

RELEASES FROM LIABILITY

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A Release or Waiver may be the most important document ever used by any organization. Either might bring to an end threatened litigation. They may even clear an organization from liability in a court room.

Due diligence requires anticipation of the worst case scenario, then planning to prevent that outcome through risk avoidance measures. Despite these best efforts, Releases should still be obtained to accommodate the unexpected and unanticipated. If your organization sponsors outings to any off-site locations such as amusement parks, ski hills, campgrounds, swimming pools or other facilities, or if your organization invites members of the public to participate in organized activities on your property, Releases should be obtained. This article will discuss drafting and executing valid Releases.

Release or Waiver, Which?

Proper terminology should be used. "Release" and "Waiver" are often used interchangeably but are different concepts. A Release is generally a written contract between two parties where one party agrees to release the other from legal liability in certain circumstances. A Waiver is generally a unilateral relinquishment - or giving up - of a legal right. It typically results from the voluntary act of the participant. For example someone who parks a vehicle in a public parking lot and who waives the right to sue for damage to the vehicle as per the terms of Waiver pre-printed on the back of the parking ticket [e.g. X is not liable for theft or damage to vehicles parked in this lot].

A Release can survive greater scrutiny than a Waiver. A Release is a signed document. Because of the signing requirement, opportunity exists to amend or customize the document. This provides the parties the

opportunity to discuss the content, answer questions or even obtain independent legal advice prior to signing. Waivers are generally unsigned. While a Waiver can be oral, written or pre-printed, they are often pre-printed. This eliminates any ability to negotiate terms. They must be accepted as printed. Because of these factors, Releases are frequently associated with activities involving greater elements of risk than activities associated with Waivers. For example, the risk of using a parking lot may be sufficiently covered by a Waiver printed on the back of the ticket dispensed upon entry, but a Release is necessary to cover all of the risk associated with a ski trip.

Assumption of Risk

Releases transfer the risk from organizer to participant. Contract law applies. For the Release to be effective the parties must have a meeting of the minds. They must understand each other. They must agree. Risk acceptance could traditionally be either expressly stated or implied from the circumstances but would only arise where both parties agree that one party assumed no responsibility for the other and the other did not expect any. Today written documents are necessary, as they are more reliable and defensible than oral understandings.

The wording of the agreement must be sufficiently broad to cover all potential risks but specific enough to be easily understood. Negligence is excluded unless specifically mentioned. The document must make clear to the participant he/she assumes all risks associated with the event, thus giving up any right to sue in the case of injury. A customized Release should be prepared for each event. Avoid using a broad Release to cover a lengthy period of time or a series of unrelated events. A detailed Release signed annually or at the time of membership may be appropriate if individual Releases for each event are also signed during the year. These individual Releases should refer to the previously executed, more detailed Release.

A sample of the inclusive wording necessary for a valid Release is provided on page 2. Aside from the standard type of wording in Paragraph 3, the complete Release must include details of the activity, an acknowledgment of the training provided, the risks assumed, the date and location of the event, names of the parties and any other special circumstances deserving mention.

Signing the Release

The circumstances of signing are as important as the content of the document. Even the most thorough Release can be nullified by the way the document is signed. Ensure a representative of the organization is present. A verbal warning of the contents must be given prior to signing. Do not downplay the importance of the document by referring to the Release as "just a formality." The person presenting the document should make some simple comment like, "This is a Release of Liability you must read and sign prior to participation." Offer to answer questions. Create a relaxed atmosphere. Ensure sufficient space and time to review the

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RELEASE OF LIABILITY

PLEASE READ CAREFULLY

This is a legal document. By signing this document you are agreeing to give up certain legal rights including the right to sue. You are also assuming certain obligations.

1. I hereby acknowledge that I have voluntarily applied for and been accepted into the program [here list all of the details of the program, including the name, location, whether transportation is involved and, if so, to where and by what method, a departure and expected return date and time and any other details of significance to this particular program].
2. I also acknowledge [the organization] has provided training as a condition of my participation. I understand that I have been trained to appropriately respond to all reasonably anticipated circumstances which may be encountered during participation in this program, including [here list all circumstances which may be anticipated such as interaction with other cultures, consuming foods safely, warnings provided about staying with the group, appropriate responses to environmental risks, handling tools and equipment safety, etc.].
3. I understand that my participation in [name of program] may have undesired and unanticipated consequences. Notwithstanding this, I hereby release and forever discharge [the organization] and all affiliates, members, directors, officers, leaders, agents, volunteers and employees from any and all actions, causes of action, suits, claims, demands, liabilities, including negligence, and expenses I have now or may have in future in connection with, arising from or related to my involvement with or participation in this activity.

Signature of Participant

Date

Please Print Your Name

Date

Signature of Witness

Date

document adequately. Do not rush the process. There must be no evidence of duress, fraud or misrepresentation.

Review the document for completeness prior to witnessing. Ensure the signer remains during this review as changes may be necessary. Witness and date the document immediately after review. The witness must actually observe the signer writing the signature on the document. Avoid the situation where members of a group sign documents all at once, then the employee purports to "witness" the signatures by signing and dating a batch of documents after the signers have gone.

If large groups must sign Releases, arrange several sessions to accomplish this. Provide advance warning a Release will be required. Send a copy with the application package but advise not to sign the Release ahead of time. If the form does come back presigned, ask for a comparison signature to be produced on the spot, or have an identical form re-executed so the signature can be witnessed.

Children

Caution must be exercised in requiring a Release to be signed for a minor child. Generally a contract signed by or on behalf of a child can be voided by the child and the child's family. If the contract is prejudicial to the child, the


contract is considered void. This has the same practical effect as having no contract. Does this mean a Release to be signed by or on behalf of a child is irrelevant? Not necessarily. Since all of the circumstances of the case will be assessed after the fact and only in the case of major injury, organizations should never pass up any opportunity to collect evidence which may be of future assistance. Release forms should be executed on behalf of every participant regardless of age. A judge may discount or invalidate the Release depending upon the circumstances, but that will only happen far in the future.

Minor children should have Releases signed on their behalf by parents with custodial rights. Both parents have custodial rights unless those rights have been modified by a separation agreement or court order. Older children, possibly in their late teens, should also consent on their own behalf by signing the Release along with their parents. Consult the following chart to determine the age of majority in each province and territory.

Summary

Unambiguous Releases are essential to clearly show the intentions of the parties. A valid Release shifts the legal risk onto the participant thus absolving the event organizer of all responsibility for personal injury. Organizations not capable of drafting a legally binding contract should retain legal counsel. These legal fees may be the best money ever spent.

Checklist:

- use simple words; avoid vagueness
- tailor the form to the specific event, describing all necessary elements
- place a clear statement at the top of the page requiring the signor to read the document
- use effective headings such as "Release of Liability"
- **print the most important elements in bold**
- use bright colors to highlight essential statements
- limit the content to one page 

What is a Child?

Province/Territory	Age
Alberta Manitoba Ontario Prince Edward Island Quebec Saskatchewan	under 18
British Columbia New Brunswick Newfoundland and Labrador Nova Scotia Northwest Territories Nunavut Yukon	under 19