



Your Releases

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Seven-Part Program to Build a Release to Defend Your Business/Program/Activity

Releases are also known as “waivers” or “covenants not to sue.” They are also called “allocation of risk” or “transference of risk” documents. If a court calls your release or a part of your release an exculpatory agreement, that is not

good. Whatever the name, they are an agreement between two parties as to who will assume the cost of an injury before the injury occurs.



Another type of document, called an “Assumption of Risk” document, does not provide the complete extent of legal defenses a release provides. However, in states that do not allow the use of a release, or if you are dealing with minors in any states that do not allow a parent to sign away a minor’s right to sue, an assumption of the risk agreement is your best defense. You need to know the difference, know when to use which one, and when to combine the two.

A properly written release, which includes assumption of the risk language, used in conjunction with a well-thought-out marketing plan and post-accident follow-up, can stop lawsuits. Your release or waiver is not the only document you need to build a wall of protection around your business or educational program, but it is the most important. The other two are a legal entity protecting your business, like an LLC, and insurance.

An exculpatory agreement is a term to defines contracts that take advantage of a consumer. Exculpatory agreements are defined as an agreement where the consumer needs or must have the service or product being offered and is offered an agreement that the consumer cannot change or negotiate. This term was applied for food, house, utilities when the consumer was forced to release the provider from all risk or pay a fee the consumer could not afford.

Why include “marketing plan” in a risk-management memo? Because:

Marketing makes Promises that Risk Management must pay for.

Releases will be different for the type of business you run. An outfitter, a business where guides accompany the trip, will have a different release from a livery or canoe rental business where a canoe or equipment is rented for the day. Activities where parents accompany children and maintain control and supervision over children will be different from either an outfitter or a livery release. Some releases may be simple notices of those risks that the participants need to be aware of, and those campground rules that are designed to prevent injuries.

Your release will also be different based on the activity, the state where the release will be used, the age of your participants, and the risks you want them to assume. No release, if it is to be effective, is going to be like any other release.



You need to understand what type of operation you have, not only from your perspective, but also from your participant's point of view. What you see as normal or fun may scare your participants. Always look at your world through their eyes.

Releases for product liability issues are a different type of release entirely. Not all

states recognize a release as a defense against a product liability claim.

First Line of Defense: What the future participant reads upon finding your business, marketing material.

The first document your client reads or sees should start the process of preparing the client for the risk and the fact that he or she will be assuming the risk of the activity. Most times, this will be your brochure, marketing letter, course catalog, or website. Emphasize in these marketing opportunities that your company uses a release, and that customers must sign the release before they can participate in an activity or trip. You might want to state that there is the possibility that guests can be injured or die during the trip, and that you are not responsible for their injuries or their lost or destroyed personal property. This opening information is the first brick in your wall of protection.

You don't want an injured guest suing you, stating that if they had known about the risk and the release, they would not have gone on the trip or attended your activity. Worse, you don't want to be facing a lawsuit where the actual risks are far greater than what you advertised or told the participant.

Remember, I am a trained paranoid. As such, in your profession, someday someone will die. I hope not, but the odds are good. No matter how good you are, you are dealing with humans, and in several cases, odd humans. One will walk into a crevasse, take a dump, or just decide to leave in the middle of the night. Consequently, I want your documents to be as perfect as possible. There are no guarantees on any release and however, we have to do the best we can.

Second Line of Defense

The next step is to ensure that the release is given to your customers as soon as possible. This may not be possible with a walk-in business. However, you should always attempt. Put your release on your website so your guests can review it if they go to your website. A PDF that can be easily found and downloaded is the best way to inform customers and keep judges happy. Making the release available after someone has signed up provides the defense of surprise or duress to an injured party.

Make sure your release and the other documents you use do not create a conflict or a lawsuit. Do not make promises you cannot keep about the safety of the trip or activity. Doing so can make your release a worthless piece of paper. This can happen if you do not answer questions about your release, or you answer the questions incorrectly. Your staff should also be trained to answer questions correctly and adequately represent the risks involved.

If your release is for a product being purchased, then the release should be given to the customer as you are preparing the product for sale. Give the customer plenty of time to read the release and ask any questions. Placing your release on your website in advance so they can read it, then eliminates the argument, the signor did not have enough time to read and understand the release.



This may cause you concern, that having the release so visible might drive away customers. If your release drives away customers, that is a good thing. A customer who does not want to sign the release is a customer who will probably sue if they are injured. A customer who realizes the risks of the activity are more than they want after reading the release is another customer you do not want.

Finally, very few people read the release in advance or before signing. The only people who will ever read it are attorneys.

