

James R. Favor & Company, LLC

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To: All James R. Favor & Company Clients

RE: **COVID-19 Assumption of the Risk Forms**

With the potential exposure of COVID-19 to the general public, college campuses and within fraternal community living groups, we suggest that the General Fraternity Headquarters consider promoting the use of Assumption of Risk and Hold Harmless agreements by house corporations and chapters with members, volunteers, visitors, and contractors whenever such persons would enter the chapter facility or participate in chapter activities. The intent of these forms is to make individuals aware of and assume the risk of contracting COVID-19, and to hold harmless the fraternity from such risks. Attached are James R. Favor & Company's (JRFCo) proposed assumption of the risk forms. There are five versions of the proposed assumption of the risk forms (Chapter Facility Resident, Student Member, Volunteer, Contractor, and Visitor versions) each intended to have the same effect. The reason for the different versions is to help the users of the assumption of the risk forms pay attention to the many different types of relationships a chapter and the individual persons have. Users of the assumption of the risk forms should focus on having each assumption of the risk form executed by the proper persons at the right time. The executed assumption of the risk forms should be safely maintained by the appropriate chapter, house corporation, or General Fraternity designee and, if possible, also scanned and saved electronically.

1. CHAPTER FACILITY RESIDENT FORM

Who: This is intended to be used for those students who are living in the chapter facility.

When Executed: It should be executed, ideally, at the same time that the potential resident is signing the lease for his space in the chapter facility.

Implementation Details: Executing the Chapter Facility Resident Assumption of the Risk Form at the same time as signing the lease makes it easier for the house corporation, or any other defendant, to assert that the lease signed by the student was signed with knowledge of the risks being covered by the assumption of the risk form. Having the Chapter Facility Resident Assumption of the Risk Form signed later than the lease is signed allows a student, or the student's parents, to claim that: (i) the execution of the assumption of risk form was an afterthought; (ii) that the student's occupancy should only be governed by the language of the lease; and (iii) that the house corporation was running a sort of bait and switch deal by offering the lease first and then requiring the assumption of risk from being executed after the student had locked in plans to live in the chapter facility and had no other options.

It is possible for a house corporation to include all of this language in the house corporation's lease form, but that may not be possible at this time as leases have likely already been issued and signed. The house corporation should also review the applicable lease forms to make sure that there is nothing in those lease forms that is inconsistent with the language in this form. The form should be countersigned by the house corporation and a copy of the fully signed document should be returned to the other party. The house corporation should then arrange to keep the original fully executed forms through a period that is longer than the statute of limitations period in the jurisdiction in which the chapter facility is located.

2. STUDENT MEMBER FORM

Who: The Student Member Assumption of the Risk Form is an assumption of the risk form for all current student chapter members, except those who have signed the Chapter Facility Resident Assumption of the Risk Form because those chapter members would be living in the chapter facility.

When Executed: Chapter members should sign the Student Member Assumption of the Risk Form before returning to school in the fall.

Implementation Details: This Student Member Assumption of the Risk Form does not affect the student's membership in the chapter or in the fraternity. The Student Member Assumption of the Risk Form should be signed before the chapter member returns to school and becomes involved in any activities that might take place at the chapter facility. The form should be countersigned by the house corporation and a copy of the fully signed document should be returned to the other party. The house corporation should then arrange to keep the original fully executed Student Member Assumption of the Risk Forms through a period that is longer than the statute of limitations period in the jurisdiction in which the chapter facility is located.

3. VOLUNTEER FORM

Who: The Volunteer Assumption of the Risk Form should be signed by any person who is working as a volunteer with the chapter or its members and who would have any reason to be physically present in the chapter facility at any time.

When Executed: The Volunteer Assumption of the Risk Form should be signed before any student returns to the campus in the fall, or if the volunteer would have any reason to be in the chapter facility before the return of students in the fall, the Volunteer Assumption of the Risk Form should be signed before the volunteer enters the chapter facility.

Implementation Details: At a minimum, JRFCo would recommend that the Volunteer Assumption of the Risk Form be signed by the chapter adviser, each member of the chapter advisory board, each member of the house corporation, each member of a chapter control board, and each officer or director of a chapter affiliated alumni association. The form should be countersigned by the inter/national fraternity headquarters and a copy of the fully signed document should be returned to the other party. The headquarters should then arrange to keep the original fully executed forms through a period that is longer than the statute of limitations period in the jurisdiction in which the particular chapter facility is located.

4. CONTRACTOR FORM

Who: The Contractor Assumption of the Risk Form is for anyone who will be doing work on or in the chapter facility. The addendum to the Contractor Assumption of the Risk Form should be signed by all of the employees of the contractor who will be present at the chapter facility at any time.

When Executed: This Contractor Assumption of the Risk Form should be signed at the same time the work contract is signed. (Not having a contract for the work is a different and problematic issue.) The employee addendum to the Contractor Assumption of the Risk Form should be signed before any work starts.

Implementation Details: The Contractor Assumption of the Risk Form should be countersigned by the house corporation and a copy of the fully signed Contractor Assumption of the Risk Form should be returned to the contractor. The house corporation should then arrange to keep the original fully executed Contractor Assumption of the Risk Form through a period that is longer than the statute of limitations period in the jurisdiction in which the chapter facility is located.

5. VISITOR FORM

Who: The Visitor Assumption of the Risk Form should be signed by anyone who is visiting the chapter facility at any time, be that person a parent, girlfriend or boyfriend, classmate, alumnus, or sibling.

When Executed: The Visitor Assumption of the Risk Form should be signed each and every time a visitor enters the chapter facility.

Implementation Details: Measures should be taken to ensure that no one enters the chapter facility without having signed a Visitor Assumption of the Risk Form. The chapter facility doors should be locked at all times and only one door should be used as a common entrance and exit. The Visitor Assumption of the Risk Form is to cover those individuals who are not covered by one of the other assumption of the risk forms discussed above. The Visitor Assumption of the Risk Form will be the most difficult to manage. The Visitor Assumption of the Risk Form should be readily available at the entrance of the chapter facility. The chapter president or another appropriate officer should retain an organized file of all executed Visitor Assumption of the Risk Forms and regularly provide the originals of the executed Visitor Assumption of the Risk Form to the house corporation to retain for a period that is longer than the statute of limitations period in the jurisdiction in which the chapter facility is located. Note that the Visitor Assumption of the Risk Form has a consent provision for those visitors who are not of legal age to consent. The consent portion of the Visitor Assumption of the Risk Form must be completed before the visitor enters the chapter facility.

If you have any questions, please contact JRFCo General Counsel, Michael Smith at mike@jrftco.com or at 800-344-7335. Thank you.