of a medical emergency, the company's first priority is for the on-site or on-trail care of an injured person until other qualified professional assistance takes charge. The basic emergency life skills training staff should possess in order to work for the rental/outfitter company should cover this need. Under no circumstances should anyone administer care beyond their level of training and certification. Consult with local emergency service providers to establish an effective response and customer care plan for basic emergencies. If there is an incident and there are any questions about someone's ability to operate, don't let them back on the snowmobile (*i.e. terminate rental*).

It's important to note that only legally responsible individuals can waive medical attention for themselves. Be aware that MINORS cannot waive medical attention.

Many different incidents, life threatening or not (e.g. sight of blood, blunt trauma, loss of life, etc.), can be extremely stressful for well-intentioned staff in the performance of their job. This is where backup can be crucial.

Emergency situation drills can help ready staff to manage their own feelings by preparing them to better handle the situation for themselves first so they, in turn, can care for others who may be in need of assistance.

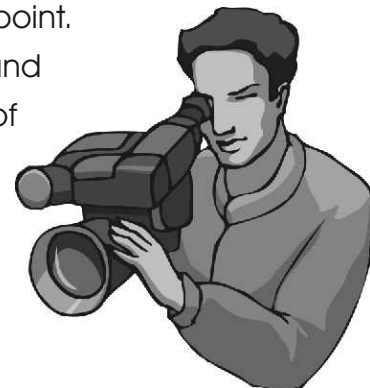
CRISIS MANAGEMENT

No matter how cautious and prepared the company tries to be, the unthinkable can actually occur in the form of serious personal injury. If this happens, company staff should be prepared to interact with medical and law enforcement personnel, as well as other interested persons. In the event of a crisis situation, it's not unusual for staff to be called upon, with little notice, to deal directly with the press, the immediate needs of family or friends of the victim, or perhaps even one or more company employees who became emotionally overwhelmed by the event. When the potential for various legal issues are added to the crisis situation, it becomes even more important that adequate procedures and experienced supervisory staff be in place to handle the various potential aspects of a crisis before it happens. Keeping authorities, media, and other interested parties adequately informed and pacified, while at the same time attending to the immediate and future needs of the business and its staff, can be crucial both during, and often after, the event has passed.

MEDIA AND PUBLIC RELATIONS

It is wise for management to instruct all personnel in advance as to what things to say, as well as what not to say, in case there is ever a pressing need for a staff member to make a comment to an official, the media, or whomever. Other than in extreme and immediate circumstances, *(and some companies wisely have a policy that allows absolutely no comments by front line, non-management employees)* only senior supervisory personnel who are properly trained and designated as a business spokesperson should make formal comments during or after a crisis. Whenever comments are made by the company spokesperson, they should be well thought out, few, brief, and to the point.

If possible, written press releases should be prepared and distributed by supervisory personnel. Stick to the facts of the situation, don't speculate, and be sensitive to the family and friends of the crisis victim. The identity of the victim(s) should not be released.



Anyone who needs to deal with the media should have some form of media and public relations training. It's imperative that all questions, interviews, and general inquires of a critical or sensitive nature be directed to a qualified spokesperson who has been trained to have the 'big picture' in mind. This pertains to the company's contact with media, lawyers, insurance providers, relatives of victims, and government agencies.

Professional training is always recommended, but if it is too costly for the business, self-help information is usually available through a number of sources including public libraries, on the internet, and also through some insurance providers. Focused training in this area can help reduce the company's exposure to misquotes or to misleading and potentially damaging information being given out by those who are perhaps well intentioned, but less informed.

CUSTOMER RELATIONS

As important as media and public relations are to the business, so are customer relations during and after a crisis situation. Apart from providing basic care and treatment, personnel are expected to professionally manage the scene for the benefit of all those involved until emergency crews (*e.g. ambulance, search and rescue, police, etc.*) officially take over. It is extremely important that staff exhibit a 'we care about you' public relations attitude to those they come in contact with, including emotionally charged family and friends. A few thoughtful acts could pay the rental/outfitter company and staff huge dividends in the future, particularly if there is ever litigation regarding the incident.

INCIDENT REPORTING

To better protect the business and staff from third party liability, a paper trail should be kept of all incidents that occur detailing: to whom the incident was reported, by what means it was reported, and when it was reported. Effective incident reporting requires knowing what to document, so look to insurance providers and law enforcement to guide what information to collect. In any event, always document any incident involving personal injury, even if it appears to be minor or inconsequential at the time.