Defense Three: Train your staff in your release

If you are still using a paper release, tell your staff to hand the release to the client with the front up. Ask them to read both sides of the agreement and sign, and complete the backside. It is not your responsibility to make sure your guests have read the release; you just don't want someone arguing that you never gave them the opportunity to read the release.

If a guest asks if the release is valid or works in your state, say yes. Tell them the release is significant in keeping your costs down by keeping your insurance at a reasonable amount. A release identifies who is going to pay for any injuries or damages in advance, so you do not have to spend time and money litigating this issue later. The release also informs them of the risks they are going to be undertaking, so they can make a clear decision about taking the trip or buying the product.

Many insurance companies are making releases mandatory. You do not have a release signed by the injured guest; you do not have any insurance.

Give this document to your staff so they understand the importance of the release and the defenses to lawsuits.

Defense Four: Assumption of the Risk

Every release should outline the risk associated with that particular activity. Saying something is dangerous is not enough. You need to specify many of the actual risks for the activity. Remember, most of the customers interested in your trip or activities are excited because they have never participated in a trip like yours. As such, they may also have no idea what the risks of the activity. They may want to compare your activity to the last thrilling experience they had, an amusement park. You need to explain those risks to them. Many companies do this in a "safety talk." Educational institutions do this at pre-trip meetings or briefings. Trying to impress a jury with what was said in a



meeting or on the side of a river can be daunting. Your release can help prove your clients knew and understood the risk they were about to undertake.

One of the best ways to inform your customers of the risks is by placing pictures and videos on your website. Make sure you post the good, the bad, and the ugly pictures and videos. If your videos only show everyone having a good time, the courts will look and say you misinformed your

customers about the risk.

If the picture or video shows an issue, point out the issue and what the customer should have done to place themselves in that situation. If the customers are doing something wrong in the video, point that out and describe what the customer should have done.

If upon learning of the risk and a customer does not want to go, happily refund their money and thank you. It is guaranteed if that customer was hurt, they would sue and the refund is nothing compared to the cost of defending a lawsuit.

More about Assumption of the Risk

If you have the opportunity to use a release, then the following information will be included in your release. Incorporate the risks of the activity to be assumed by your guest into the release. This does two things. It tells your guest and the courts that you tried to honestly tell your guest about the risks. If the release is thrown out of some reason, the document can still be used to prove the injured participant assumed the risk and should not recover.

If you do not have the opportunity to use a release because of state law, then you will be using an assumption of risk document.

Assumption of Risk is a legal defense that can be used to win a lawsuit or substantially reduce the damages of a lawsuit. It may also be the only defense for minors' claims in many states. As such, Assumption or Acknowledgment of the Risk plays an important role in your business.

In some states, the doctrine of Assumption of Risk has been replaced by the legal theory of Contributory Negligence. The legal effect and how assumption of the risk and Contributor Negligence are used in the Courtroom are substantially different. However, from a non-lawyer perspective, there is little difference between the legal doctrines. Contributory Negligence is an argument based upon the facts at trial where the jury decides if the Plaintiff's or injured parties' actions contributed to their injuries. If the Plaintiff knew about the risks and still acted or refused to act, causing his injuries, he contributed to his injuries, and his damages are reduced by his percentage of his contribution to his injury.

Assumption of Risk is used here because the idea is well defined by the words. In addition, when your clients truly know and understand the risk, they are less likely to be injured, let alone start a lawsuit.

Assumption of Risk must be proved by you to win a lawsuit. You will need to prove that your client knew and understood the risk that caused their injury. Not only must they know which things are dangerous; they need to know how dangerous. For example, most people know traveling to third-world countries may be dangerous. However, do most Americans understand that you can die from what Americans would consider a minor illness or injury? Medical care in Third-World countries can be substandard to the care someone would receive in America. Consequently, this two-step knowledge can be difficult to prove in some instances. It requires an affirmative set of actions to move this knowledge and understanding to the level necessary to win a lawsuit.



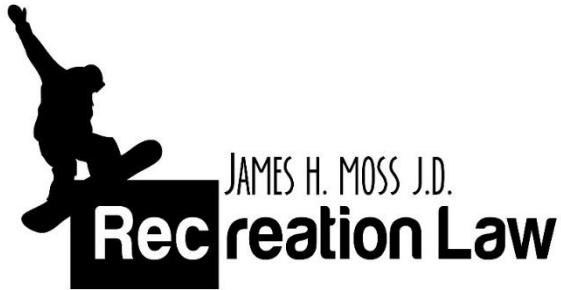
Most of us identify the obvious risk of a sport. Water activities we identify drowning, rock climbing we understand falling, and winter camping, freezing. However, a substantial amount of the injuries in outdoor Recreation happens away from the main activity. Side hikes while rafting is the major cause of injuries in the Grand Canyon. A large percentage of the injuries in rock climbing occur when items fall on the climber, or they fall while hiking to a climb. Study the injuries your clients receive and make sure the most common, no matter how trivial, are listed in your assumption of risk document or release, as well as the most horrendous.

