

An Autocrat's Guide to Site Rental Contracts

What to Watch Out For to Protect You, Your Group, and the SCA

Presented to the Board of Directors of the Society for Creative Anachronism, Inc.
By the Members of the SCA Legal Committee

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Dos and Don'ts Guide to Site Rental Contracts

Okay, so your group has agreed on a date for their next event and located a great place to have the event. It has everything you want and the site is available on your selected date. You've just discussed and verbally agreed to the price and site rules and shaken hands on the deal. All set, right? Not quite. As you finish your conversation, they hand you a "Facilities Rental Contract" to sign. The site's fantastic, the site manager is friendly and nice, no problem.

But a written contract is a legally binding document, often containing arcane terms and conditions, written in "legalese," unfamiliar, and sometimes confusing to both the site owner and renter. Although these types of contracts are typically standard "forms" drafted by the site owner's attorney, you do not have to blindly agree to each and every term. These terms, or clauses, are included to protect the site owner, but that does not mean you have to agree to them. Most people do not realize that form contracts can be modified simply by lining through a particular clause and initialing it. Not reading the contract and just signing on the dotted line can have serious consequences to you and your group, and quite possibly the SCA, Inc., should anything actually go wrong. Here are some things to consider before you commit your group and potentially the SCA, Inc. to this contract.

Performance Clauses

These are sometimes known as attrition clauses, which guarantee to the site owner that your group guarantees some type of performance - usually the payment of money - regardless of what happens. This is more common with sites such as hotels, that involve room rentals, where the site will offer a discount based upon a certain number of people, will block off a certain number of rooms with the expectation that all of the rooms will be paid for by the event holders, or, less commonly, food and beverage catered by the site with the expectation of a minimum dollar amount in sales. These performance clauses are not the same as cancellation clauses - Cancellation Clauses are written into contracts to determine the damages the site would incur if the event is not held. We will discuss those next. Performance/Attrition Clauses kick in after the event has taken place but the guaranteed room block was not filled or the food and beverage requirement was not met. These clauses are best avoided, but if that is impossible, make sure that they are clear and that you fully understand the terms. Clauses related to food and beverage should be separate from clauses related to room rentals and both should always be stated in specific dollar amounts. It is far preferable to simply negotiate a flat-rate discount for rooms or other services, without basing the discount upon numbers of attendees or being liable for

unrealized attendance. Keep in mind that gentles attending your event may choose to stay with friends, relatives or at less expensive nearby lodging. You should **not** have to pay both a cancellation and performance/attrition penalty, so read the contract carefully and make sure that it is clearly spelled out that only one clause would apply to your event.

Cancellation Clauses

As mentioned above, these are terms that apply if the event is not held. We all know that Providence does not always dictate that our planned event will actually occur. Snow, sleet, famine, plague, and political temperaments exist such that we often do not know until the last minute that there will be no War, or Twelfth Night Revel this year. There are two separate types of cancellation clauses, one covers situations where the site cancels the event and the other covers situations where your group cancels the event. Let's take a look at clauses where the site cancels first.

The Site Owners Cancel

Often contract language says if the site cancels, it's penalized only by the return of the event planner's deposit. Depending on the size and scope of your event, you may wish to negotiate language so that if the event is cancelled by the site, the site becomes responsible for costs incurred for moving or postponing the event, including higher rates at an alternative site. This would probably not be practical for most local events, but cancellation would have a huge impact on larger and inter-kingdom events (Known World Academies, Wars, etc.). Most contracts have some sort of "Acts of God" clause, also known as "Force Majure" or "Non-performance" clauses. Note that this is not the same as the performance-related clauses discussed above. An example of one of these clauses:

EXCUSE OF PERFORMANCE. The parties of this Agreement shall be excused from the performance of the terms and conditions of the Agreement when such failure is attributable to, and caused by, an Act of God, by governmental rules, regulations or actions, by a power failure, or by other circumstances that are beyond the control of any other parties hereto.

While vague as to what circumstances apply (and therefore exercise caution!), this example provides protection for BOTH parties, you and the site owner, in case something (flood, famine, war) occurs. Be on the lookout for contracts that only let the site owner off the hook.

Your Group Cancels

The next sort of cancellation clause would apply when your group needs to cancel the event. Most sites have some sort of graduated schedule in that event, but may require that you forfeit the deposit completely. Such a schedule may be no payment by you required if you cancel at least 90 days prior to the date, 75% 60 days prior to the date, 50% 30 days prior to the date and full payment required at less than thirty days. Generally, you want a contract that allows you to cancel, without penalty, at least thirty days prior to the event. Again, with larger sites that may not be practical, but should be possible with smaller events. Make sure you are fully aware of any cancellation penalties that may be assessed before you sign a contract, as your group may still be liable for full payment even if the event is not held and written notice not provided to the site owner within the allowed time. Remember, if the contract says written notice, a telephone call will not be enough.

Liability and Indemnification

Virtually all site contracts will have language that is designed to keep the site from getting sued if someone gets hurt. These clauses are not all created equal, however. Many will have a blanket clause that says the group will “indemnify and hold harmless” the site against “any and all” claims. Signing such a contract could cause the SCA, Inc or the group to be liable for damages through no fault of their own due to the actions of the site owner or due to the negligence of the site owner. An example would be if a person is injured when a dead tree limb on the owner's property falls and strikes an attendee. Not only that, but with the words “indemnify and hold harmless” the group could easily be required to pay the site’s legal fees to sue the group. While it would be best to have no such clauses in the contract, it is unlikely that the site will agree to completely remove them. So the next best alternative is to make sure that the language clearly limits the group’s responsibility to circumstances that are directly caused by actions (or lack thereof) of the group and that the site is responsible for circumstances caused by the site.

