

Release of Liability Form

A Tool to Reduce the Risk of Claims for Personal Injury or Property Loss



A properly designed release of liability form signed by a volunteer or participant in an activity can reduce liability risks of the organizing or hosting organization.

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Introduction

Placing Risk with the Participant

Accidents happen and, when they do, claims for personal injury or property damage sometimes follow. Defending lawsuits is expensive and time-consuming. The defense may be ultimately successful and covered by insurance, but the costs are ultimately passed on to the insured through higher premiums.

The risk of being held responsible for injuries or property damage associated with organizing volunteer, educational, recreational, and other events and activities (or opening up property for the same) may be avoided or minimized by having those who wish to participate sign a release of liability form.

Release forms have proven to be exceptionally useful tools for protecting organizations sponsoring or hosting recreational and other activities from the potential costs of litigation when accidents occur.

Model Release of Liability Form

The Pennsylvania Land Trust Association developed the [Model Release of Liability Form](#) for *Sponsors* to use to reduce the risks of being sued by an *Activity Participant* (or their parent or guardian). As used in the model and this guide:

- A *Sponsor* may be the organizer or sponsor of the activity or the owner of the land or manager of the facility on which the activity will take place.
- An *Activity Participant* is one who takes the opportunity to participate in a volunteer effort, field trip, event, or other *Activity* made possible by the *Sponsors*.

The [model](#) may be viewed and downloaded at [ConservationTools.org](#). This guide comments on the model's content and provides optional provisions for customizing it.

Three Approaches to Creating a Shield from Liability

The [Model Release of Liability Form](#)¹ incorporates three techniques for dealing with the risks of being sued for personal injury or property damage; each technique shifts the risk of being burdened with the cost of potential injuries and damages from the *Sponsor* to the *Activity Participant*. The model seeks from *Activity Participants*:

1. A covenant not to sue;
2. A release; and
3. An assumption of risk.

I. Covenant Not to Sue

The first risk-shifting technique is to obtain from the *Activity Participant* a waiver of their rights to sue the *Sponsor* for anything that happens while engaging in

the activity. The covenant not to sue is the first line of defense against a claim asserted by the Activity Participant because, if successful, the litigation ends there. There is no need to determine who caused the accident or, if the Sponsor was at fault, whether the Sponsor is shielded from liability by a signed release document or a recreational use statute.

The [Model Release of Liability Form](#) includes a covenant not to sue; however, its effectiveness as a bar to claims for injuries that have not yet occurred is uncertain under Pennsylvania law. Covenants not to sue entered into post-injury are recognized to be effective for that purpose.²

2. Release

The purpose of a release is to absolve the Sponsor from liability for the consequences of their negligent acts. The Sponsor may have failed to meet ordinary standards of reasonable care but, absent a finding that the Sponsor's conduct was more blameworthy than ordinary negligence, the release absolves the Sponsor from responsibility for any harm resulting from its conduct.

The release differs from a covenant not to sue. The releasing party, from the moment the release is signed, permanently relinquishes their legal rights or, in some cases, turns them over to another.³ Parties promising not to sue retain their legal rights but promise not to use them in the future.

Release Effective in Pennsylvania

As a general rule, releases of liability for negligence in a recreational setting are valid and enforceable in Pennsylvania.⁴ The "Legal Considerations" section of this guide discusses exceptions and limitations from this general rule, but the good news for Sponsors is that it is well worth their effort to obtain signed release documents from Activity Participants.

Scope of Release; Activity Description

Clarity is the key to an effective release of liability form. The terms of the release form only apply to the Activity as defined in the signed document; thus, that definition must be worded with care so as to be both clear and inclusive of all elements of the Activity. Reference to an Activity as named on the Sponsor's website or announced in a publication of Sponsor may

serve as a brief, but clear, identification. A Sponsor may take this further, providing in the release form a reference to a specific description contained at a website or in a brochure that provides greater detail about the Activity, including features, such as transportation provided by the Sponsor, which may not otherwise be clearly included in the Activity. Examples:

- "Fall tree planting work party at Woodlands Preserve"
- "Horseshoe Trail hiking opportunities described at [www._____.org](#)"
- "Field Trip B (Birding Adventure) described in the Sponsor's 2020 conference information"

The [Model Release of Liability Form](#) provides a space where users insert a description of their Activity.

3. Assumption of Risk

A release of liability form is strengthened when the Activity Participants admit that they knowingly and voluntarily chose to sign the document⁵ and accept the risks of participation in the Activity. The [Model Release of Liability Form](#) includes several provisions evidencing the Activity Participant's assumption of risk.