The easiest way to prove your clients knew and understood the risk is to put that information in writing and have your clients acknowledge the receipt and read through the document. Some states require the information concerning the risk to be a component of a release. As such, your release should always contain language outlining the risks of the activity. Judges frequently comment upon the fact, the injury sustained by the Plaintiff was specifically identified in the release or assumption of risk agreement.

Remember that any document or video your clients read or view can be used to prove they understood the risks. Your release, promotional information, pictures in the office, or videos are important. To prove the clients knew and accepted the risk, several companies or industries have developed videos to show to clients before they undertake the activity. A video has proven to be extremely important in several possible lawsuits. It is difficult to sue when the actions that injured the Plaintiff were identified visually and audibly as something not to do. Add to that the release identified the risk and stated the client had seen the video. This is a fairly iron-clad wall against an invasion by injured customers. To see examples of these, OARS, the whitewater rafting and adventure travel company, has a complete set of videos on the risks of rafting at: <http://rec-law.us/NvHtqu>

Assumption of Risk – The First Line of Defense and The First Step in Building a Release in Several States

Assumption of the risk is the only defense available in those states that do not allow the use of a release, such as New York, Virginia, Louisiana, Oregon, possibly Montana,



Arizona, New Mexico, West Virginia, Wisconsin, and others. See [States that do not support the Use of a Release](#) to stay current on this list¹. It may also be the only line of defense for minors. As such, Assumption or Acknowledgment of the Risk (A/R) plays an important role in your business.

More importantly, guests who know and understand the risks are less likely to be injured and more prepared to enjoy the trip or activities you are helping them with.

More states are removing Assumption of the Risk from contributory negligence in sport and recreation lawsuits. The theory is that when you engage in any sport or recreation, you automatically assume the risks of the sport. Unless the plaintiff can prove the defendant increased or, in some states, changed the risk, the plaintiff is stopped from suing because they assumed the risk.

Assumption of Risk must be proved by you to win a lawsuit. You will need to prove that your client knew and understood the risk they were about to take. Not only must they know which things were dangerous, they needed to know how dangerous. For example, most people know traveling to third-world countries may be dangerous. However, do most Americans understand that you can die from what Americans would consider a minor illness or injury because the medical care is not the same as exists in the USA. Medical care in Third-World countries can be substandard to the care someone would receive in America. Consequently, this two-step knowledge can be difficult to prove in some instances. It requires an affirmative set of actions to set this knowledge and understanding to the level necessary to win a lawsuit using the defense of assumption of the risk.

Defense Five: Understand the Risk from Your Client's Perspective

To prepare your clients for the risk, you need to evaluate the risk in advance. Do this from your client's perspective, not from your own. Gather information on what the actual risks of the activity are. Ask your insurance company for a list of the claims they have had over the past several years. Look at the accidents you have had over the life of your company, and that may be peculiar to your operation, where you are operating, or your clients. Finally, always include the worst-case scenario in your release, even if that chance is remote, such as mental anguish, trauma, paralysis, or death.

If you understand the risks from your client's perspective, someone who has never experienced your activity, been to your company, or experienced your operation, you will have a better handle on dealing with their issues. You will be able to explain the risks to them, so they understand, not just what you believe are the risks.

¹ This page is updated regularly; however, it may not always be current.

Because assumption of risk is a personal question to be examined by the judge and jury, you need to make the knowledge personal. Use the examples included here as a starting point to build a risk statement for your operation.

Defense Six: The Wall is up, Don't Tear it Down.

Your wall of defense consists of multiple blocks that inform your guests of the risks they are going to undertake and who will pay for any injury they may encounter. The final defense in your defense wall is how you deal with your guests after they have been injured. If you have done a good job of informing your guests of the risks, then they should be mentally prepared to accept the fact that the injury was probably their fault and their responsibility. However, right after an injury is not the time to bring that up.

You want to treat an injured guest the same way you treated them before their injury. Nothing has changed. They are still a guest who can pay you more money for another trip or send you referrals with their good word. Treat them the way you treat everyone. Be attentive, help them and their family. Follow up and remain their friend.

Do not allow someone to breach your wall by acting in a way to make them angry enough to try.

Defense Seven: Treat people right

This does not mean writing checks for everyone unhappy. This does mean not hiding if something goes wrong. How would you want to be treated if you were in your injured guest's situation? What will they want to know, what do they need, how are they feeling.

