



July 2020 v2

COVID-19 – Getting through this, together!

COVID-19 Risk Forms

In response to our COVID-19 bulletin sent July 17, 2020, we have received a number of questions regarding the various risk forms. We have included some answers to the most common questions and have included the forms again in this bulletin (including a form suitable for a person under the age of majority).

For Commercial Equine Enterprise Operations, Clubs, Coaches and Trainers

1) If I establish acceptable protocols with the guidance of my local health authority, is my insurance coverage with CapriCMW in force?

Your insurance policy as administered by CapriCMW has not changed and has been in full force and effect throughout the COVID 19 pandemic. What changed was Government oversight restricting the movement of people and the operation of many business enterprises. Government alone is starting to allow more activity but have made it very clear that return to activity comes with specific guidance and protocols to ensure everyone stays safe and healthy.

2) As an equine industry professional, I am becoming aware of the new risks associated with COVID 19. Should I get my clients to sign new acknowledgement of risk forms that address this?

The short answer is “yes”. The best forms are those that address the general risks associated with equine activity and note that there is a possibility of disease being present at the farm, horse show, lesson etc. Just remember that the use of such forms is not a guarantee that a claim won’t be brought against you. These forms are only one of many components in an effective risk management strategy.

Recently, the legal community has weighed in to suggest that in addition to general risk forms associated with our equine sport, that separate and specific forms related to COVID19 should be employed.

Attached are forms that we think are good tools:

Acknowledgement of Risk form

A form that should be familiar to most readers that speaks to general bodily injury/property damage risks associated with equine related activity. This form has now been updated to include reference to “disease” and “communicable disease”. There is a form for persons over the age of majority and a separate form for those under the age of majority.

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Daily Attestation form

The general guidance on the use of this form is that it be signed EACH TIME a client is receiving service from you or attends at your place of business. Having a daily form helps to show the courts that you are undertaking a regular pattern of risk management for the benefit of your client.

Facility form

This form is useful for boarding places and facilities where clients may attend on a regular basis. This is not a daily form.

Specific Event form

As the name implies, this form would take the place of the Facility form if you were to run a “one of” event (show, clinic etc.)

3) Can these forms be signed electronically?

From an insurance perspective, “e-signatures” are increasingly acceptable but suggest that you refer to your legal counsel in this regard to discuss the implication if you were sued.

4) How long do I need to keep these forms?

The forms need to be stored for several years. We suggest again that you refer to your legal counsel for their advice.

5) Are insurers going to cover claims arising from COVID-19 allegations brought against the business?

Insurers are now starting to issue specific exclusions surrounding Bodily injury claims arising from COVID 19. This is an understandable position given the magnitude of this global pandemic. We fully expect that in the coming months, there simply will not be any insurance covering this. In the mid term (a few years from now perhaps when a vaccine is available and in wide use, insurers may come back to the table as they have in the past when other world wide calamities strike. As you prepare and engage in activity once again with your customers, you should assume there will be no coverage so that your risk management and mitigation plans are robust.



Your Provincial and National Sport Organizations continue to offer assistance to the community by offering general best practice guidance that considers the overall health and welfare of everyone involved – including the horse. PTSO organizations across the country have terrific COVID-19 resources on their websites to help you get back to activity.

If you are in doubt of whether you are operating your business as required in the current environment, you should consult your local government and health authorities.

We will continue to monitor the situation with the intent of providing assistance where we can. If you have any further questions, we're here to help. Contact us by email at equine@capricmw.ca

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike King'.

Michael A. (Mike) King, Partner

ACKNOWLEDGMENT OF RISK AND RELEASE OF LIABILITY

(AR-0103)

For Participants Over the Age of Majority in the Province or Territory in which the Equine Activities are Provided by the Host

WARNING: THIS AGREEMENT WILL AFFECT YOUR LEGAL RIGHTS. READ IT CAREFULLY!

