



MUTUAL RESCISSION AND RELEASE AGREEMENT & GUIDE

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Sample Mutual Rescission and Release Agreement

1. Overview

When both parties want to invalidate an agreement that neither has fulfilled completely, and to release all of their related obligations and rights under that agreement, they may use a rescission to meet these objectives. If one or both parties have completed key tasks required of them under the agreement, a different remedy is generally required (often a claim for restitution). Rescission “turns back the clock” and puts each party back in the position they held before the agreement became effective. It is, as some courts have said, the un-making of a contract.

A well-drafted rescission and release agreement is the definitive end of the parties’ commitments, and can help prevent future misunderstandings and disputes. While no document can insulate you from later lawsuits or claims, a clear rescission form can strengthen your defense if such claims arise.

Note that a rescission is not an end in itself: it may open avenues of discussion with the other party that might otherwise have been closed. You can review your mutual expectations and concerns, perhaps even laying the groundwork for future agreements and interactions. An assessment of why the existing agreement was unworkable can afford you both a better understanding of what should be expected in the future.

2. Dos & Don’ts Checklist

- ☐ Before signing the rescission, make sure this is the right document for your situation. A rescission assumes that neither you nor the other party has completed your obligations under the agreement. Talk with the other party and confirm that they have not fulfilled all of their commitments.
- ☐ It is important that most (if not all) of the major contract steps have not been taken if you are intending to complete a rescission. However, this does not necessarily mean that no steps can have been taken. Rather, any actions that have been taken can’t be “material” (in other words, central) to the agreement.
- ☐ If one of the parties has fulfilled their obligations under the contract, that agreement cannot be rescinded using the enclosed document. Additional steps must be taken to make sure that the party that has completed its obligations receives some reciprocal benefit for that work.
- ☐ Allow each party to spend some time reviewing the rescission together with the original agreement. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any new terms or how it might affect their rights and duties.
- ☐ Sign two copies of the rescission, one for you and one for the other party.
- ☐ Keep your copy of the signed rescission with the original agreement. Once the rescission has been drafted and signed, it is the concluding part of the original agreement and should be treated accordingly.
- ☐ Depending on the nature of its terms, you may decide to have your rescission witnessed or notarized. This will limit later challenges to the validity of a party’s signature.

- ☐ The enclosed form contemplates a rescission based on the parties' explicit agreement. If either you or the other party is pursuing a rescission based on claims of fraud, misrepresentation, or other fault, you should not use this document.
- ☐ If the original agreement or the terms of your rescission are complicated, do not use the enclosed form. Contact an attorney to help you draft a document that will meet your specific needs.

3. Mutual Rescission and Release Instructions

The following provision-by-provision instructions will help you understand the terms of your mutual rescission and release agreement.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the agreement. Please review the document in its entirety before starting the step-by-step process.

- **Introduction.** Identifies the document as the rescission of an existing agreement. Write in the parties and the date on which you want the rescission to be effective. The parties must be the same as those who signed the original agreement (unless the new signer is an agent of the same company that originally signed) and should have the same designations as well.
- **Recitals.** Identifies the existing agreement that's being modified and explains your interest in voiding the agreement. Put in the effective date of the original agreement. Note that the paragraph requires you to attach a signed copy of the original agreement as an exhibit to this document.
- **Section 1: Rescission.** Explains that both parties want to rescind the agreement.
- **Section 2: Mutual Release of Liability.** Discharges both parties of any liabilities that could arise from the original agreement. In other words, you both agree that you will not sue the other party for some unfinished obligation or fees. This section has the biggest impact: you are eliminating your ability to claim that you are still owed something under the original agreement (and the same is true of the other party with respect to your obligations). Unfortunately, the inclusion of this provision will not prevent a party from arguing that enforceable promises still exist, but it will provide you some protection from these claims.
- **Section 3: Confidential Information (Optional).** This serves largely as a reminder to the parties that confidential information must remain confidential, even after the rescission is effective. Review this section closely to make sure it provides sufficient security for your company and its proprietary information. If you remove this section, correct the section numbers and references in the agreement.
- **Section 4: Non-Disparagement (Optional).** This reflects the parties' agreement that neither will say or do anything to damage the other's commercial reputation. If you remove this section, correct the section numbers and references in the agreement.
- **Section 5: Covenant Not To Sue.** Promises that neither party will initiate or help others to initiate a lawsuit against the other based on claims specifically released by the rescission. Again, the inclusion of this provision will not prevent all such lawsuits, but it will provide you some protection from those filings.

- **Section 6: Governing Law.** Your original agreement probably includes a choice-of-law provision that governs what laws will be used to interpret it. If it does not, this section allows the parties to choose those laws. Note that this is not a venue provision: the included language will not impact where a potential claim can be brought.
- **Section 7: No Assignment.** Promises that neither party has transferred or promised to transfer any of the rights or obligations under the original agreement.
- **Section 8: Counterparts/Electronic Signatures.** The title of this provision sounds complicated, but it is simple to explain: it says that even if the parties sign the rescission in different locations, or use electronic devices to transmit signatures (e.g., fax machines or computers), all of the separate pieces will be considered part of the same document. In a modern world where signing parties are often not in the same city - much less the same room - this provision ensures that business can be transacted efficiently, without sacrificing the validity of the rescission.
- **Section 9: Severability.** Protects the terms of the rescission as a whole, even if one part is later invalidated.
- **Section 10: Entire Agreement.** The parties' agreement that the rescission they're signing (when taken together with the original agreement) is "the agreement" about the issues involved. Unfortunately, the inclusion of this provision will not prevent a party from arguing that other enforceable promises exist, but it will provide you some protection from these claims.
- **Section 11: Authority.** A promise that the parties signing the rescission have the right and power to do so.
- **Section 12: Headings.** Notes that the headings at the beginning of each section are meant to organize the document, and should not be considered operational parts of the agreement.

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MUTUAL RESCISSION AND RELEASE AGREEMENT

This mutual rescission and release agreement (the "Rescission") is entered into as of _____, 200_, (the "Rescission Date") by and between _____ ("Party One") and _____ ("Party Two") (collectively the "Parties").

RECITALS

WHEREAS, Party One and Party Two are parties to that certain agreement dated as of _____, 20__ (the "Agreement"), a copy of which is attached as Exhibit A hereto and made a part hereof by reference; and

WHEREAS, the Parties acknowledge that neither Party concluded its duties or obligations pursuant to all of the necessary terms and conditions set forth in the Agreement; and

WHEREAS, the Parties have determined that it is in their best interest to formalize the voiding of the Agreement by mutually rescinding the Agreement as of the Rescission Date and thereby returning the Parties to their respective positions before the Agreement's effective date;

NOW THEREFORE, in consideration of the above recitals and the mutual benefits contained herein, the Parties hereby agree as follows:

1. RESCISSION.

The Agreement is hereby rescinded and the Parties are released from all obligations under the Agreement.