Deal with the issues, show them you are a good person and are willing to help, not because you are trying to dodge problems, but because you are continuing to follow your companies, motto or theory and always want to be a friend.

Moss Maxims: Ideas to Remember when Dealing with Guests

10 Signs of Great Risk Management <http://rec-law.us/sUzpHT>

7 Mistakes Made by People who are called Defendant <http://rec-law.us/stli09>

Crisis Response <http://rec-law.us/ul6Nrl>

Reasons Why People Sue <http://rec-law.us/uZ5RKR>

Ten Commandments of Dealing with People in a Crisis <http://rec-law.us/Kol8Xo>

Additional Articles on Why People Sue

It's Not Money <http://rec-law.us/zxmmqy>



Recreation Law
JAMES H. MOSS J.D.

Serious Disconnect: Why people sue.

<http://rec-law.us/wm2cBn>

Why do people sue? Not for the money.

<http://rec-law.us/A0866T>

A Church wants to apologize and the insurance company for the church panics. What else would you expect a church to do?

<http://rec-law.us/zl0FUI>

Great article on why some corporate apologies fall short and they are not sincere

<http://rec-law.us/xb1uVb>

Her life is permanently changed, but she really wants an apology

<http://rec-law.us/yHjVn0>

Make sure you understand what the other side is saying

<http://rec-law.us/1b5m1mt>



Arbitration Agreements or Clauses in a Release

Arbitration has taken a move in most states to be required in many instances, and if part of an agreement, an absolute. Many states may not uphold the use of a release but will allow and require arbitration. States also allow a parent who signs a release for a minor child that contains an arbitration agreement to require arbitration.

This can be an excellent way to reduce your costs and maybe the only real defense in a few states. Your defenses are valid in arbitration, release, assumption of the risk, and any other defense you may be able to argue. Arbitration is also faster than going to trial. Discovery is usually limited, and arbitration is usually held within one year. This can cut the attorney fees significantly.

The bigger advantage when using arbitration is that Arbitrators are not allowed in most states to award anything other than actual damages. Meaning the damages that are arbitrator can award are the actual medical bills and lost wages of the plaintiff. Awards for pain and suffering are rarely allowed, and if they are allowed, are significantly reduced.

When a plaintiff's attorney sees the recovery, they are limited to, they are unlikely to be excited about taking on the case, which is another hidden benefit of arbitration.

All states have a state arbitration law, and there is also a federal arbitration law, so you have a good chance of using arbitration.

When might you not use arbitration? In those 7-8 states that allow a parent to sign away a minor's right to sue, and those states that support releases when an adult is injured. Any of those states will also uphold the attorney fee provisions if you win the case. Again, this makes it less appealing to a plaintiff's attorney.

Many arbitration laws also make it difficult to appeal an arbitration ruling by requiring the winning side of the appeal to recover their attorney fees and costs.

Using a Release

If you are using a paper release, don't allow any changes to the release. Nothing crossed out, etc., and the only writing on the form should be the blanks that need to be filled in.



After your guests have signed the release, make sure you look at BOTH sides of the document and verify the name on the document matches the name on the form and the name of the person who signed up, and nothing else. Make sure the boxes are checked or not, the information is filled in or not, and there is a signature. Nothing else should be written on the form on either side. If they do, hand them another one, smile, and say, "Try again!" If they don't want to sign, give them their money back and say goodbye.

These ideas were developed over twenty-plus years of writing and defending releases in court.

1. Keep the copyright at the bottom. If someone gives you a hard time about just say, call him and point to the bottom of the form. I'll answer their questions for free as long as you keep the copyright there.
2. Don't allow any changes to the form by people signing the form. Nothing crossed out, etc. The only writing on the form should be the blanks to be filled in.
3. Put this online as a PDF even if you are not having it signed on your website. That way, people cannot argue that they did not know about it. You can say it has been on the website, and you could have downloaded it and taken it to a lawyer if you want.
4. It is designed to be signed by a husband, wife, and one/two children. If the person can read the release and they are under the age of 18, have them sign it. It is not valid as a release; it might work as assumption of the risk document in some states. If they are over 18, doesn't matter if they read it or understand it, get them to sign it.
5. If the family has more than one kid or one parent and more than 2 kids then one parent has to sign the second release. So, Mom, Dad and 2 kids will take 2 pieces of paper, and Mom and Dad must sign at least one of the pages each.

If you can't get both parents to sign the release because one parent is not on site, do not panic; just have everyone present sign.