Let’s discuss two different examples of these clauses:

1. *The (site) shall not be responsible for any damage, injury, loss or theft occurring on, in or about is facilities. Lessee (your group/SCA, Inc.) hereby releases (the site) and its officers, directors and employees and agrees to indemnify and hold harmless (the site) and its officers, directors and employees from and against any and all claims, costs and expenses resulting from the Lessee’s use of the facility. The Lessee specifically assumes all risk of loss incurred by it or its service providers, guests or invitees, resulting from the use of the facilities.*

This is the exactly the sort of language you **DO NOT WANT** to see in a contract. Translated into plain English, this paragraph says that no matter what happens, you’re responsible and you have to fully and financially protect the site from ANY expense to

them as a result of any injuries or damages incurred during your event, even if the injury was a result of something the site did or did not do.

2. Lessee shall defend, indemnify and hold harmless (the site), its officers, agents and employees from and against all claims, damages, liabilities and expenses (including costs and attorney's fees) arising from bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of or in consequence of Lessee's performance of this Agreement, provided such injuries to persons or damage to property are due to the negligent or intentional acts or omissions of Lessee, its officers, employees or agents. The provisions under this paragraph shall only apply in proportion to and to the extent of such negligent or intentional act or omissions. (Site) shall defend, indemnify and hold harmless Lessee, its officers, agents and employees from and against all claims, damages, liabilities and expenses (including costs and attorney's fees) arising from bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property, including loss of use thereof, arising out of or in consequence of (Site's) performance of this Agreement, provided such injuries to persons or damage to property are due to the negligent or intentional acts or omissions of (Site), its officers, employees or agents or operation of the facility, including without limitation the fixtures, entrances, exits, sidewalks and approaches of the facility. The provisions under this paragraph shall only apply in proportion to and to the extent of such negligent or intentional act or omissions. It shall be the intent of the parties hereto, that they mutually agree to release, indemnify and hold harmless each other, from and against all liability for bodily injury (including death or paralysis), damage to property, personal injury, claims, demands, losses, damages, costs and expenses (including attorney's fees), and lawsuits arising from, or alleged to arise from, the rental and use of the facilities, which are the subject of this agreement. Each party shall agree to accept full responsibility for their own negligence and their own actions.

While considerably longer, this clause is better. It says that the group is responsible for injuries caused by the actions/inactions of the group and the site is responsible for injuries caused by the actions/inactions of the site, and each agrees to protect the other. This language also has more limiting language as to what circumstances apply, and what damages each party is responsible for, than the first example did. If the first type of clause exists in the contract, negotiate to have the second type of clause put in its stead. There is nothing wrong with saying, Look - we'll be responsible for us and our end of it, but you need to be responsible for you and your end of it.

Other Terms and Conditions

In addition to the three issues discussed previously, there are a few more things that you want to be on the lookout for in any site contract.

- Under what circumstances can the contract be changed after it is signed, and by whom?

Ideally, the terms of the contract should only be allowed to be altered if such changes are agreed to and signed by both Parties. Ask to remove any language that says that the site can change the contract simply by notifying you of the new terms.

- Are there any other or “required” add-on expenses or services mentioned in the contract?

Particularly look for mention of security or janitorial services, and even charges for table or chair rental. Often those will be in a separate paragraph from the rental fee and at an additional expense. Many sites will insist that at least one employee/representative of the site be present during an event and will expect you to pay for it. Larger sites may require security or janitorial staff, again at your expense. If the site will not remove such requirements, make sure you know exactly how much you are being charged and for what service(s), and that those terms are clearly spelled out in the contract, including exact dollar amounts.

- Is the entire facility being rented or only a portion of the facility?

Make sure the contract clearly spells out what rooms/grounds are being rented. Do not assume that the entire facility will be accessible to your group unless the contract says so. Kitchen access, if a requirement for your event, should be clearly stated in the contract.

- What are the rules of the site, particularly concerning smoking, alcohol consumption and animals?

Make sure you know the rules, that they are either in the contract or attached as an addendum if the contract says ANYTHING about your group being required to follow any rules or regulations of the site and what the consequences of any violations are. Make sure these rules are well communicated to your event attendees.

Keep in mind that everything is negotiable and the site should be willing to work with you in making sure that the written contract reflects terms that both you and they can live with. A few words about changing the language of the pre-prepared contract that the site

manager hands to you - A few minor changes can be handled by crossing out unacceptable language and writing in your change, then BOTH of you need to initial that section. If there are numerous changes it may be better to have the contract re-typed completely before signing it.

While it may seem like a lot to worry about, the most important thing is to really read the contract, make sure you understand each of the terms and ask questions if needed. If the site is insistent on keeping terms that you are not comfortable with or are not sure if they are appropriate for your specific event, talk to your local, regional or kingdom seneschal before signing the contract. Many, many problems can be avoided simply by understanding what these standard clauses in form contracts really mean. Paying careful attention to the contract before you sign it can save your group hundreds, perhaps thousands of dollars, should unforeseen events happen that prevent your group from meeting all of the obligations called for in the contract. Again, read everything, make sure you understand it, and don't be afraid to ask for changes. The site owners usually want your business as much as you want their site.

Good Luck, and well wishes for many successful events.

In Service to the Dream,

Legal Committee to the Board of Directors
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