Every Person Must Read and Understand this Waiver Before Participating in Equine Activities

The following waiver of all claims, release from all liability, assumption of all risks, agreement not to sue and other terms of this agreement are entered into by me (the Participant) with and for the benefit of: _____

_____, its directors, officers, employees, volunteers, business operators, agents and site property owners or lessees (collectively the "Host"). Without limiting the generality of the foregoing, "Equine Activities" includes but is not limited to, competitions, tournaments organized and /or operated by the "Host", riding instruction, coaching and training provided by the "Host" to the Participant.

Initial Each Item below after Reading and Understanding each item:

1. I am aware that there are inherent dangers, hazards and risks (collectively "Risks") associated with "Equine Activities" and injuries resulting from these "Risks" are a common occurrence. I am aware that the "Risks" of "Equine Activities" mean those dangerous conditions which are an integral part of "Equine Activities", including but not limited to:
 - (a) the propensity of any equine to behave in ways that may result in injury, harm or death to persons on or around them and to potentially collide with, bite or kick other animals, people or objects;
 - (b) the unpredictability of an equine's reaction to such things as sounds, sudden movement, tremors, vibrations, unfamiliar objects, persons or other animals and hazards such as subsurface objects;
 - (c) the potential for other participants to behave in a negligent manner that may contribute to injury to themselves or others, including failing to act within their abilities to maintain control over an equine.
 - (d) the potential of natural or man-made hazards being present that can cause me harm, including communicable disease.
2. I freely accept and fully assume all responsibility for all "Risks" and possibilities of any and all personal injury, sickness, disease, medical payments, death, property damage or loss resulting from my participation in "Equine Activities".
3. I agree that although the "Host" has taken steps to reduce the "Risks" and increase the safety of the "Equine Activities", it is not possible for the "Host" to make the "Equine Activities" completely safe. I accept these "Risks" and agree to the terms of this waiver even if the "Host" is found to be negligent or in breach of any duty of care or any obligation to me in my participation in "Equine Activities".
4. In addition to consideration given to the "Host" for my participation in "Equine Activities", I and my heirs, next of kin, executors, administrators and assigns (collectively my "Legal Representatives") agree:
 - (a) to waive all claims that I have or may have in the future against the "Host";
 - (b) to release and forever discharge the "Host" from all liability for any personal injury, death, property damage, or loss resulting from my participation in the equine activity due to any cause, including but not limited to negligence (failure to use such care as a reasonably prudent and careful person would use under similar circumstances), breach of any duty imposed by law, breach of contract or mistake or error in judgment of the "Host"; and
 - (c) to be liable for and to hold harmless and indemnify the "Host" from all actions, proceedings, claims, damages, costs demands, including court costs and costs on a solicitor and own client basis, and liabilities of whatsoever nature or kind arising out of or in any way connected with my participation in "Equine Activities".
5. I agree that this waiver and all terms contained herein are governed exclusively and in all respects by the laws of the Province or Territory of Canada in which the "Equine Activities" are provided by the "Host". I hereby irrevocably submit to the exclusive jurisdiction of the courts of that Province or Territory of Canada and I agree that no other court can exercise jurisdiction over the terms and claims referred to herein. Any litigation to enforce this waiver will be instituted in the Province or Territory of Canada in which the "Equine Activities" are provided by the "Host".
6. I confirm that I have had sufficient time to read and understand this waiver in its entirety. I understand that this agreement represents the entire agreement between myself and the "Host", and it is binding on myself and my "Legal Representatives".
7. I confirm that I have reached the age of majority in the province in which I am participating in "Equine Activities".

Participant Name _____ Date of Birth _____ Tel # _____

Address _____ City _____ Province _____ Postal _____

Signed this _____ day of _____, 20____

(Signature of Participant)

(Print Name of "Host" Witness to Signing and Initialing)

Signed this _____ day of _____, 20____

(Signature of "Host" Witness)

ACKNOWLEDGMENT OF RISK AND RELEASE OF LIABILITY

(AR-0103)

For Participants Under the Age of Majority in the Province or Territory in which the Equine Activities are Provided by the Host

WARNING: THIS AGREEMENT WILL AFFECT YOUR LEGAL RIGHTS. READ IT CAREFULLY!

