



Inside Track

Quarterly Newsletter for Members of the Road Runners Club of America

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RUNNING THE NATION FOR 50 YEARS!

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CONTRACT BASICS FOR RUNNING CLUBS & EVENTS

By: John Farrow, Esquire

With the new year, it is reasonable for running clubs to consider their contractual relations and how they might be strengthened and solidified to avoid, or at least minimize, the possibility of disagreements or, in a worst case, litigation.

As a preliminary matter, one common misconception that many people have concerning contracts is that they are not enforceable unless they are reduced to writing. In fact, the converse is true. The law specifies certain types of contracts that must be in writing to be enforceable, such as those pertaining to real estate, but barring such a law, most agreements are enforceable whether or not they are in writing.

That having been said, a written agreement is the only way to avoid the lapses in memory, misunderstood terms, differing expectations and other he-said she-said scenarios. Therefore, the following is offered as a general guide to help running clubs with their agreements but should not be used as an alternative to seeking legal advice. In fact, clubs should in all cases endeavor to have their agreements drafted, or at least reviewed, by a local attorney (who may well be a club member).

Therefore, keep in mind the following basics:

Who. Who are you dealing with? Is it an individual or an entity such as a corporation or limited liability company? You may be dealing with an individual who is well-known in your community, but if he operates through his own corporation and something goes south with the deal, you may have very limited options. On the other hand, if you are dealing with a corporation, it is important to remember that corporations and other entities act only through their officers. However, not all officers may have the authority to bind their corporation to a contract.

Therefore, you should assure yourself that the person signing the contract has the authority to bind that corporation.

For example, if you are dealing with another running club, who is the person with the authority to bind that club to a contract? Certainly the president has that authority, but does the race director, web master or similarly situated person? This is a very basic fact that needs to be established to avoid problems down the line.

2. What. In essence, who is going to do what? Here, the more detail, the better. Common contracts by running clubs include race timing, web design, newsletter publishing and training programs. For example, perhaps you are agreeing to time a race for another running club. Do you need a list of registered runners? In what format, paper or electronic, and if electronic, Windows or Mac? How are results to be reported? Who owns the results, and can you post the results on your own web site? These are just some of the questions that should be covered. If you are to produce the entire race, this list would (should) be quite extensive indeed.

Insurance. One issue of utmost importance from a liability standpoint is insurance coverage and how much is to be carried should be specified. The contract should also state that you be named as a loss payee on the other's insurance policy and that you receive a copy of the policy and evidence that you are named as a loss payee. Additionally, you should try and obtain language in the contract that the other side will hold you harmless from liability for its acts.

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CONTRACT BASICS FOR RUNNING CLUBS & EVENTS (CONCLUDED)

They may request reciprocal hold-harmless clauses and that is better than none at all. The contract should state that this provision survive termination since you may not find out about something until later.

Example: _____ agrees to purchase one or more policies of liability insurance covering the event in the amount of at least \$ _____. Further, [Club] shall be named as a loss payee with respect to all such policies of insurance with copies evidencing same to be delivered as a prerequisite to commencing performance hereunder.

Example: The parties agree to defend, indemnify and hold harmless each other from and against any and all damages or expenses, including reasonable attorneys' fees, incurred directly or indirectly as a consequence of their failure to comply with any terms hereunder, or any laws ordinances, rules or regulations of the location where the race is to be held. This obligation shall survive the termination of this Agreement.

3. How Much. Make sure the contract spells out who gets paid what, and when payment must be made. In the hypothetical race timing contract, is it a flat fee per runner? If per runner, is it registered runners or finishers only? Or some combination? Make it clear and understandable. Also, when is payment due? Do you want to be paid before you have to show up at the race site? If so, the contract should be explicit as to the payment deadline so that everyone knows what is expected. If your expectation is that the other side is to complete something, such as a web site, by a certain date, that should be in the contract with penalties for failing to meet agreed-upon deadlines (if desired).

Example: All amounts due hereunder shall be paid in full no less than 24 hours prior to the start of the race described above or _____ shall be under no further obligation to perform hereunder.

4. The End. The contract should be specific that you have the right to terminate the contract if things are not done on time (i.e. you don't get paid the day before the race, as agreed, or your web site is not up and running on the due date).

Example: In the event that the subject web site is not fully operational on or before [date], then _____ shall have to option to send a written notice of termination of this contract, retain all work product delivered to date and shall be under no further obligation to perform hereunder.

5. When Things Hit the Fan. If things go seriously wrong, it would be in your interest to find a way to resolve the dispute out of court, if possible. One way is to include a liquidated damages clause whereby the parties agree that damages in the event of default would be difficult to prove and therefore the parties agree that a specified sum (which can be nominal) will be paid by the defaulting party to the other.

Example: The parties agree that it may be difficult, if not impossible, to accurately determine the amount of damages, if any, that may be incurred in the event of a default hereunder. Accordingly, the parties agree to accept the sum of \$100.00 as liquidated damages for any such default.

Another possibility is an agreement to arbitrate any disputes. Many courts now offer or even require arbitration of claim under a certain amount, say \$25,000, and utilize local attorneys as arbitrators. Several forums should be investigated as fees vary widely. Sample contract language follows.

Example: All claims, disputes and other matters in question between the parties to this Agreement and arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise.

Ultimately, local running clubs would do well to keep in mind the RRCA policy on agreements which requires each contract to have, at a minimum, the following: (1) clear start and termination dates along with the ability to terminate the contract for cause, (2) a hold harmless clause for claims arising from the actions of the other party, (3) a clear dispute resolution clause such as an agreement to arbitrate and (4) clearly defined expectations for both parties, including financial obligations.

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