An incident report should be comprehensive enough to provide answers to basic questions, even if it is only intended as an internal backup document for the rental company.

- ◆ When did medical treatment and law enforcement arrive at the scene, when were they summoned?
- ◆ What happened?
- ◆ Who was involved, include both injured and non-injured parties?
- ◆ What time did the incident occur?
- ◆ Where did the incident occur?
- ◆ What were the conditions?
- ◆ Were there any witnesses, and what are their names and contact information?
- ◆ What is the estimated level of property damage?
- ◆ Did physical injury result and what were the apparent injuries or complaints by the victim?
- ◆ Was medical treatment required?
- ◆ Was medical treatment waived?
- ◆ Who was notified, when, and in what manner?

LEGAL REPRESENTATION

If a crash or casualty should occur that involves a rented snowmobile and eventually results in litigation, the company (*and person operating the snowmobile*) should be certain the attorney handling the case has adequate training and experience in injury law. An attorney should not handle a snowmobile crash as if it were simply another typical motor vehicle crash since this could invite a legal disaster for the company. While there are similarities between snowmobiles and automobiles, there are also many differences in their operation and governing laws and regulations. Consult an attorney with experience in outdoor recreation and the law.

RECREATIONAL WAIVER LAW AND YOU!

WHAT IS A WAIVER?

A waiver is a contract between two parties (*the rental business and customer*) addressing Risk and Responsibility. For this purpose, we will define **RISK** as the inherent danger of participating in snowmobile rental/outfitter activities and **RESPONSIBILITY** as the division of roles between the contracting parties. You (*the rental business*) agree to provide certain services or products and acknowledge your responsibility to minimize the risk involved (*e.g. by providing relevant orientation/training and properly maintained equipment*). Your customer acknowledges the risks involved and waives his right to hold you responsible for bodily injury or property damage that may arise from the disclosed inherent risks.

Waivers are both beneficial and necessary if individuals (*we*) want to participate in activities that present some danger. Without the appropriate use of waivers, it is quite likely we would be denied participation in many recreational activities (*e.g., alpine skiing/snowboarding, amusement rides, canoeing/kayaking, parachuting, horsebackriding, snowmobile/ATV/PWC riding, scuba diving/snorkeling, etc.*).

PROPER DESIGN AND USE OF WAIVERS

Q: If waivers are so beneficial, why are they commonly described as WORTHLESS?

A: Since waivers are legal contracts, they must meet the minimum requirements necessary in all contracts to be defensible under law. Many waivers in common use are poorly worded and are open to broad interpretation as to their real intent. Those invariably fail to provide any protection from legal action. To make it legal and binding, a waiver must contain five essential elements needed in any contract:

MUTUAL AGREEMENT

Generally understood as offer and acceptance, mutual agreement is more difficult to achieve in a waiver than in most normal contracts. In a typical snowmobile rental operation, there are really two contracts:

1. The first contract (*quite often an oral agreement*) deals with the snowmobiling activity and the provision of certain services or equipment for a fee. This contract should specify the services to be provided, the fee to be paid, the responsibilities borne by both parties, and the requirement for the participant to complete a waiver agreement.
2. The waiver is actually a second contract where the Offer is permission to participate in a hazardous activity and the Acceptance is represented by agreeing to hold the service provider (*in this case, the snowmobile rental/outfitter company*) harmless in the event of injury, etc. This is confirmed by reviewing the waiver and by agreeing to its terms by signing it.

CAPACITY OF PARTIES

Certain persons are protected by law and are made legally incapable, either wholly or partly, of binding themselves by contract. This includes minors, mentally incompetent persons, and intoxicated persons. A waiver signed by these individuals is technically void. Minors must have parental or guardian agreement on a waiver and both the minor and parent/guardian must be fully aware of and agree to the terms and conditions in the waiver.

LEGAL CONSIDERATION

In the case of a normal contract, consideration generally involves payment of some kind of fee. In the case of a waiver, however, consideration is far less defined. As participation in the activity is usually conditional upon signing a waiver, the actual waiver itself becomes the consideration. In simple terms, the rental customer pays for the privilege of participating by agreeing not to hold the provider responsible for any incidents. The key issue that arises when a waiver is contested is whether or not the specific incident that occurred was actually contemplated by the waiver agreement.