The Parent/Guardian Must Read and Understand this Waiver Prior to Infant Participating in Equine Activities

The following waiver of all claims, release from all liability, assumption of all risks, agreement not to sue and other terms of this agreement are entered into by me on behalf of the Infant Participant named below with and for the benefit of:

_____, its directors, officers, employees, volunteers, business operators, agents, and site property owners or lessees (the "Host"). Without limiting the generality of the foregoing, "Equine Activities" includes but is not limited to competitions, tournaments organized and /or operated by the "Host", riding instruction, coaching and training provided by the "Host" to the Infant Participant.

Initial Each Item below after Reading and Understanding each item:

1. I am the Parent/Guardian of the Infant Participant and am executing this waiver on behalf of the Infant Participant in my capacity as Parent/Guardian and with the intent that this waiver be binding on myself and the Infant Participant for all legal purposes.
2. I am aware that there are inherent dangers, hazards and risks ("Risks") associated with "Equine Activities" and injuries resulting from these "Risks" are a common occurrence. I am aware that the "Risks" of "Equine Activities" mean those dangerous conditions which are an integral part of "Equine Activities", including but not limited to:
 - (a) the propensity of any equine to behave in ways that may result in injury, harm or death to persons on or around them and to potentially collide with, bite or kick other animals, people or objects;
 - (b) the unpredictability of an equine's reaction to such things as sounds, sudden movement, tremors, vibrations, unfamiliar objects, persons or other animals and hazards such as subsurface objects; and
 - (c) the potential for other participants to behave in a negligent manner that may contribute to injury to themselves or others, including failing to act within their abilities to maintain control over an equine.
 - (d) the potential of natural or man-made hazards being present that can cause me harm, including communicable disease
3. I freely accept and fully assume all responsibility for all "Risks" and possibilities of any and all personal injury, sickness, disease, medical payments, death, property damage or loss resulting from the Infant Participant's participation in "Equine Activities".
4. I agree that although the "Host" has taken steps to reduce the "Risks" and increase the safety of the "Equine Activities", it is not possible for the "Host" to make the "Equine Activities" completely safe. I accept these "Risks" and agree to the terms of this waiver on behalf of the Infant Participant, even if the "Host" is found to be negligent or in breach of any duty of care or any obligation to myself or the Infant Participant in the Infant's participation in "Equine Activities".
5. In addition to consideration given to the "Host" for the Infant Participant's participation in "Equine Activities", I and my heirs, next of kin, executors, administrators and assigns, as well as the Infant Participant and his/her heirs, next of kin, executors, administrators and assigns (collectively our "Legal Representatives") agree:
 - (a) to waive all claims that the Infant Participant has or may have in the future against the "Host";
 - (b) to release and forever discharge the "Host" from all liability for personal injury, death, property damage, or loss that I, the Infant Participant, or our "Legal Representatives" might suffer as a result of the Infant Participant's participation in "Equine Activities" due to any cause, including but not limited to negligence (failure to use such care as a reasonably prudent and careful person would use under similar circumstances), breach of any duty imposed by law, breach of contract or mistake or error in judgment of the "Host"; and
 - (c) to be liable for and to hold harmless and indemnify the "Host" from all actions, proceedings, claims, damages, costs demands, including court costs and costs on a solicitor and own client basis, and liabilities of whatsoever nature or kind arising out of or in any way connected with the Infant's participation in "Equine Activities".
6. I agree that this waiver and all terms contained herein are governed exclusively and in all respects by the laws of the Province or Territory of Canada in which the "Equine Activities" are provided by the "Host". I hereby irrevocably submit to the exclusive jurisdiction of the courts of that Province or Territory of Canada and I agree that no other court can exercise jurisdiction over the terms and claims referred to herein. Any litigation to enforce this waiver will be instituted in the Province or Territory of Canada in which the "Equine Activities" are provided by the "Host".
7. I confirm that I have had sufficient time to read and understand this waiver in its entirety. I understand that this agreement represents the entire agreement between the "Host", myself as Parent/Guardian, and the Infant Participant, and it is binding on myself, the Infant Participant and our "Legal Representatives".

