



FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

STRENGTHENING AQUATIC COLLABORATIONS

OPERATING A NON-YMCA-OWNED AQUATIC FACILITY

Considerations for YMCAs
YMCA OF THE USA

AUDIENCE

- Chief Executive Officers
- Chief Operations Officers
- Chief Financial Officers
- Branch Executives
- Camp Directors
- Property Managers
- Risk Managers
- Aquatics Directors

QUICK SUMMARY

If your YMCA is considering operating a non-YMCA-owned aquatic facility, be aware of the liability and operational risks. Use this guide to ask the right questions and tap knowledgeable resources to help your Y make the best decision.

CONTENTS

- Introduction** 1
- Facility Categories** 1
- Do Your Homework** 2
 - Questions to Ask 2
- Resources** 4
 - YMCA of the USA Resources 4
 - Insurance Representative 5
- Conclusion** 6

INTRODUCTION

As cause-driven organizations committed to strengthening community through youth development, healthy living, and social responsibility, YMCAs are leaders in responding to community needs. As a national leader in aquatics, the Y helps hundreds of thousands of people learn to swim and be safe around water. Given the Y's position at the heart of community life and at the forefront of aquatics, there may be instances when a local organization—such as a municipality, school, or other nonprofit—will ask a Y to operate an aquatic facility that the Y doesn't own. This may be due to financial reasons, a need for expertise in aquatic facility operations, or a need to combine resources to meet a local need.

The goal of this document is to help Ys make an informed decision about whether to assume responsibility for operating or providing services at a non-YMCA-owned aquatic facility. It also seeks to raise awareness of the additional risks posed by doing so. Use this document as a guide to determine what steps your Y should take before entering into a collaborative agreement. You can also use this guide to re-evaluate an existing contract or arrangement.

FACILITY CATEGORIES

Aquatic facilities come in all sizes, shapes, configurations, and environments. Each type of aquatic facility is unique and each has a different set of exposures. This can pose challenges that require special considerations in operation, supervision, maintenance, and safety.

Following are the common types of facilities that a Y may be approached to provide programs for or to manage:

- **Public pools.** These include municipal pools and those located at schools, public colleges, or universities. These are typically the traditional rectangular pool, either 25 yards or 50 meters in length, and may also have diving facilities. These types of pools are often used for recreational or lap swimming, competitive and fitness programs, swim lessons, and water safety training.
- **Multi-attraction facilities.** These sites usually have swimming pools and may also feature water slides and/or play structures, such as inflatables, spray areas, floating water walks, and interactive playgrounds.
- **Waterparks.** Aquatic theme parks may include play structures and moving water rides and attractions, such as wave pools, vortex pools, speed slides, or winding rivers.

- **Waterfronts.** These are outdoor facilities where open water meets land, including surf and inland aquatic environments, such as ocean beaches, rivers, ponds, lakes (natural or artificial), quarries, and reservoirs.
- **Private pools.** These pools may be located in backyards, apartment complexes, hotels, homeowner associations, and housing authority complexes. Typically, Ys offer aquatics programming at these pools in collaboration with other organizations or agencies, such as providing swimming lessons and water safety training to diverse communities.

DO YOUR HOMEWORK

Serious liability and operational risks are associated with involvement in non-Y-owned aquatic facilities. If your Y is considering entering into an agreement to operate a non-YMCA-owned aquatic facility, your first step is careful research and planning. Be sure to ask questions during the research process, and use the following suggestions as a guide. Most important, use the many resources available to assist you in making this decision.

QUESTIONS TO ASK

When considering operating a non-YMCA-owned aquatic facility, ask yourself and your Y's counsel, risk manager, and insurance representative questions to help make an informed decision about whether to proceed or not. The questions in the following section are provided to help you in this process. If an answer to a question is favorable, proceed to the next question, and so forth. If an answer is less than favorable, proceed with caution. And if an answer is not favorable, you may want to reconsider moving forward in the process.

BRANDING

As a cause-driven leader of a YMCA, it is your job to protect and promote the Y brand and to ensure that any partner your Y takes on will further the public's perception of the Y as a cause-driven organization. All collaborations must meet Y brand requirements. Consult YMCA of the USA's Brand Resource Center, available through [Exchange](#), to ensure that proposed signage and use of the Y name and logo are in compliance.

- Why are we considering doing this?
- How does this partnership/relationship enable us to advance our cause of strengthening community through youth development, healthy living, and social responsibility?
- Do we want to be associated with this organization?
- Will this be in compliance with YMCA of the USA's graphic standards for strategic relationships?
- How does this relationship enable us to serve our community more effectively?
- What value is the Y offering in this transaction?

CONTRACT

A contract should be as reflective of the arrangements as possible, such as outlining each party's responsibilities and what services are offered. Additionally, your Y should know what type of entity you are contracting with and understand the implications that has for your YMCA's operations and for the Y brand. For example, some government entities have sovereign immunity, which means they cannot be sued or they have limited liability and can be sued up to only a certain amount. If there is litigation, this could result in additional exposure for the Y if the Y is viewed as the party with "deep pockets."

