

CHAPTER 9-13

RELEASE AND SUBSTITUTIONS OF OBLIGATION

9-13-01. Extinction of obligation by release. An obligation is extinguished by a release therefrom given to the debtor by the creditor upon a new consideration, or if the release is in writing, with or without a new consideration.

9-13-02. Extension to known claims. A general release does not extend to claims which the creditor does not know or suspect to exist in the creditor's favor at the time of executing the release, which if known by the creditor, must have materially affected the creditor's settlement with the debtor.

9-13-03. Joint debtors - Effecting release. A release of one of two or more joint debtors does not extinguish the obligations of any of the others unless they are mere guarantors. Such release does not affect the right of the joint debtors to contribution from the party so released.

9-13-04. Accord defined. An accord is an agreement to accept in extinction of an obligation something different from or less than that to which the person agreeing to accept is entitled.

9-13-05. Satisfaction defined. Acceptance by the creditor of the consideration of an accord extinguishes the obligation and is called satisfaction.

9-13-06. Only full execution of accord extinguishes obligation. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is executed fully.

9-13-07. Part performance accepted in writing extinguishes obligation. Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

9-13-08. Novation defined. Novation is the substitution of a new obligation for an existing one.

9-13-09. Novation - Created by contract. Novation is made by contract and is subject to all the rules concerning contracts in general.

9-13-10. How novation made. Novation is made by the substitution of:

1. A new obligation between the same parties with intent to extinguish the old obligation;
2. A new debtor in the place of the old one with intent to release the latter; or
3. A new creditor in place of the old one with intent to transfer the rights of the latter to the former.

9-13-11. Rescinding acceptance. When the obligation of a third person or an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if:

1. The debtor prevents such person from complying with the order or from fulfilling the obligation;
2. At the time the obligation or order is received, such person is insolvent and this fact is unknown to the creditor; or

3. Before the creditor with reasonable diligence can present the order to the person upon whom it is given, that person becomes insolvent.