Infant Participant's Name _____ Date of Birth _____

Address _____ City _____ Province _____ Postal _____

Parent/Guardian's Name _____ Date of Birth _____ Tel # _____

Address _____ City _____ Province _____ Postal _____

(Signature of Parent/Guardian of Infant Participant) Signed this _____ day of _____, 20____

(Print Name of "Host" Witness to Signing and Initialing)

(Signature of "Host" Witness)

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NAME OF ORGANIZATION HERE

the “**Organization**”

Daily Attestation

DAILY COVID-19 ATTESTATION AND AGREEMENT

By signing below, the Participant (named below) or the Participant’s Guardian attests that the Participant:

1. Does not knowingly have COVID-19;
2. Is not experiencing any known symptoms of COVID-19, such as fever, cough, shortness of breath or malaise;
3. Has not travelled internationally during the past 14 days;
4. Has not frequented a COVID-19 high risk area in the Province during the last 14 days;
5. Has not, in the past 14 days, knowingly come into contact with someone who has COVID-19, who has known symptoms of COVID-19, or is self-quarantining after returning to Canada; and
6. Has been following government recommended guidelines in respect of COVID-19, including practicing physical distancing.

Furthermore, by signing below, the Participant or the Participant’s Guardian agrees that while attending or participating in the Organization's events or attending at the Organization’s facilities, the Participant:

1. Will follow the laws, recommended guidelines, and protocols issued by the Government of the Province in respect of COVID-19, including practicing physical distancing, and will do so to the best of the Participant’s ability while participating in the Organization's events or attending at the Organization’s facilities;
2. Will follow the guidelines and protocols mandated by the Organization in respect of COVID-19;
3. Will, in the event that the Participant experiences any symptoms of illness such as a fever, cough, difficulty breathing, shortness of breath or malaise, immediately:
 - a. inform a representative of the Organization; and
 - b. depart from the event or facility.

FOR PARTICIPANTS WHO HAVE BEEN DIAGNOSED WITH COVID-19

By signing below, the Participant (named below) or the Participant or the Participant’s Guardian attests that the Participant has been diagnosed with COVID-19, but been cleared as noncontagious by provincial or local public health authorities and has provided to the Organization, in conjunction with this COVID-19 ATTESTATION AND AGREEMENT, written confirmation from a medical doctor of the same.

Print Name: _____ **Date of Birth:** _____
the “**Participant**” (mm/dd/yyyy)

Print Name: _____
The “**Guardian**” (if Participant is a minor)

Signature: _____ **Date:** _____
Participant or Guardian for minor (mm/dd/yyyy)

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NAME OF ORGANIZATION HERE

the “**Organization**”

Facility Use Waiver

WAIVER OF LIABILITY FOR ALL CLAIMS AND RELEASE OF LIABILITY

PLEASE READ CAREFULLY BEFORE SIGNING.

Completed waivers must be returned prior to entry and use of the Organization’s facilities. This waiver does not affect accident and out-of-country travel insurance provided by the Organization where applicable.

By signing below, the Participant (named below) and/or the Participant’s Guardian understands and acknowledges, the risks, dangers, and hazards which are inherent on entering all lands, properties, facilities, structures, installations, vehicles or equipment owned, leased, operated or otherwise controlled by the Organization (the “**Premises**”), which risks include, but are not limited to: the potential for bodily injury or illness (including contraction of COVID-19); contact or interaction with others who may have been exposed to COVID-19; close proximity to or contact with surfaces, equipment, fixtures, or other objects that, despite the Organization’s efforts, may be infected with COVID-19 or other communicable illnesses; permanent disability, paralysis, or loss of life; collision with natural or manmade objects; tripping hazards; imperfect venue or field of play conditions; equipment failure; participants of varying skill levels; the negligent use of the Premises by others; inadequate safety measures or unsafe Premises; other circumstances known, unknown or beyond the control of the Organizer, its partners, sponsors, agents, affiliates, directors, employees, officers, therapists, or volunteers (together, the “**Releasees**”); or negligence or omission of the Releasees (collectively, the “**Risks**”).