LAWFUL OBJECT

The object of a contract must be lawful; otherwise it is not valid or enforceable by either party. This is of direct concern in some areas where a waiver can be rendered invalid simply because it does not comply with local law. Waivers can also be considered contrary to public policy and voided as a result.

GENUINE INTENTION

Both parties to the waiver must be clear with respect to their intentions. If one of the parties is induced to make the contract by improper means or under such unfair circumstances that the result is not what was really intended, then it is not binding upon them, *(e.g. asking a participant to sign a waiver after the rental has been paid for and the snowmobile has left the trailhead)*.

As long as a waiver meets all of these requirements, one has the basis for a legal argument to avoid litigation via a Summary Judgment Motion *(an appeal to the court for dismissal of a legal action against the company on the basis of the Waiver agreement)*.

Q: What circumstances make a waiver hard to enforce?

A: The courts do not generally like to enforce waivers and sometimes go to great lengths to avoid doing so. It is unlikely a waiver can be enforced if the individual giving away his rights has not had time to reflect on the decision, was pushed into the agreement *(e.g. peer pressure)*, misled by the other party, or was not fully informed of the risks involved in the activity.

THE DUTY TO RESCUE

If the company is offering guided snowmobile trips and is not equipped to properly execute a competent rescue *(e.g. an avalanche rescue of a tour group riding off-trail in mountainous terrain)*, the business is asking for legal difficulties, even with a signed waiver on file. This means safety equipment and personnel must meet recognized standards to be considered acceptable.

Analyzing A Typical Waiver

ACKNOWLEDGMENT OF RISK

I, _____ do hereby affirm and acknowledge that I have been fully informed of the inherent hazards and risks associated with snowmobiling activities. I fully understand that these risks can lead to severe injury and even loss of life. I understand that snowmobile operations may be conducted at a site that is remote from competent medical assistance; nevertheless, I choose to proceed even in the absence of competent medical assistance. Additionally, I understand that there are also risks associated with snowmobile usage, including, but not limited to the possible injury or loss of life as a result of a snowmobile accident. Despite the potential hazards and dangers associated with the activity of snowmobile riding, I wish to proceed and I freely accept and expressly assume all risk, dangers and hazards that may arise from snowmobile activities which could result in personal injury, loss of life, and property damage to me.

It is very clear that the party signing this waiver is acknowledging the waiver and admitting previous knowledge of the activity, the inherent hazards involved in snowmobile riding, and is willing to accept those hazards and risks. The main reason this portion of a waiver can be discredited is that the individual signing is not actually aware of the hazards and risks because they are new snowmobile operators or passengers and are required to sign the waiver before they actually become aware of the real hazards and risks. That is one reason a reaffirmation of the waiver is an extremely valuable addition prior to snowmobile riding activities.

If a reaffirmation of the waiver is not practical to execute due to time restraints, etc (*e.g. the entire lesson plan is completed in such a short period of time that there is not enough time to get the customer to sign again later on*), then the customer must sign the acknowledgment of risk after all material customer education and training is complete. If there is only one opportunity to obtain the customer's signature for this, be certain it is **after** the relevant education and training has been received and understood by the customer. This should help reduce the risk of this portion of the waiver being discredited.

Safety and Risk Management

Following is an example of a Waiver Reaffirmation:

WAIVER REAFFIRMATION

(To be completed after customer orientation and training; just prior to snowmobiling activities)

I HAVE READ THIS AGREEMENT, I UNDERSTAND, IT AND I AGREE TO BE BOUND BY IT.

Signature Of Participant _____ Date _____

Witness (Name) _____ Signature _____

Signature Of Parent Or Guardian If Participant Is A Minor, and by their signature they, on my behalf release all claims that both they and I have.

Signature of Parent or Guardian _____ Date _____

Once orientation has been completed and a reaffirmation has been signed, it is difficult for a plaintiff's attorney to assert his client was not aware.

Another area of key importance in the waiver is the 'Release' portion:

RELEASE OF LIABILITY, WAIVER OF CLAIMS, & INDEMNITY AGREEMENT:

In consideration of being allowed to participate in snowmobile rental activities, as well as the use of any of the facilities and the use of the equipment of the below listed releasees, I hereby agree as follows:

1. TO WAIVE AND RELEASE ANY AND ALL CLAIMS based upon negligence, active or passive with exception of intentional, wanton or willful misconduct that I may have in the future against any of the following named persons or entities (hereafter referred to as Releasees):

Snowmobile Rental/Outfitter Business: _____

(Instructor/s): _____

(Facility/ies): _____

(Others): _____

It is crucial that all entities that need to be released are listed and that their Legal Names are used. Many a waiver has failed because a party was not listed, or a nickname was used instead of a legal name. If you are operating under a DBA (*Doing Business As*), you should use both your legal name and the DBA (*i.e. Enterprise Holdings, Inc. d/b/a Snow Elite Snowmobile Rentals Unlimited*). This should help avoid future arguments as to whom it was that was supposed to be released. If the business uses multiple instructors and/or other staff for teaching, all of their names should be listed.

