

The “Risk” of Signing Contracts

Over the last several months, we have seen a substantial increase in the number of social events that have a contract requiring a multiple of insurance requirements. We will present some “red flags” to look for in the usual type of contracts that you can expect from facilities who are renting to fraternal organizations.

It is very important that you stress to your members that these contracts should be carefully reviewed and not entered into lightly. We would also recommend that the contract not be signed before the insurance and risk management implications are reviewed. Advisors, headquarters personnel and your insurance agent can play a valuable role in this important risk management effort.

This spring alone we saw roughly a 50% increase in the number of events that are requiring a signed contract. In addition, we saw a substantial increase in the number of contracts that were already signed by the time they were presented to our agency. This becomes a dilemma only when the contract requires certain insurance codicils that may be compromising to the insured such as waivers of indemnity, additional insured etc.

What follows are some examples of actual contracts and the “red flags” contained within. These “red flags” are typically:

- Additional Insured requirement
- Primary language requirement with the Additional Insured requirement
- Hold Harmless or Indemnification requirement regardless of fault
- Requirement to carry Liquor Liability insurance
- Requirement to carry Worker’s Compensation insurance for 3rd Party employees

The transfer of liability to another party is not a technique that should be done with out some serious review. Your members need to be informed on this subject!

**FIPG Legal Affairs
July 2006**

SAMPLE #1

Additional Insured wording- Venue is serving alcohol.

CERTIFICATE OF INSURANCE

A certificate of insurance naming Elk Cove Vineyards as ~~an additional insured~~ for a combined single limit of \$500,000.00 is required. This is generally a very simple procedure handled through your homeowners or renters policy. The certificate of insurance must be received by the winery two months prior to the event.

The user assumes full responsibility for any injury to their guests, theft, loss or damage to the property of their guests from the time such are brought onto Elk Cove premises and lands until removed.

Elk Cove Vineyards assumes no responsibility for any such injury or property.

SAFETY

For safety reasons, there is no throwing of rice, birdseed, confetti or streamers at the bridal party or guests. There is no confetti of any kind allowed in the Rooms. No taper or pillar candles are permitted due to fire hazard. No sparklers or fireworks are allowed on the property.

Wording should be added: ...except in claims arising out of the negligence of Elk Cove Vineyards.

CHILDREN

If there are children attending or participating in the event, we strongly suggest a designated baby-sitter who will be responsible for their safety and conduct at all times. This will enable their parents to thoroughly enjoy the event while ensuring the children's safety.

MUSIC

Please advise musical groups and disc jockeys that set up and breakdown must be completed within the stated rental time. They must supply all their own equipment: tables, chairs, extension cords, etc. They are also responsible for moving their own equipment on and off the premises.

PARKING

Parking is available in the Event parking lot. The Tasting Room parking area (front lot) is reserved for Tasting Room customers from 10:00 a.m. to 5:00 p.m. There is NO parking on the road or driveway. It is the responsibility of the renters to provide designated parking attendants to help guests park in the Event parking lot. Florists, caterers, musicians, rental companies, etc. may use the back kitchen entrance and rear parking lot, but must leave the Tasting Room parking area clear.

damages against Galleria Marchetti as a result of any such cancellation.

15. LIMITATION OF LIABILITY.

Galleria Marchetti shall have no liability for any loss or damage of personal property or any personal injuries unless caused solely by the gross negligence or willful misconduct of Galleria Marchetti or its employees. The Licensee agrees that Galleria Marchetti's liability to Licensee, if any, whether arising out of a breach of this Agreement, claim for injury to person (including death) or property, claim for other tort liability, or otherwise, shall not exceed an amount equal to the Event Fee, plus, in the case of personal injury or property damage, any available proceeds of liability insurance coverage carried by Galleria Marchetti. Licensee acknowledges that the foregoing shall be (i) Licensee's sole and exclusive remedy against Galleria Marchetti; and (ii) Galleria Marchetti's sole and exclusive liability to Licensee. The provisions of this Section shall survive any termination of this Agreement.

Liability should never be limited.

16. ASSIGNMENT.

This Agreement shall be binding upon and inure to the benefit of Galleria Marchetti, Licensee and their respective successors and permitted assignees. The Licensee shall not assign this Agreement or permit the use or occupancy of the Facilities during the Event Period by any party other than the Licensee, its employees, agents, guests, and invitees.

17. REMEDIES.

If Licensee fails to make any payment when due or otherwise fails to honor any of the terms of this Agreement, and such failure continues for five (5) days after written notice thereof, then Galleria Marchetti may at its option (i) commence action against Licensee for damages or any other remedy available at law or in equity, and/or (ii) if such failure occurs prior to the Event Date, Galleria Marchetti may cancel the Event without further notice to Licensee, in which case all sums paid to date shall be retained by Galleria Marchetti as liquidated damages. All remedies of Galleria Marchetti are cumulative and concurrent, and are in addition to any other remedies available herein, at law, in equity or otherwise. The liability of Licensee shall not be limited to the amount of the Security Deposit. If Galleria Marchetti engages an attorney to enforce this Agreement against Licensee, Licensee shall pay all attorney's fees, litigation costs and other costs of collection incurred by Galleria Marchetti.

18. ENTIRE AGREEMENT; AMENDMENT.

This Agreement, Schedule A and the Event Guidelines which are attached hereto and incorporated herein, embody the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements with respect thereto. This Agreement may be amended only in writing by both parties.

