

The Ins and Outs of “Releases” in Washington

We’re asked to sign releases all the time.

Sometimes we’re not even asked to sign—they’re just embedded in our transactions. (Like when we buy lift tickets to go skiing.)

The Deterrent Effect of Releases

People fall into two categories. Either they assume that releases are iron-clad or they forget that they signed releases.

The people who assume they’re iron-clad don’t pursue claims. That (false) belief is the biggest benefit to the businesses that make customers sign them.

But, in reality, releases are paper tigers.



Releases in Premises Cases

Releases are most common in premises liability cases. For instance, someone gets hurt at the gym. It’s likely that they signed a release that says the gym is not liable if they get hurt even if it’s because of the gym’s negligence.

It’s true that releases can validly eliminate negligence claims. ***But what they can’t do is eliminate claims based on gross negligence.***

What is gross negligence? Here’s the definition provided by Washington courts:

Gross negligence is the failure to exercise slight care. It is negligence that is substantially greater than ordinary negligence. Failure to exercise slight care does not mean

the total absence of care but care substantially less than ordinary care.

In order to pursue a claim—even though there’s a release—all you have to do is establish the business was sloppy in terms of identifying, warning, guarding against and/or eliminating the hazard.

(Releases can also be challenged based on a theory called “unconscionability.” But these challenges—usually based on the typographical point and font used in the agreement (containing the release)—are usually unsuccessful.)

Releases in Cases Involving Kids

A lot of places require parents to sign. This ties directly back into the “deterrent effect.” Because in Washington parents cannot release their kids’ claims.

Releases and Motorcycle Rides—Inadvertent Consequences

Clubs like to organize events. Poker runs are a favorite.

Well-meaning organizers cut and paste releases from forms found on the Internet.

Not only can these releases affect claims against organizers, they can also impact claims by one participant against another or even claims made under riders’ own insurance policies.

We have a template for motorcycle runs. It protects organizers but allows participants to pursue claims against other people who cause them harm. If you’re interested, let us know and we’ll send it to you.



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