The terms contained in this portion of the release are also crucial:

- ◆ Negligence can best be described, as something the prudent staff instructor should have done, but didn't, or something they shouldn't have done, but did.
- ◆ Active negligence is when the business is aware of some negative influence and goes forward anyway (*e.g. allowing a rental to go out when weather or snow conditions are unacceptable*). Passive negligence is when the business is not aware of the negative influence, but should have been (*e.g. staff not checking the weather or snow conditions prior to letting the rental proceed*).
- ◆ Why do we add the phrase..."with the exception of intentional, wanton, or willful misconduct"? It is simply unreasonable to expect someone to release a person for intentional misconduct. Further, some states have actually legislated against waivers that attempt to provide release for Gross Negligence (*another term for intentional, wanton, or willful misconduct*).

THE 'HOLD HARMLESS' PORTION

2. To release the releasees, their officers, directors, employees, representatives, agents and volunteers, from liability and responsibility, whatsoever, for any claims or causes of action that I, my estate, heirs, executors, or assigns may have for personal injury, property damage or wrongful death arising from snowmobile rental/outfitter activities whether caused by active or passive negligence of the releasees or otherwise. By executing this document, I agree to hold the releasees harmless for any injury or loss of life that may occur to me during snowmobile rental/outfitter activities and/or instruction.

THE "LEGAL ACKNOWLEDGMENT" PORTION

3. By entering into this agreement, I am not relying on any oral or written representation or statements made by the releasees, other than what is set forth in this agreement.

4. If any provision of this release is found to be unenforceable or invalid, that provision shall be severed from this contract. The remainder of this contract will then be construed as though the unenforceable provision had never been contained in this document. I hereby declare that I am of legal age and am competent to sign this Agreement or, if not, that my parent or legal guardian shall sign on my behalf, and that my parent or legal guardian is in complete understanding and concurrence with this agreement.

THE 'CONFIRMATION' (SIGNATURE) PORTION

I HAVE READ THIS AGREEMENT, I UNDERSTAND IT, I AGREE TO BE BOUND BY IT.

Signature Of Participant _____ Date _____

Witness (Name) _____ Signature _____

Signature Of Parent Or Guardian If Participant Is A Minor, and by their signature they, on my behalf release all claims that both they and I have.

Signature of Parent or Guardian _____ Date _____

It is also crucial that parents or guardians be fully informed of the inherent hazards and risks associated with snowmobiling activities prior to accepting their signature. If they are not, the waiver will be again rendered invalid.

Safety and Risk Management

When these multiple elements are combined (as per the following example) into a single document, explained properly, reviewed fully and acknowledged legally, the rental company's exposure is minimized.

Another example of a combined parent and minor Release and Waiver form is shown in the appendix.

Sample Rental Waiver Form

I, _____ do hereby affirm and acknowledge that I have been fully informed of the inherent hazards and risks associated with snowmobile rental activities. I fully understand that these risks can lead to severe injury and even loss of life. I understand that snowmobile operations may be conducted at a site that is remote from competent medical assistance; nevertheless, I choose to proceed even in the absence of competent medical assistance. Additionally, I understand that there are also risks associated with snowmobile usage, including, but not limited to the possible injury or loss of life as a result of a snowmobile accident. Despite the potential hazards and dangers associated with the activity of snowmobile riding, I wish to proceed and I freely accept and expressly assume all risk, dangers and hazards that may arise from snowmobile activities which could result in personal injury, loss of life, and property damage to me.