Voluntary Participation

Activity Participants may seek to defeat a signed release document by claiming that it was not voluntary—the terms were forced upon them (a [contract of adhesion](#)). That strategy does not work in Pennsylvania even if the release form is non-negotiable. The Sponsor may insist that its terms must be accepted as a condition to participation in the Activity. The Activity Participants can then decide whether to participate or not but, if they do, they have accepted the release form as-is and cannot void it by claiming it is a contract of adhesion.

Knowing Election to Assume Risks

Release forms may not be effective if it is found that the Activity Participants did not knowingly give up their legal rights, either because they did not appreciate the inherent dangers of the activity or they did not understand the terms of the release.

The plain language of the model is intended to be clear and easily understood by a person of ordinary

intelligence and education. It includes several provisions highlighting the inherently dangerous nature of the activity and the need for Activity Participants to take responsibility for their own safety. The model may, if desired, be customized to reflect the dangers of a specific activity; for example, a snowmobiling club may add examples of dangers inherent in that activity.

Other Terms Included in the Model

The [Model Release of Liability Form](#) also includes the following provisions:

- **Emergency First Aid and Medical Care.** The model shields the Sponsor from liability for rendering first aid or other medical assistance if the Activity Participant is unable to do so.
- **Loss of or Damage to Belongings.** The model shields the Sponsor from liability for loss of or damage to personal property during the activity including associated transportation and storage of the property.
- **Photos and Videos.** Sponsors often take photos and videos of Activities and publish them through social media, websites, and other media. To assure that Activity Participants have no objection to Sponsor’s use of their images, the model provides authorization to the Sponsor to take and use photos, videos, and the like.

Terms That Could Be Added

Brevity is an important feature for a release of liability form. A court is not likely to find credible an assertion that the Activity Participant lacked sufficient opportunity to read and understand a one-page document, and the [Model Release of Liability Form](#) was prepared with this in mind. Nevertheless, Sponsors may want to consider customizing the model with additional contract terms, including some of the following items, depending on the circumstances.

Unlimited Duration

A signed release document is limited in time to the duration of the described Activity. As to a one-day field trip or a two-week hike, the duration is clear. As to an Activity that the Activity Participant may engage

in any number of times over an unspecified period of time, a clarification of the unlimited duration of the release may be a desirable addition. For example, a hiking club might require its members to sign release forms that describe the Activity as “all hikes, trail maintenance, and other activities organized or sponsored by the club.” A term, such as the following, could also be included in the forms:

I understand that the terms of this form are unlimited in duration and cover all Activities that I participate in at any time in the future.

Choice of Forum

Some Sponsors may want assurance that any litigation will take place in a certain court or the county in which the Sponsor is located for convenience, cost saving, and, perhaps, strategic purposes.⁶ The following provision may be added to the [Model Release of Liability Form](#) for that purpose:

I agree that the only courts to decide any matter covered by this contract are the Court of Common Pleas of ____ County, or the United States District Court for the ____ District of Pennsylvania.

Charge

The liability protections for landowners provided by Pennsylvania’s Recreational Use of Land and Water Act may not be available if there is a charge for entering the property. (See the [Guide to Pennsylvania’s Recreational Use of Land and Water Act](#) for descriptions of allowable charges and both the guide and the “Recreational Use of Land and Water Act” subsection below for more information.) If applicable, the following provision could be added to the release form to address possible ambiguity and reinforce the statute’s protections:

I WILL NOT CLAIM that I paid a charge for participating in the Activity or entering the Property.

Legal Considerations

Enforceability of Risk Shifting by Contract

Risk-shifting contract provisions are legally valid in Pennsylvania if three conditions are met:⁷

- The clause must not contravene public policy.

- The contract must be between persons⁸ concerning their private affairs⁹.
- Each party must be a free bargaining agent so that the contract is not one of adhesion.

Even if the clause meets the three requirements for validity, it may still be unenforceable unless the language is clear that a party is being relieved of liability for the party's own acts of negligence.¹⁰

Public Policy Exception

As a matter of public policy, Pennsylvania courts will uphold a pre-injury release of liability applicable to negligent conduct¹¹ but will not enforce such a contract as applied to reckless or intentional conduct.¹² It is unclear whether a properly worded release is effective for claims of gross negligence.¹³

Neither this guide nor the [Model Release of Liability Form](#) attempts to untangle the myriad of fact patterns and court decisions to explain what acts do or do not constitute gross negligence and whether those acts ought to be excluded on public policy grounds from a pre-injury release. By its terms, the model applies to conduct which, under Pennsylvania law, may be the subject of a pre-injury release. The model is drafted so that gross negligence may or may not be included in that conduct depending upon future court decisions.¹⁴

Free Bargaining Agent

As discussed above, the terms of a release form may be non-negotiable. Activity Participants are, nevertheless, free bargaining agents if, having the opportunity to read and understand the release form, they choose to participate in the Activity.¹⁵

Clear Language

The language of the risk-shifting document must be clear to be effective. In particular, drafters must pay particular attention to the following:

- **The fact that the signer is entering into a contract.** The model includes the following caption to drive this point home: "This is a Contract. Read It!"
- **The kinds of conduct included in the release.** For example: the model includes "negligence or other conduct on the part of Sponsor for which a release is not contrary to public policy."¹⁶

- **Those entitled to the benefit of the release.** For example, "ABC Trail Conservancy, its members, officers, directors, agents, servants, and employees." The model also includes the landowners if not otherwise included as a named Sponsor.

