

# Ask an Attorney: The Dangers of Waivers and Releases

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Make sure you read and understand release/waiver forms you sign in exchange for payment. Some contractors mistakenly believe these forms are harmless documents. These forms are often called Waiver of Liens or Release of Liens & Claims (or something like that), and they often contain complex legalese. Contractors should understand that signing these release/waiver forms can waive all claims that arose before the date of the release. Even pending change order proposals can be inadvertently waived.

Review the contract beforehand to see if it requires a release or waiver in exchange for payment. If so, get a copy and determine if the effect is that all claims arising before the date of the release/waiver form are released/waived. Ask for language to be added to the form that allows you to identify claims that you do not want to waive. G.R. Sponaugle got burned by releases about 10 years ago on the Giant Center Project. It signed 20 waivers with its monthly pay apps without listing its claims for additional labor costs. The court threw out most of Sponaugle's claim determining that Sponaugle waived the claim because it did not identify the claim in the space where claims not intended to be waived had to be listed. The form said that the contractor waived all claims that arose before the date of the waiver form except those listed. Sponaugle argued unsuccessfully that the waiver was just a routine "form" document and that it had multiple meetings with the GC to discuss the claims, which showed that the GC knew the claim was not waived. The court didn't care – it ruled that the release form was to be interpreted like a contract and since Sponaugle signed 20 releases without reserving the claim, it was waived.

If the release/waiver form does not have a space where you can reserve or exempt claims, ask the customer to revise the form to include one. If the customer refuses, you should still attempt to reserve or exempt the claims by identifying the claims that you don't intend to waive. A handwritten or typed description of the claim in the margin or at the bottom with a statement that the claim(s) is not released or waived will likely be sufficient. Even if the form doesn't have a place to list claims that you don't intend to waive, you should still identify claims that you do not want to waive anyway stating that you do not intend to waive them. This is called exempting or reserving claims. If Sponaugle had followed this advice and had exempted or reserved its claim, it would not have been thrown out.

If the customer refuses to allow you to reserve or exempt claims on the release and refuses payment unless you withdraw your attempt to reserve a claim, we recommend you comply with the demand to obtain the payment. However, write a contemporaneous letter making it very clear that you are removing the reservation language purely because the customer refuses to make payment otherwise. The best approach is to address the form of the release at the contract negotiation stage and to make sure the form gives you the right to reserve or exempt claims. Don't assume these forms aren't significant. Contact your lawyer if you have any concerns.