6. Electronically, have each adult sign the release (supposedly) by doing something like putting in a date of birth or typing their name. The best option is to have them fill out the credit card information for payment first and have the release on the page right after that. Put in language that says that each person putting in their DOB or typing their name has read and agreed to the release.
7. Hand the release to them with the front side up. Do not hand them the release with the signature page only. Don't give them the excuse that I did not know it had two

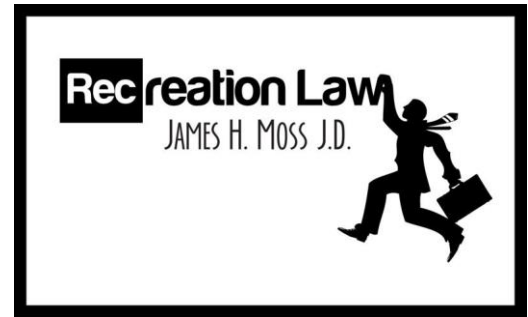


sides. Hand it to them and say *Please read both sides, fill in the information, and sign.* Make sure **you** look at both sides of the document and verify that the name on the document matches the name of the person who signed up. The name should always match the name on the credit card. You need to verify this so you get paid. It does not have to be 100% perfect, but it is easy to get the fraudulent people out in advance.) Whether the boxes are checked or not, whether the information is filled in or not, and whether there is a signature. Nothing else should be written on the form on either side. If they do,

hand them another one, smile, and say Try again! If they don't want to sign, give them their money back and say goodbye.

8. Here is how the electronic signature can work: The best way to make sure your release matches the name allegedly signing the release is with the toughest contract ever written: A person's credit card. The credit card company says you are you when you use your card. So, if you can have everyone pay for something with a credit card, even a penny, when they sign the release, you have done all the verification you will need to do.
9. If you don't have an option to pay with a credit card, then collect the normal Credit Card information. Collect the person's Name, Address, Phone, Email and Date of Birth. Date of Birth is how the criminal law tracking system works and is actually the best way to track a person or verify who they are. Getting a copy of the driver's license to make sure everything matches is also a great idea. You can't keep it, but you can scan it.
10. Require an email to be sent to everyone signing online. If a person is registered for an event/membership by another person, that person should receive an email indicating that they have been registered and then prompting them to visit a link where they can make their electronic signature. Make sure your sign-up sheet collects the person's name, email address, and phone number, along with any other information you need.
11. If the email is for someone who did sign up and use their credit card, the email should contain a copy of their receipt, additional information about what they signed up for, and a copy of the release they signed, or at least a link to the release they signed.
12. If the person did not sign up, but is part of a group, send them an email. The email should contain a link to where they can complete the information you need for the trip, activity, etc., AND a page where they can sign the release. When they have completed that signup information, send them another email thanking them, including any additional information they need, and a copy of the release or a link to the release they signed.

13. Additional information about the trip you might need, such as their height and size, to properly fit them into a PDF or other gear. Anyone they prefer to go with or paddle with. Their riding and horse experience (those are separate things), if they are going on a horse ride. Their size is used to make sure they are in the right class or team. Horse experience means they have put on halters, saddles, know how to lead a horse, and generally know how a horse reacts. Riding experience may only be that I've done other trail rides, and know how to get off a horse.



14. Minors will NOT have the option of utilizing the electronic waiver. However, if mom or dad gives their minor child a credit card to sign up and the bank accepts the credit card, then the sign-up program says mom signed the document for herself and her child.

Issues that you should avoid in your release

Your release is a contract. A legal agreement where both parties receive a benefit from the agreement after payment (or consideration). As such, you want to make sure that your document stands the test of both being a contract, a release, and cannot be considered anything else by the court.

Medical Documents

Unless you are a physician and the future guest your patient, you do not have the authority to tell any client they cannot go on a trip because of medical issues. This pops up all the time and creates massive problems.

One suggestion is to keep the option open to require your future guests to have a physical by their physician, and the physician must approve that the guest can go on the trip. To make that effective, you need to provide the form that the physician must fill out, sign, and date. The first part of the form is what the activity is and how strenuous it is. How high the guest will be expected to climb, how many minutes they are expected to run, or how many miles they are expected to hike each day is just the start. You need to provide the physician with the information to provide your future guests with good medical advice.

Drugs

If you have prescription drugs in your first aid kit, intending to use them on guests, you will be committing a felony in most states, and the physician who prescribed those drugs to you will possibly lose their law license.

Physicians, by law, can only prescribe drugs to patients. Patients are people the physician has established a physician-patient relationship with, and in most states, has examined the patient. Only then can the physician prescribe a drug. If you believe your participants should carry prescription medications, provide that list to the participant and have him or her get the medications from their prescriptions. They should keep the



prescriptions in their original containers with the prescriptions on the bottle or package. Crossing an international border with prescription drugs in any container other than the container the drugs were issued in can get you arrested as a smuggler.