Releases Signed by or on Behalf of Minors

In Pennsylvania, there is little benefit to obtaining a release from a minor (in Pennsylvania, a person under the age of 18). However, a release signed by the minor's parent or guardian may be worthwhile.

Release by Minor Is Ineffective

A contract made by a minor is voidable at the minor's discretion, meaning that the contract is valid and enforceable until the minor takes some affirmative act to disavow the contract. Courts that have addressed the issue of whether or not a release is effective for the claim of a minor have held that it is not.¹⁷

Release by a Parent or Guardian for a Minor May Be Worthwhile

In the absence of a release, if the parents or guardians pay a minor's medical expenses stemming from an Activity, they can assert a claim for reimbursement from the Sponsor. Their right to make such a claim may be given up with a release.¹⁸

If the parents or guardians have signed a release form for a minor, the parents or guardians have given up *their right* to sue on the minor's behalf; however, a parent or guardian does not have the legal capacity to give up the *minor's right*; once the minor turns 18, the person can sue on account of the injury even if the suit would otherwise have been time barred.¹⁹

Recreational Use of Land and Water Act

The [Guide to Pennsylvania's Recreational Use of Land and Water Act](#) describes at length the protection available to those who make their land available to the public for recreational use under Pennsylvania's Recreational Use of Land and Water Act ("RULWA"). Releases can furnish protection from liability beyond the scope of RULWA.

Who Is Protected?

RULWA only protects landowners and others having an interest in or control over the property. The term *Sponsor* (as defined in the [Model Release of Liability](#)

[Form](#)) covers a broader range of persons involved in arranging and supporting the Activity who may have no interest at all in the land or control over its condition.

Free of Charge

RULWA protection may not apply if a fee is charged for access; however, it is not always clear how that rule applies to particular situations. For example, are the owners of land that is made available for a field trip protected if the Activity Participants make a payment to the Sponsor to reimburse travel and other expenses of a field trip? The [Model Release of Liability Form](#) will apply whether or not a payment of any kind is received by the landowners or other Sponsor.

Improved or Not

Some courts have interpreted RULWA as not applicable to injuries resulting from unsafe conditions *within improvements or on or near improved areas*, for example, within a building or on a basketball court. The [Model Release of Liability Form](#) affords protection whether or not the Activity includes the use of improvements or occurs on or about improved land.

Scope of Protection

The Activity described in the release form may include off-site travel included in the Activity; for example, an Activity described as “visit to Hawk Mountain including bus trip.” RULWA only provides protection for claims associated with entry onto the property.

Different Standards of Protection

RULWA protection applies unless the landowners *willfully or maliciously* fail to warn of dangerous conditions. A signed release document will not protect persons who engaged in *reckless or intentional* conduct; and, as discussed earlier, may or may not apply to grossly negligent conduct.

RULWA’s *willful or malicious* language is not synonymous with the terms *reckless, intentional, or grossly negligent*, but an explanation of the differences is beyond the scope of this guide. The important point here is this: if the incident is at least arguably covered by RULWA, the protection of that statute should be raised as a defense in addition to the protections offered by the release form. Conduct (perhaps gross

negligence), if excluded by law from the protections of a signed release document, may be covered under RULWA.

Guides to Reducing and Managing Risk

The Pennsylvania Land Trust Association developed this guide and several others to introduce organizations to tools and strategies for reducing and managing risks of claims of personal injury and property loss:

- [Reducing Liability Associated With Public Access](#) suggests ways to minimize and insure against liability risks.
- [Indemnity Agreements and Liability Insurance](#) explains how an indemnity agreement operates to allocate, between the parties to the agreement, the risks of defending and paying claims asserted by others (who aren’t parties to the agreement).
- The two-page [Overview of Pennsylvania’s Recreational Use of Land and Water Act](#) provides a concise, easy-to-consume overview of the landowner protections provided by the statute.
- The five-page [Guide to Pennsylvania’s Recreational Use of Land and Water Act: A Law Limiting the Liability of Those Who Open Their Land to the Public](#) looks in more detail at the protections provided by the statute and describes relevant case law.