RELEASE OF LIABILITY, WAIVER OF CLAIMS AND INDEMNITY AGREEMENT

In consideration of being allowed to participate in snowmobile rental activities, as well as the use of any of the facilities and the use of the equipment of the below listed releasees, I hereby agree as follows:

1. TO WAIVE AND RELEASE ANY AND ALL CLAIMS based upon negligence, active or passive with exception of intentional, wanton or willful misconduct that I may have in the future against any of the following named persons or entities (hereafter referred to as Releasees): _____

Snowmobile Rental/Outfitter Business: _____

(Instructor/s): _____

(Facility/ies): _____

(Others): _____

2. To release the releasees, their officers, directors, employees, representatives, agents and volunteers, from liability and responsibility, whatsoever, for any claims or causes of action that I, my estate, heirs, executors, or assigns may have for personal injury, property damage or wrongful death arising from snowmobile rental/outfitter activities whether caused by active or passive negligence of the releasees or otherwise. By executing this document, I agree to hold the releasees harmless for any injury or loss of life that may occur to me during snowmobile rental/outfitter activities and/or instruction.

3. By entering into this agreement, I am not relying on any oral or written representation or statements made by the releasees, other than what is set forth in this agreement.

4. If any provision of this release is found to be unenforceable or invalid, that provision shall be severed from this contract. The remainder of this contract will then be construed as though the unenforceable provision had never been contained in this document. I hereby declare that I am of legal age and am competent to sign this Agreement or, if not, that my parent or legal guardian shall sign on my behalf, and that my parent or legal guardian is in complete understanding and concurrence with this agreement.

I HAVE READ THIS AGREEMENT, I UNDERSTAND IT, I AGREE TO BE BOUND BY IT.

Signature Of Participant _____ Date _____

Witness (Name) _____ Signature _____

Signature Of Parent Or Guardian If Participant Is A Minor, and by their signature they, on my behalf release all claims that both they and I have.

Signature of Parent or Guardian _____ Date _____

Specific Waivers

The rental/outfitter company's waivers must also be specific to the particular activity being engaged in. The company may need to have multiple waivers if the business offers several different activities. The one-size-fits-all waiver simply does not work.

Q: If a customer has signed up to engage in multiple activities (*such as a guided snowmobile tour one day which guides a group to an area to do backcountry telemark skiing and then an unguided snowmobile rental on the following day*) can one waiver be used?

A: Absolutely Not! A specific waiver is required for each activity. Each subsequent activity (*guided snowmobiling, telemark skiing and unguided snowmobiling*) has different risks and hazards and a proper waiver depends upon the individual being fully informed of the inherent hazards and risks associated with that specific activity. Therefore, a separate waiver is required for each activity.

Examples of Specific Waivers that may be used or customized for the individual business's services that they offer:

INSTRUCTIONAL WAIVERS

- ◆ Entry level: no prior snowmobiling education or experience.
- ◆ Intermediate level: with IASA approved snowmobiling education.
- ◆ Advanced level: with IASA approved snowmobiling education and extensive snowmobile operating experience.
- ◆ Specialty courses: trailering.
- ◆ Passengers: not operating but actively participating.

COMPANY RENTAL EQUIPMENT

- ◆ Snowmobile and equipment rental checkout/waiver.
- ◆ Associated equipment (*trailer*) rental waiver.

SUPERVISION OF RIDERS

- ◆ Unguided rental waiver.
- ◆ Supervised guided tour riding waiver.
- ◆ Overnight unsupervised off-site rental waiver.
- ◆ Appropriate supervision/activity waivers (*sightseeing, wildlife watching, skiing, etc.*).

- Q: Will a rental waiver work if the equipment that was rented **FAILS**?
- A: It could, but only if the equipment had been properly maintained and the renter fully checked its operation prior to accepting it and acknowledged its working condition on the waiver. If there was no specific equipment waiver, or if the renter was not required to test operate the equipment prior to accepting it, the waiver is likely useless.
- Q: Do **Roster** waivers work? (*i.e. a single waiver which all snowmobile operators, and/or passengers add their name to*).
- A: In most cases they do not! A separate waiver, signed by an individual fully informed of the hazards and risks associated with the specific activity, will always have the best chance of actually working. Using anything less is an invitation for serious legal difficulty.

Waiver Law Summary

When relating these issues to typical snowmobile rental/outfitter activities, the rental company needs to ensure its waiver agreements:

- ◆ Confirm the inherent risks involved.
- ◆ Confirm the responsibility of the parties involved.
- ◆ Confirm the understanding and acceptance of responsibility (*this includes the legal rights given up by virtue of signing the waiver*).
- ◆ Name all pertinent parties (*legal names only, No nick names !!!*).
- ◆ Be activity specific, simple, legible, and individual.
- ◆ Contain the word negligence.
- ◆ Be supported by actions: do as I say and as I do!