19. AGREEMENT TO TAKE NECESSARY AND DESIRABLE ACTION.

Licensee agrees to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement.

20. LICENSEE REPRESENTATIVE.

The Licensee shall designate one representative in conjunction with the Agreement (the "Licensee Representative"). The Licensee Representative will work with Galleria Marchetti, or its representatives, to coordinate and plan the Event. The Licensee Representative shall be on the Facilities at all times during the Event Period. The name of this representative shall be provided at the time this Agreement is signed. Galleria Marchetti may rely on all notices, directions and communications received from Licensee Representatives and disregard those given by anyone else purporting to represent the Licensee.

SAMPLE #3

AGREEMENT

Barry Good, Inc., doing business as Barry's Bar & Grill, hereinafter referred to as the licensee, agrees to permit the right to conduct an event on the 30th day of SEP, 2005, at a cost to the permittee of \$ 850, payable in advance. Licensee agrees to provide alcoholic and nonalcoholic beverages, bartenders and other employees as needed. All sales of alcoholic and nonalcoholic beverages will be made by the licensee and no alcoholic beverages of any type may be brought onto the premises by the permittee.

DEPOSIT : A security and Indemnity deposit of \$ 500 in the cash, money order, or check drawn on the account of the organization sponsoring the event made payable to the licensee will be required 5 days in advance of the event. This deposit will be returned within 48 hours of the conclusion of the event if no damages have occurred and if the licensee has not been informed of any alleged violations of state or local liquor laws. If damages have occurred or allegations of violations of the state or local liquor laws made, the deposit check will be cashed and the proceeds retained until the full extent of the licensee's losses or liabilities can be determined. The permittee expressly agrees to be responsible for all damages and liquor law liability resulting from the event whether or not the deposit is sufficient to cover those costs and whether or not the deposit has been refunded.

Host Liquor Liability is provided by the insurance policy.

MINORS : While it is understood minors may attend the event, they will at all times be supervised by a member of the sponsoring group or organization who is 21 years of age or older. No minor may at any time, purchase, attempt to purchase, possess, or consume any alcoholic beverages. Minors will at all time be marked as such as may be required by the licensee. If any minor purchases, attempts to purchase, possesses, or consumes any alcoholic beverage while on the premises, the licensee retains the right to terminate the event immediately and retain the full damage deposit. Permittee specifically agrees to make every effort to control any minors present and agrees to indemnify the licensee for any fines or other penalties imposed upon the licensee under the state or local liquor laws.

OTHE PROHIBITED ACTIVITIES : Permittee agrees that in addition, no illegal drugs of any type will be possessed, sold or consumed by any person attending the event and that no gambling of any type will be permitted nor will any fights, brawls or other disturbances which might endanger persons present or employees. The licensee retains the right to immediately terminate the event for any violation of this paragraph.

INTOXICATED PERSONS : No person will be admitted to the event if they are intoxicated and no intoxicated person will be at any time served or sold alcoholic beverages. The licensee retains the right to refuse service to anyone.

INDEMNIFICATIONS : The permittee specifically agrees to indemnify and hold the licensee harmless from any and all injury, loss damage or claims of any type whatsoever made by anyone attending the event not directly arising for the negligence of the licensee. OK

Automobile Liability to include hired, non-owned and owned automobiles. Client shall furnish Museum with evidence of all such Insurance naming Museum as an additional insured which Insurance shall be primary and noncontributory.

- continued -

Primary Additional Insured wording is not recommended and a separate charge of \$150 is applied.

Hollywood Entertainment Museum
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5. Client agrees to abide by all applicable Museum rules, regulations, procedures and posted signs and to maintain no rules, regulations and procedures of its own which are inconsistent therewith. Client shall comply with any and all federal, state or local laws. Client shall not employ or use any person in connection with its activities hereunder whose employment or use would cause Museum, any Owner of Museum or any Museum affiliate to breach any collective bargaining agreement to which they or any of them may nor or hereafter be a party, or would cause or permit any union to contend that they or any of them had committed an unfair labor practice or had breached any such laws or that such union had the right cancel or terminate any agreement, or which would cause them or any of them to be picketed or subjected to any work stoppage. Client agrees to reimburse Museum for any and all damages for which Museum may become liable as a result of Client's failure to meet its obligations under this Paragraph 5. Client shall not, for or in connection with the production of said event use any services, performances, materials or any other matter or thing, if such use shall or may cause any governmental agency, or person, firm, corporation, union, association or organization to require Museum or any Museum affiliate to conform to any statute, law, rule, regulation, collective bargaining agreement, franchise agreement, or the like to which Museum or any Museum affiliate would not otherwise be required to conform, or to pay any sums of money, or any other consideration of any kind or nature, which Museum or any Museum affiliate would not otherwise be required to assume or to pay.

6. Client releases Museum, and its officers, agents, representatives, employees, parent and affiliate companies from any losses, costs, damages, liabilities, actions, claims, and demands of every kind which Client may ever have or claim to have against Museum including all rights that Client may have under Section 1542 of the Civil Code. Such section reads as follows:

"1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Client represents and warrants that its event or any film, video tape or still photography relative thereto, will not be defamatory to the Museum, its staff or Board of Directors, or any of the persons appearing in the event and/or such film, video tape and/or still photographs, and Client