

# MARITIME LAW

## Tender and Toy Orientation A Good Practice Everywhere—but Especially in Florida

**Does Florida's little known "livery statute" require a yacht's crew to conduct a pre-ride safety orientation before guests operate the yacht's tender or water toy?**

**Short Answer: We think it does, and that's a good thing.**

First, a "livery" offers vehicles, such as automobiles or boats, for hire. In the yachting industry, many businesses meet this definition. There is a little-known Florida statute that says:

"A livery may not knowingly lease, hire, or rent a vessel, with a motor of 10 horsepower or greater, to any person. . . unless the livery provides pre-rental or pre-ride instruction that includes, but need not be limited to:

1. *Operational characteristics of the vessel to be rented.*
2. *Safe vessel operation and vessel right-of-way.*
3. *The responsibility of the vessel operator for the safe and proper operation of the vessel.*
4. *Local characteristics of the waterway where the vessel will be operated."*

Any person providing this information must have successfully completed a boater safety course approved by the National Association of State Boating Law Administrators (NASBLA) and the State of Florida.

Florida courts have held that a violation of this statute is negligence per se and renders a rental company's otherwise valid exculpatory clause unenforceable. See *Straw v. Aquatic Adventures Management Group, Inc.*, 2011 WL 5008359 (N.D. Fla. Oct. 20, 2011).

Essentially, under Florida law, anyone renting a boat, personal watercraft (PWC) or similar vessel is required to provide a comprehensive orientation before the rental or ride commences. Failing to do so means that if a renter is injured, the person or company renting the item to the renter will be deemed negligent, even if they did not actually contribute to the injury in any way, and even if the renter has signed an otherwise enforceable liability waiver.

This statute could be applied when a yacht charterer or guest is injured on one of the yacht's toys without receiving the required orientation.

### A RECENT CASE

In a recent Florida case, a woman was injured when she was thrown from a PWC she rented as part of a guided tour of Panama City Beach. She sued the rental company on claims of negligence, violation of statutory duties, and vicarious liability.

Before renting the PWC, the woman (and later the plaintiff) had executed a release entitled "Assumption and Acknowledgement of Risks and Release of Liability Agreement." The release identified specific risks, such as tides, currents, wave action, wakes, collisions, equipment failure, and so on. It also provided that she had "agree[d] to assume responsibility for all the risks of the activity, whether identified or not and EVEN THOSE ARISING OUT OF THE NEGLIGENCE OF [the rental company]."

The rental company moved for summary judgment, contending that the release barred her claims. She countered that the company breached the Florida livery statute – Florida Statute 327.54(e)(I) – and that the release was therefore invalid.

In this case the rental company argued that it complied with the statute by having her review and sign a "PWC Renter Orientation Checklist." The checklist covered a variety of subjects and included detailed instructions concerning "protective clothing and equipment," three items for "PWC controls," and three items on "Avoid[ing] Collisions." The final item asked whether the renter had any questions about the PWC or its operation. The plaintiff had signed the checklist and initialed each of these items.

The court noted that waivers relieving a party of liability for its own negligence are generally disfavored but are valid if the waiver is clear and unequivocal. The court noted that the waiver was presumptively valid. However, while the livery statute did not expressly require the rental company to give the customer live instructions or an interactive presentation, there were questions about whether the checklist satisfied the statute. Therefore, the rental company's motion for summary judgment was denied.

### CONCLUSION

Florida's little-known livery statute could cause problems for charterers who provide tenders, PWCs and other "toys" for the use of guests. At the same time, companies offering charters or operating vessels for hire can insulate themselves from liability to a degree by requiring that guests receive orientation on this equipment prior to use. The orientation should cover the four areas listed by the statute: operational characteristics of the vessel to be rented, safe vessel operation and right-of-way, operator responsibilities, and navigation information about the waters where the vessel will be operated.

This is a good idea from a liability point of view, and it helps increase the safety and welfare of the guests onboard.

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