The sole exception to that rule is epinephrine. Thirty to thirty-five states allow physicians to prescribe epinephrine to a specific list of organizations, IF the organizations have had someone who has taken the

epinephrine class. In most cases, these organizations are school districts. Just because your state has a new epinephrine law does not mean that your guide service may qualify for the safety it provides. So far, fewer than ten states allow outdoor services to receive prescription epinephrine.

In the majority of cases, check with your physician,

Sign Up Sheet

Courts continuously throw out releases that have more than one family signature on the release. Or a sign-up sheet that has exculpatory language somewhere on the sheet. You did not buy a car or a house with the same contract already signed by someone else. Why do you think it will work on a release? It is a contract to tell each party to the contract who will be responsible for their injuries and bills during the event, ONLY.

Photo Release

Again, I see these in releases all the time. However, they will NOT stand up in court. Photo Releases are specific contracts that are defined by the law in most states. If a minor is being photographed, the parent must sign the photo release for the minor and to be effective, it must be a separate stand-alone document with the required language and cover the copyright legal issues. Also, for a photo release to be a contract, consideration must be exchanged between the parties. Finally, the photo release must determine what exact rights are being sold under the release. For use in a brochure, online, emails, how long, etc. Putting you give us the right to use your photo in our marketing does not work.

Any other clauses other than those found in a release.

Again, when you bought your car or your house, the contract said nothing about where you must shop, how often you had to get your picture taken, what you can carry in your car, or allow in your house. Every clause in contracts like that, when dealing with consumers, only has those agreements that are necessary and normal to purchase the car or house or accomplish what the contract is for.

You can find contracts that cover everything under the sun in them, but they are for companies when dealing with each other. Businesses, the courts have always held, are used to dealing with big contracts and can easily hire attorneys to negotiate those contracts. Consumers must be able to understand their agreements and should be specific about what the contract is for. Many courts will look at the reading level of a

contract to determine if it contains too much legalese. Courts have also adopted requirements for contracts with consumers that should never be broken.

Release Specific Contract Rules

1. Your font size can never go below 10 points. That is the minimum size that any court allows the pleadings to be. You never want a contract or any document that the court reads to be smaller than what the court believes is the smallest that should be allowed. If the judge has to pull out a magnifying glass, the judge won't; it's easier to say you lose.
2. One large document on one page with no breaks. That makes it very difficult to read. Never allow formatting or looks to change the release. The release must be readable at the lowest possible level. Large paragraphs are difficult to read. And don't worry about more white spaces. It is a contract, not a party invite.
3. You have mixed contract and tort issues in the release. You have a lot of contract issues in the General Terms. Contract issues are those where there is money and a promise to do something. Torts are the injuries that occur due to negligence, an accident. The release covers tort injuries. Those are the lawsuits for which the damages can be unlimited.

Contract issues are not as dangerous as they are limited to the amount of the contract. However, they can be a pain. More importantly, it is these annoyances that lead to a larger tort claim. Explaining the contract issues to the participants in writing helps eliminate these claims and puts you in the position where you can control the issues.

4. Attempting to pass liability to others, such as contractors, in a release. That creates a multitude of problems. 1.) You want the contractors to be liable, it provides you with greater protection; 2.) It may create tax or FICA liability for an independent contractor; 3) it eliminates a classic defense available to you besides release. Create a solid contract with all of your contractors that defines the scope of their liability and leave it out of the consumer release. Courts that the release to be between you and the consumer and no one else.
5. Refund terms that are onerous in the eyes of the court. A consumer signs up for your activity or trip, and upon learning what the risks are, wants out. Keeping their money won't work and requires a different language that is not found in releases. In a court, you will lose the refund issue unless you have the participant's signature on the terms of the refund, usually in a separate document. Even then, you will lose unless you have added the language your credit card company wants in that agreement.
7. Anytime you ask for information, you should probably get a signature on the truthfulness of the statements. I had a mother lie on a BSA physical one time, not stating on the form that she had taken her kid off his medication. The kid finally lost it on the firing range. I was the program director and stopped by the firing range about once a week. My luck, I pop up looking at an 11-year-old with a 22 pointed at me. Mom





thought a week in the woods would do him good, medication-free. Since he was not taking any drugs, there was no need to list them. She did not know that withdrawal occurred on most drugs to some extent, and the cocktail this 11-year-old child was on could kill a horse.

