

## ABCS OF CONTRACTS

It is very common for local chapter officers to be asked to execute contracts with other parties for a number of different reasons. A chapter could seek to rent a facility for a special event and the venue requires you to sign a contract. You might hire a bus company to provide transportation to a retreat. Many colleges and universities require local chapters operating on campus to execute a Recognition Policy, Recognition Agreement or Relationship Statement which spells out the requirements of the local chapter in order to enjoy the benefits of recognition by the host institution. These often contain statements and terms that could be asserted to be contractual agreements.

Agreeing to comply with or execute a contract can create an assumption of liability for risks for the chapter. In many cases, the terms and conditions of these contracts contain inequitable language that will impact whether your liability insurance carrier is required to respond on behalf of the other party to the contract and to what extent they are required to respond. This type of inequitable language could increase the cost of a claim and ultimately the cost of insurance.

It is very important that local chapters refrain from signing contracts until they are reviewed by appropriate staff or volunteers. Before signing, read the contract carefully and look for these key things:

- Contracts should be executed in the official name of the chapter rather than the National Organization.
- Any indemnification language included in the contract should be eliminated if possible. If you agree to indemnify the other party, you have promised to cover their losses if your members or guests do something that causes someone harm or causes a third party to sue them. The key words are “indemnify,” “hold harmless,” and “defend.” Indemnify and hold harmless mean the same thing — to make whole after causing a loss. The word defend relates to providing a defense for the other party should a lawsuit be filed.
- Any indemnification language should stipulate that the chapter is only obligated to defend, indemnify and hold the other party harmless for loss arising from the negligent actions of the chapter.
- A chapter should not agree to indemnity language which results in the chapter assuming either partial or full liability on behalf of the other party for direct allegations of negligence against that party.

- Waiver of Subrogation clauses should not be unilateral in nature and favor the other party. Instead, mutual waivers of subrogation language should be created in which all parties agree to waive their rights of subrogation against the other party.
- A party can be added as an Additional Insured on the General Liability Policy of the other party. Additional Insured requests should be sent to your Holmes Murphy Client Manager.

## GLOSSARY OF TERMS

**Indemnification:** Agreeing to pay for the cost of possible future damage, loss or injury

**Indemnification Agreement:** The contract by which one party agrees to protect another party from future damage, loss or injury

**Hold Harmless:** A statement in a legal contract stating that an organization is not liable for any injuries or damages caused to the individual signing the contract. This results in the participant accepting all risks associated with the activity.

**Subrogation:** The process where an insured pursues reimbursement from another insurer for claims they paid that were caused by the actions of their policy holder.

**Waiver of Subrogation:** Prevents the insurer from pursuing reimbursement from the other insurer for such claims.

**Additional Insured:** An agreement by which the rights of the general liability policy are granted to a third party.

**Taking the time to review contracts prior to their execution to ensure the contract is equitable for all parties can pay significant dividends when an incident occurs and a claim or lawsuit is brought on behalf of the injured party.**

*This resource has been adapted from resources provided by Holmes Murphy Fraternal Practice.*

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