

RCABC Waiver Guidelines

The Importance of the Waiver

A waiver of liability is a contract where by the person signing the document is agreeing that they will not hold liable the parties listed in the document, even if they were negligent. This is important as the courts do not like such absolute terms. As a result, the wording, presentation and delivery of a waiver of liability must follow strict protocols, otherwise the courts may rule the release to be void.

The reason that waivers of liability are important to instructors and guides, is that they offer a significant degree of legal protection should a civil legal action happen as a result of an incident. They also act to inform the person that is signing them that there are risks involved with the activity they are doing. By signing the waiver of liability, a person is assuming personal responsibility for these risks.

It goes without saying that always adhering to “the best industry practices”, as outlined in the current RCABC manual, is the best way to avoid an incident, accident or injury. However, if something does happen and a lawsuit is initiated, the waiver of liability could absolve and instructor or guide of legal liability. Therefore, it is so important to administer them with care and thoroughness.

Administering the Waiver of Liability

To ensure that the RCABC waiver can hold up under legal scrutiny, here are some guidelines to help you:

1. **VERY IMPORTANT!** When you administer the waiver, it is vital that they know and understand what they are signing. The best way to convey this is to simply read the top box of the waiver to them. Your introduction should sound like this: “This is a release of liability, waiver of claims and an assumption of risks and indemnity agreement. By signing the document, you will waive or give up certain rights, including your right to sue or claim compensation following and accident. Please read it carefully.”
2. If you have another way of delivering the waiver verbally it is recommended that you record it on paper and always use the same wording, just like a police officer would do when reading a person their rights when they are being arrested.
3. Administer the waiver as early as you can in the process. This means before an activity is started and preferably before a financial transaction has taken place. One reason that waivers have been ruled void is when people feel they were forced to sign them without an alternative or a way to opt out of the activity.
4. Give people time and space to read the document. This means that they are free of distractions such as engaging in conversations, watching presentations or asking them questions while they are reading the waiver. It is important that people be given time to understand what they are signing.
5. If you are administering the waiver electronically, try to get a hard paper copy as well. The legal community is split on the validity of electronic waivers. One issue is that you don't have

proof of who may have signed the waiver, so it is advisable that you have your clients sign a paper copy as well.

After a waiver is signed, ask the person who has signed:

- Have you read the waiver?
- Do you understand the waiver?
- Do you have any questions?

Things to be aware of:

- A new waiver must be signed at the start of each even or course, regardless of whether a person has previously signed an RCABC waiver either recently or in the past.
- Waivers should be signed with either blue or black ball point pen (this means no pencils, felt pens or sharpies).
- If someone crosses out anything on the waiver, makes marks or adds language to the waiver they must sign a new one. The document must remain unaltered except for the sections of the document that are to be filled out as indicated.
- If a person says they cannot read the waiver for any reason, offer to read it to them.
- Avoid interpreting or summarizing the document in your own words. Instead, use the text and language that is provided in the document.
- A waiver can be ruled invalid if the person who was signing it was intoxicated or under the influence of drugs or alcohol at the time they signed it.
- A parent or guardian should sign a waiver of liability on behalf of each of their children that are eighteen or under in age.
- Each person involved in a course or activity must sign their own waiver as you cannot waive the legal rights of another person. This means a wife or husband cannot sign on behalf of their spouse or partner or vice versa.
- If a participant refuses to sign the RCABC waiver of liability, they are ineligible to participate in any RCABC courses or events. No exceptions.

All waivers need to be held for a period of seven years. Waivers should be kept with the course or event registration forms as these forms indicate the course or event dates, location, clarify which course or event the participant was participating in when they signed the waiver, their address, age, ability as indicated and their medical history.

If an accident does occur:

- Record as many details as early in the process as possible including times, what was said, what happened, actions taken and witness statements and information. It is important to record if a person has refused help or to seek medical advice.
- Fill out the RCABC accident form: <https://bccanoe.com/members-2/insurance-docs/accident-report-form/file>. You will also need to contact the RCABC Instructor Coordinator and President as soon as possible.