Reading Level²

The reading level of this document is:

Flesch-Kincaid Grade Level:

7.26

That means the 7.26 falls in the Flesch-Kincaid between 6 – 9. This means the average middle schooler should be able to understand the document. Or Someone with an age range of eleven to fourteen.

Flesch-Kincaid Grade Level Scoring

Flesch-Kincaid Score	Reading Level	School Level	Age Range (US)
0 - 3	Basic	Kindergarten / Elementary	5 - 8
3 - 6	Basic	Elementary	8 - 11
6 - 9	Average	Middle School	11 - 14
9 - 12	Average	High School	14 - 17
12 - 15	Advanced	College	17 - 20
15 - 18	Advanced	Post-grad	20+

On the Flesch Reading Ease scale:

63

The higher the reading score, the easier a piece of text is to read. The Flesch Reading Ease score measures two variables.

- the average length of your sentences (measured by the number of words)
- the average number of syllables per word

Flesch Reading Ease Score Ratings

90-100 very easy to read, easily understood by an average 11-year-old student

² <https://readable.com/readability/flesch-reading-ease-flesch-kincaid-grade-level/>

80-90	easy to read
70-80	fairly easy to read
60-70	easily understood by 13- to 15-year-old students
50-60	fairly difficult to read
30-50	difficult to read, best understood by college graduates
0-30	very difficult to read, best understood by university graduates

Most educators say that the reading level of the average American is that of an 8th grader. Consequently, you want the reading level of your release to be as close as you can get it to the 8th-grade level. Too complicated or too much legalese, and the court will find a way to throw the release out. Many states have enacted laws stating that consumer contracts must be written at a specific reading level or below.

Rental Agreements

Rental agreements can be interpreted in several different ways by the courts. If you believe you are running a pure rental operation, your documents can be significantly different from a rental operation that the courts consider as an outfitter. Review your operation with your attorney to make sure your attorney understands your business and which interpretation the courts will apply.

Your release may contain language about the rental, returns, late fees, etc.; however, it is better to have these on a separate fee agreement. The fee agreement needs to have the proper language to make sure you get paid, even if the customer decides to argue the charge with his credit card company. Check with your credit card company to get this language to win these complaints.

Electronic Signature:

Having someone sign your release online is as easy as using paper now days and saves you money and storage space. The easiest way to do this is when they are signing up and using their credit card to pay for the activity. The credit card company has verified who they are and thus the use of the credit card is verification of their identity and signature.

I suggest that you have the person complete the information you need from them first: name, address, email address, etc. You want to collect information so that you can prove the person was who they said they were when they encountered the release. The credit card information page can either be next to or after the release. Have the release be present in full on the page, with the option of downloading a PDF of the release if the person wants. At the bottom of the page with the release, you should have a button that they must click to accept the release and move to the next page.

If you wish, you can have another box/window pop up at this time affirming the fact the signor understands they have given up their legal rights. However, that does not seem as important now days. Then have your guests click through to the next credit card or payment page. Having the release in front of the payment page eliminates you have to give refunds if the release bothers or scares away a customer.



The most important part is to make sure they person cannot continue through your website and/or pay for the trip without completing the Release. Meaning, if they do not agree to the release, they cannot pay for the trip, as they never signed up.

Your email to them, then becomes additional proof, they signed the release. They could not have received an email receipt if they had not signed the release.

If a person is registered for an event by another person, the second person will receive an email indicating that they have been registered and then prompting them to visit a link where they can complete their registration and sign the release electronically. Another option is to place these people on a separate list and have them sign a paper release upon arrival. However, that will back up your registration system and require an extra person to double-check the releases.

If you still require paper releases, develop a system to verify that you have collected all the releases. They hand in the signed release, and they get the balls, or ticket, or wrist band, or something so that you know if you have someone on the field or the bus without the ticket, they did not sign the release.

If a parent is signing a minor up for an event or activity, the parent can affirm that they have read the release and are giving up their legal rights as well as the rights of their minor. You should also have your release incorporate language saying that the parent has reviewed the risks and the release with the minor.

When collecting information required to process a credit card, see if you can add a space to collect a date of birth. A date of birth is one of the best ways apart from a credit card to verify someone's identify.

Keep the copyright at the bottom of the release. If someone gives you are hard time about the release or does not want to sign it, just say, call him and point to the bottom of the form. I'll answer their questions for free as long as you keep the copyright there.



Electronic Signature Language

Your release can have language stating the person understands they are signing a document electronically, but it is not necessary now days. *You understand that you are signing this document electronically. You understand that under the law, there is no difference between signing this electronically or in writing.*

How to use Electronic Signatures?

The two issues with an electronic release are making sure the person who signed electronically is the person we are trying to stop from suing, and the person understands they are signing away their rights.