In consideration for allowing the Participant to use the Premises, the Participant and/or the Participant’s Guardian: (a) release, discharge and forever hold harmless the Releasees from any and all liability for damages or loss arising as a result of the Risks arising from entry into or use of the Premises; (b) waive any right to sue the Releasees in respect of all causes of action (including for injuries or illness caused by their own negligence), claims, damages or losses of any kind that may arise as a result of the Risks or in connection with entry into or use of the Premises, including without limitation the right to make a third party claim or claim over against the Releasees arising from the same; and (c) freely assumes all risks associated with the Risks or anything incidental to the Risks, which may arise as a result of or in connection with use of the Premises. **YOU ARE GIVING UP LEGAL RIGHTS TO ANY AND ALL FUTURE CLAIMS AGAINST THE ORGANIZATION AND RELEASEES.**

I confirm that I have read and fully understand this waiver and release of liability. I sign this waiver and release of liability voluntarily without any inducement, assurance, or warranty being made to me.

Print Name: _____
the “**Participant**”

Date of Birth: _____
(mm/dd/yyyy)

Print Name: _____
the “**Guardian**” (if Participant is a minor)

Signature: _____
Participant or Guardian for minor

Date: _____
(mm/dd/yyyy)

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NAME OF ORGANIZATION HERE

the “**Organizer**”

Event Participation Waiver

WAIVER OF LIABILITY FOR ALL CLAIMS AND RELEASE OF LIABILITY

PLEASE READ CAREFULLY BEFORE SIGNING. Completed waivers must be returned with registration or prior to attending the Organizer’s event: _____ (the “**Event**”). This waiver does not affect accident and out-of-country travel insurance provided by the Organization where applicable.

By signing below, the Participant (named below) and/or the Participant’s Guardian represents that the Participant:

1. Has not travelled internationally during the last 14 days;
2. Has not visited a COVID-19 high risk area, region or location in Canada during the last 14 days;
3. Does not knowingly have COVID-19;
4. Is not experiencing known symptoms of COVID-19, such as fever, cough, or shortness of breath, and if experiences such symptoms during the Event will immediately depart from the Event;
5. Has not, in the past 14 days, knowingly come into contact with someone who has COVID-19, who has known symptoms of COVID-19, or is self-quarantining after returning to Canada; and
6. Follows government recommended guidelines in respect of COVID-19, including practicing physical distancing, and will do so to the best of the Participant’s ability during the Event.

In addition, by signing below the Participant and/or the Participant’s Guardian understands, acknowledges and assumes the inherent risks in participating in the Event, including, but not limited to: the potential for bodily injury or illness (including contraction of COVID-19); contact or interaction with others who may have been exposed to COVID-19; permanent disability, paralysis, or loss of life; collision with natural or manmade objects; dangers arising from adverse weather conditions; imperfect venue or field of play conditions; equipment failure; participants of varying skill levels; inadequate safety measures; circumstances known, unknown or beyond the control of the Organizer, its partners, sponsors, agents, affiliates, directors, employees, officer, therapists, or volunteers (together, the “**Organization**”); negligence or omission of the Organization (collectively, the “**Risks**”).

In consideration for allowing the Participant to participate in the Event, the Participant and/or the Participant’s Guardian: (a) release, discharge and forever hold harmless the Organization from any and all liability for damages or loss arising as a result of the Risks of participation in or in connection with the Event; (b) waive any right to sue the Organization in respect of all causes of action (including for injuries or illness caused by their own negligence), claims, demands, damages or losses of any kind that may arise as a result of the Risks of participation in or in connection with the Event, including without limitation the right to make a third party claim or claim over against the Organization arising from the same; and (c) freely assumes all risks associated with the Risks, anything incidental to the Risks, which may arise as a result of participation in or in connection with the Event. **YOU ARE GIVING UP LEGAL RIGHTS TO ANY AND ALL FUTURE CLAIMS AGAINST THE ORGANIZATION.**

I confirm that I have read and fully understand this waiver and release of liability. I sign this waiver and release of liability voluntarily without any inducement, assurance, or warranty being made to me.

Print Name: _____
the “**Participant**”

Date of Birth: _____
(mm/dd/yyyy)

Print Name: _____
The “**Guardian**” (if Participant is a minor)

Signature: _____
Participant or Guardian for minor

Date: _____
(mm/dd/yyyy)