- Whom will we be contracting with?
 - Is it a public entity, private entity, school district, home owners association (HOA), etc.?
 - Are there special issues, such as sovereign immunity, to consider when working with municipalities and other public entities?
- What services will our Y be providing? Are we providing
 - complete management and operations of the facility?
 - staffing (lifeguards, swim instructors, etc.)?
 - programming?
- Do we have an internal procedure in place for contract review?

OPERATIONS

Your Y will need to assess and ensure that you have the resources and expertise needed to operate the intended aquatic facility. For example, if it is a multi-attraction facility, your Y should have the following:

- An aquatics director with expertise in operating such a facility
- Adequate number of lifeguards supervising and providing surveillance for each attraction
- Lifeguards trained in the unique challenges posed by play features
- Pool operators familiar with maintaining the unique features of the facility

Additionally, your Y also should consider the financial implications of entering into an agreement and whether it is financially feasible to operate the facility.

- Are we equipped to operate the facility?
- Do we have the skills and expertise to provide these services?
- Who will control pricing?
- What are the hidden and deferred costs?
- Will programming be limited to only the general public?
- If services are not open to the public, will revenue generated from this transaction be considered unrelated business income and subject to unrelated business income tax?
 - Will it affect our tax exempt status?

- Do the location and population match the people whom we are trying to serve?
 - Are we equipped culturally to provide the service?
 - Does this match our skill sets?
- Who will be responsible for the facility's operation and maintenance? The physical plant maintenance?
 - If the Y is responsible, are we equipped and do we have the expertise to do this?

RISK AND INSURANCE

A Y may assume additional risks when entering into a partnership. You will have to identify, assess, and weigh the risks and ensure that you are able to protect your Y's assets, including its people, property, finances, and reputation.

- What are the risks?
- Will the facility be able to conform to our Y's safety standards and procedures?
- What is the condition of the facility, physical plant, and property?
 - Is it safe?
 - Does the facility meet all federal, state, and local regulations and codes?
- Is the location of the facility suitable and safe?
- Who is in charge of security after hours?
- What liability do we have in providing these services?
- Will our insurance premium go up?

RESOURCES

Several valuable resources are available to help assist your Y. It is highly recommended that you use these resources before entering into and accepting the terms of any agreement.

YMCA OF THE USA RESOURCES

Aquatic safety is vitally important to fulfilling the Y's mission and cause. Ensuring safety is an important part of what Ys do every day—whether teaching a child to swim, training a lifeguard, or maintaining and managing aquatic facilities. YMCA of the USA's [Aquatic Safety Guidelines for Ys](#) recommends that when managing non-YMCA-owned facilities, your YMCA

- ensures the association CEO/CFO is involved in the contract process.
- puts in place a written agreement outlining the parties' responsibilities and protections for your YMCA. Have this reviewed by your Y's legal counsel prior to signing.

- reviews insurance requirements and obligations with your Y's management and insurance representatives.
- ensures offsite aquatic facilities used by your YMCA for programming—such as swim lessons, water aerobics, or any other type of instruction—comply with all of your Y's safety standards and procedures.
- does not “rent” or dispatch lifeguards to private homeowners for parties or any lifeguarding-related responsibilities. Limit all offsite lifeguarding activities to YMCA programs only.

YMCA of the USA staff are available to help your Y during this process—especially helpful will be your Y's Resource Director, the General Counsel Office, and the Aquatic Safety and Risk Specialist. They can be a resource in providing guidance, contract review, and safety considerations, and they can refer you to additional resources, such as identifying other Ys currently engaged in similar agreements.

INSURANCE REPRESENTATIVE

It is important that you contact your Y's insurance representative for advice and counsel and involve them at the beginning of the process. They can guide your Y in the contract review and risk-assessment process by ensuring that the agreement

- specifically outlines the responsibilities of each party;
- accurately reflects the services being offered;
- outlines insurance requirements; and
- includes an indemnification clause fair to both parties.

Additionally, they may be able to

- assess exposures to loss and mitigation of each exposure;
- determine insurance premium charges; and
- conduct risk management assessments of the facility.

Involving your Y's insurance representative in the process will also benefit your Y if there is a claim, since they will be familiar with the agreement and your Y's operations.

CONCLUSION

Thorough research and planning is critical when considering entering into any type of collaboration that involves management of an aquatic facility that is not owned by your YMCA. Use Y-USA as a resource and involve your insurance representative at the beginning of the process. Tapping these resources and asking the right questions will help make the process smooth and will help your Y avoid any potential contract, legal, and reputation issues down the road.

The Y is a community organization that thrives on collaboration, and it is appropriate and important to work with others in responding to community needs. However, assessing liability and determining if the Y can obtain adequate legal protection for the services provided for non-Y-owned aquatic facilities is critical in the decision-making process. It is also important to remember our master brand strategy and assess how your relationships might affect public perception of the Y Movement.

To learn more or access additional resources about aquatics and safety and risk management, visit [Exchange](#) or call YMCA of the USA at 800-872-9622.

YMCA OF THE USA

101 N Wacker Drive, Chicago IL 60606

800 872 9622

yexchange.org