1. The easiest way to accomplish the first step is to have the release signed at the time the people sign up and pay for the activity. If your activity is free, you can still charge them a penny and refund the charge or in some cases just use the credit card to verify the information.

Have the person complete any information electronically you need: Name, address, email, etc. Have them sign the release (see below). Have them complete their electronic payment by credit card. The credit card name must match the information filled out on the information form. If not, you need to determine how you are going to complete that. If the last names match, spouses then no problem.

If you have the release signed electronically, pull the medical line and experience line out of the release and put them on a separate page or the page you use to collect general information.

☐ By checking this box, you indicate that your family and you have previous CLIMBING experience.

☐ No one in your family or you have any medical condition that would prevent our participation in this CLIMBING except:

_____.

I wear size _____ PFD or helmet, or shoe.

The remaining blank information on the release can then be populated (filled in). There are several services out there you can use if you don't want to charge you for third-party software to sign away the release. I would just do it on your own. It takes your customer to a different website and employees half a dozen steps to sign the release. The courts do not require that, in fact, they never did.

You will need a way to track when someone agrees and electronically signs the release. So, their registration information goes to a database, an email that you can save, or a spreadsheet. It needs to match up with their credit card, name, and the date and time they signed. So, if needed, you can say Name with credit card Number XXXX-XXXX-XXXX-1234 signed the release at 4:53:08 11/1/2023, you will be set. That can be in a

spreadsheet under columns that are created by the software or something that could be printed.

If you match a credit card, then you know it is not a fraudulent transaction. Even if they are not paying for anything, you can still have them put

credit card information in for verification purposes. Unless a parent gives a credit card to a minor to use. Nothing to worry about. The parent is still on the hook.



Your Release Covers Lawsuits by Minors in Seven States

Minors are a problem. Minors cannot sign contracts or releases in 43 states. Washington does not allow a minor to sign a contract. In addition, whenever a minor is injured, several other parties can sue for the damages they suffer because of the minor's injuries. Parents can sue for the injuries they suffer and for the minor's injuries. The minor can sue for the minor's injuries. As in any case where the state or an insurance company is involved, the state or the insurance company can sue.

A release, if signed by the parents, can stop lawsuits by the minors in 7 to 10 states. If you are in a state where a parent cannot sign away a minor's right to sue, the minor should always sign the release for several reasons.

- A. If the minor does not void or disaffirm the release and reaches the age of 18, then the release may be held against him as a valid release.
- B. The release should include a large amount of information about the risks of the activity. If the minor reads and signs the release (and signing it is reading, it as long as the minor can read), and it is evidence in the trial that the minor assumed the risks of the injury they received.
- C. A release signed by the minor and the parents may be enough of a negative incentive to not start a lawsuit.
- D. Most plaintiffs' attorneys do not know that releases are not valid against minors.

Consequently, always have a minor and their parents should sign the release. To support the issue of assumption of the risk, the more information you collect about the minor's experience and education, the more you can prove at trial.

If the minor is below the age of twelve or thirteen, most states say the minor cannot acknowledge the risks at that age. So, make sure the minor is old enough to read and understand the assumption of the risk language.

Who can sue if a minor is injured

If a minor is injured, a parent can sue on behalf of the minor, the minor can sue, and if the minor is a ward of the state, the state can sue to recover for the minor's injuries. In 43+/- states, currently.

Colorado is one of the states that allows a parent to sign away their child's right to sue. [Colorado Revised Statutes §§ 13-22-107.](#)

Arbitration Clauses and Minors

In those states where your options are limited or do not exist for defending a release, the best option is probably requiring the minor's parent or guard to sign a release or assumption of the risk agreement that includes an Arbitration Clause.

The number of states that are enforcing parental signatures on contracts requiring a minor to arbitrate their claims is growing, the majority of states now enforce arbitration clauses in releases. As stated in Arbitration Agreements or Clauses in a Release above, an arbitration clause may not guaranty a win, but it will save time, money and in most states restrict the damages the minor and their parents may receive.

DISCLAIMER

Before implementing any program contained herein, I suggest that you review the program with your risk manager, safety director, insurance company, and legal counsel. Although the programs contained herein have been tested and are instituted by various insurance companies, the ideas themselves may be difficult to implement.

All legal advice by its very nature is subject to change and different state laws. The law varies with each state and federal jurisdiction. All legal advice requires a review by your local attorney. You should have this document checked out by a lawyer licensed to practice in your State and familiar with the laws concerning the activity, program, or adventure you provide.

Finally, act so badly and you will lose. Judges don't like bad people or people who don't do the right thing. If you become an asshole or treat your injured guest and his or her family badly, the judge will find a way to void your release.

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