The most recent version of this guide and related resources can be found at <https://conservationtools.org/guides/130>

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¹ The form may be named a “release” or a “waiver” or a “release and waiver.” The [Model Release of Liability Form](#) contains both waivers of the Activity Participant’s legal rights (such as the right to sue) and releases absolving the Sponsor from potential liability. These types of forms tend to be called releases in Pennsylvania; thus, the model uses that name.

² A post-injury covenant not to sue is sometimes used as an alternative to a release in cases where a release of one person partly responsible for an accident may unintentionally release another. Example:

The bus carrying Activity Participants to a field trip destination is involved in an accident and injuries are sustained. An Activity Participant is only interested in pursuing recovery against the bus company (not the Sponsor), but counsel raises a concern that if the Activity Participant signs a release applicable to the Sponsor, the bus company may argue that the release operates to its benefit as well. Instead, counsel suggests a covenant not to sue as a preferred alternative when a release may have undesirable consequences.

³ A release may operate to transfer the rights of one party to the other to use. See, for example, the provision for use of images in the “Other Terms Included in the Model” section of this guide.

⁴ *Chepkevich v. Hidden Valley Resort L.P.*, 607 Pa. 1, 2 A.3rd 1174 (Pa. 2010) (referred to as “Chepkevich”); *Tayar v. Camelback Ski Corporation*, 47 A.3rd 1190 (Pa 2012) (referred to as “Tayar”).

⁵⁵ While a signed release document is *highly* desirable, it is not strictly necessary if a contract may be implied from the facts; for example, a sign at the entry to a trail stating that:

This is a natural area and is not inspected or maintained for public safety. If you choose to enter, you assume all risk of injury and release anyone holding an interest in the area from all liability for your injury.

A court may find that the sign constituted an offer to allow entry on certain terms (assumption of risk and release of liability); the offer stipulated that entry constituted acceptance of those terms; thus, the offer was accepted and a binding contract formed by the *act* of entry regardless of whether a document was signed.

⁶ For example, a Sponsor located in a rural, undeveloped county may believe that local residents are more likely to appreciate the inherent dangers of accessing wild lands. By choosing its own county as the forum for litigation, the Sponsor eliminates other more urbanized and developed counties as potential sites for the court case.

⁷ *Tayar*.

⁸ A *person* may be an individual or a legal entity such as a corporation.

⁹ The term *private affairs* presumably excludes governmental action as the subject of a release governed by the rules developed by Pennsylvania courts. As explained in the guide [Reducing Liability Associated With Public Access](#), municipalities and other governmental entities are afforded statutory protections under Pennsylvania law.

¹⁰ Green, Nancy, “Drafting Exculpatory Releases after Chepkevich and *Tayar*”, *The Legal Intelligencer*, July 26, 2013. As discussed in the “Legal Considerations” section, clarity of language is a key element to craft a legal, binding, and enforceable release document.

¹¹ *Tayar*.

¹² *Tayar*.

¹³ Emory, Hugh, “[Releases of Liability are Better Than You May Think](#),” *Cipriani & Werner, P.C. Journal*, (referred to as “Emory”). The author comments that “[t]he language of the majority opinion [in *Tayar*] arguably supports the position that gross negligence, as being a type of negligence, would be covered, whereas recklessness, which is more akin to intentional conduct, is not covered.”

¹⁴ A Sponsor may narrow the coverage provided by the default provision in the [Model Release of Liability Form](#) to

exclude gross negligence but, before doing so, the Sponsor should consult with counsel and consider whether it may be more prudent to defer, until the facts surrounding a specific occurrence of alleged gross negligence are known, the decision of whether to offer compensation to the claimant.

¹⁵ In *Chepkovich*, a release included in a non-negotiable Season Pass Agreement for access to a ski area was held to be effective and barred all of the injured skiers claims against the ski area.

¹⁶ Emory.

¹⁷ Emory.

¹⁸ Parents or guardians can give up their own rights to reimbursement but, if expenses were paid by Medicaid, the Commonwealth of Pennsylvania Department of Public Welfare has its own right to reimbursement unaffected by the parents' or guardians' release.

¹⁹ In 1996 in Michigan a 10-year-old girl was injured when another child jumped into a swimming pool on top of her. The mother agreed not to sue in exchange for a \$3,275 settlement with the YMCA where the injury occurred. However, when the girl turned 18, she filed a lawsuit against the YMCA. The court ruled that the parent "had no authority, merely by virtue of being a parent, to waive, release or compromise claims by or against the parent's child." In other words, the mother did not have the legal authority to sign away the child's rights, and the YMCA was still liable for the negligent act. Eric Eilerman and Dr. Peter Titlebaum, "[Understanding Liability Waivers](#)," *Recreation Management*, viewed at http://www.recmanagement.com/feature_print.php?fid=200908gc01 on 11/18/2013.