- Q: What does the rental business do with those who don't want to accept responsibility and won't sign the waiver agreement?
- A: Don't let them ride or rent your equipment!

Since waivers and assumption of risk forms are legal documents, it is imperative that the rental/outfitter company seeks legal counsel to prepare them. With prior involvement in preparation of the forms, your lawyer will be better preferred to defend the documents in court, if necessary.

Each state, province, and territory has specific Waiver and Release laws that need to be considered. The information summarized above and throughout this manual is not all encompassing and should be used for reference purposes only. Therefore, each rental/outfitter company is advised to consult directly with an attorney who has experience in outdoor recreation and the law; insurance providers; and the laws of their state, province, or territory when developing their own rental contracts and legal forms.

Insurance Considerations

FOR MANAGEMENT AND STAFF

Each employee should be covered by liability insurance, whether obtained by themselves, or as part of the rental company's policy. Either way, both the individual and the rental business should be a named insured on the policy. Although the duty of care may be somewhat less for some than others, there should be a formal contract drawn between the company and each one of its employees outlining the respective legal obligations each has to the other, as well as to the customers to be served.

INSTRUCTOR LIABILITY

Instructor liability, often referred to as professional liability, covers allegations that the instructor fell short on the instruction given or taught something improperly.

SUPERVISOR/GUIDE LIABILITY

Snowmobile Guide and Supervisor liability falls within the same framework as Professional Liability and Instructor Liability. Allegations, should a lawsuit arise, often would be for such things as inadequate trip briefings, failure to maintain contact, failure to respond to an emergency, or misinforming a customer.

CONTINGENT LIABILITY

It is not inconceivable that a claim on insurance could eventually come as a result of a former instructor/supervisor's performance being questioned at a later time, actually past the date when they were employed and insured. If there is a contingent liability insurance policy in force, it would stand in place of any previous coverage that had otherwise lapsed or was cancelled, giving the same coverage to those (*former staff and the rental company*) as previously insured.

It is recommended that all instructors and supervisors/guides possess IASA accredited course certification for safe snowmobiling education and instructor

training (*See page 16 Personnel*), even if the state, province, territory, or insurance providers don't require it.

Personnel qualifications may vary by state, province, or territory and by insurance company for the businesses instructors, supervisors, and guides. To reduce its exposure, the company should work with local service agencies, law enforcement, emergency response teams, and insurance providers whenever possible to determine what the requirements are in their particular area.

For The Business

RENTAL PRODUCTS LIABILITY

Typical allegations made here would be for rental equipment that was rented to an unqualified person or for equipment failure due to improper maintenance. Keep adequate maintenance records for each unit.

TRIPS AND EVENTS LIABILITY

Claims for allegations made in this category would be for improper instructions, poor supervision, and/or hazards encountered during a guided snowmobile trip or rental center special event.

COMPREHENSIVE GENERAL LIABILITY

General comprehensive insurance is designed primarily to provide coverage for third party injury or property damage. It will cover medical expenses for any number of things like slips or falls on an icy walkway, a customer bumping head-first into some piece of equipment or fixed object, etc. Regular safety audits can help the rental center discover potential hazards and take corrective measures before incidents like these happen.

Personal injury is yet another category that falls under general comprehensive insurance. Allegations and/or claims here would be for such obscure things as slander and libel. These are extensions of coverage rather than the primary coverage.

GENERAL PERILS

This coverage protects the business from loss due to floods, fire, hail, wind, or other weather related damage, as well as for loss of equipment or contents due to loss or theft.

FOR THE SNOWMOBILE

SNOWMOBILE INSURANCE

General Liability Insurance for the rental fleet and guide sleds should provide the business with complete coverage for third party injury such as medical expenses and accidental death, as well as property damage. Basic coverage should include such things as theft, collision, and fire. Optional coverage should be considered for uninsured snowmobiles, extended medical and health care, trailer equipment, off-site transportation insurance, loss of business use, etc.

It is recommended that an insurance specialist be consulted to determine coverage needs for all company snowmobiles and associated equipment. Since insurance needs can vary from business-to-business, region-to-region or location-to-location, it is strongly advised that an insurance agent visit the company location when setting up the policy to determine exactly what the rental company's needs are. Having an insurance representative make a periodic visit to audit rental business operations from an insurance perspective can also help the company stay on top of its needs as the business grows and can help ensure nothing is overlooked along the way.

