

From the Desk of:
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Questions Re: Agent Agreements

Our office has received several inquiries about new contract requirements being required by several of their clients. It is of course up to you as a business owner and service provider to determine if you can fully comply with the requirements set forth in any agreement and you are encouraged to have your own legal counsel review the document if you have specific concerns. We are going to provide the questions sent to us so far and our answers below:

1. If I sign a contract saying I agree I'm liable for any excess costs incurred by my client, will insurance cover it?

Not necessarily. What insurance will cover is determined by the terms and conditions in the insurance policy. What is covered by insurance is not dictated by what you agree to when signing a contract. You need to be extremely careful when signing any agreement that obligates you to pay for any and/or all costs incurred by your client or your client's client as a result of any action. Some of these costs/fees may not be insurable losses and could obligate you to expensive "out of your own pocket" legal fees and other expenses.

2. Should I sign an agreement if it says a third party or their authorized party may enter my lot at any time?

As a result of some repossessioners holding cars for payment, some client agreements are beginning to include sections where you authorize the client or their authorized party to enter any and all of your property for the purpose of recovering the client's property stored on your lot. Due to premise liability concerns and the possibility of damage and/or unauthorized access to other clients' vehicles, we do not recommend allowing anyone on your lot except for your employees. Giving anyone else access to your lot could result in other property being damaged or left unsecured or could open you up to liability if a person other than an employee were to be injured on your lot. Some agreements also have indemnification clauses where you are holding the client and/or their authorized party from any and all claims resulting from entry to your lot. (So if they come on your lot and damage another client's vehicle, you have agreed here to hold them harmless from that claim and you will be assuming the responsibility for those damages.)

3. Do I have to perform criminal background checks on all my employees?

While it may be a good idea to do your due diligence and it is becoming a more common request of clients, if you do perform background checks you need to be certain to have the employee or potential employees permission in writing to obtain the information and then his/her permission to later release that information if requested. You also need to make sure you are following your state's laws regarding obtaining, using, storing and safeguarding employee personal information. You should also review any agreement you sign to see if you are in fact obligating yourself to perform this task. Having this information could pose some potential privacy disclosure issues if you would be providing your employees' private, personal identifiable information to a 3rd party. You should also make sure any personal information given to a 3rd party is protected by the 3rd party by an insurance policy. You may also be allowing the client to dictate which employees can perform the client's work and which cannot.

4. Can I be held responsible for costs and fees if my client settles a claim without my insurance carrier's input?

Some agreements require the Contractor to agree to **promptly and fully reimburse the client or their client's client for any cost or expense incurred by the client** to the extent such cost or expense arises out of, relates to or is in connection with any damage to the Property... This could mean that the client settles a debtor's claim for damage to the vehicle or personal property regardless if you are at fault and you have agreed to reimburse them in full for whatever amount, including legal expenses. Depending on the claim, it is not unheard of to see these legal expenses to reach in excess of \$50,000 or \$100,000. This huge legal expenses are why you see insurance companies sometime settle claims for significantly smaller amounts.

5. Does RSIG provide 30 days notice of cancellation?

We strive to provide 30 day notice of cancellation except in cases of non-renewal, non-payment or if a member terminates his/her membership. In cases of non-payment and non-renewal, we follow individual state requirements as outlined by the insurance laws in each state.

6. Are tow trucks covered by my RSIG policy and are they listed on the wrongful repossession endorsement?

These are two different coverage types; wrongful repossession is a general liability coverage and tow trucks are an owned auto coverage. A wrongful repossession endorsement **does not extend coverage to tow trucks or to any other property owned by the Contractor's company**. Tow trucks are to be scheduled on your owned auto/tow truck policy and evidenced on a separate certificate of insurance.

7. My client is requiring that the insurance agent provide written confirmation that the insurance policies provided are written in accordance with the prior sections of the contract. Will an insurance agent provide this?

Insurance agents are not lawyers and should not be held accountable for ensuring their insured's are honoring all obligations in a service agreement/contract. Most insurance policies are standard forms, changed with specific endorsements, the insurance agent does not have the ability to write specific language that obligates the insurance carrier to every client's requirements. No insurance carrier that I am aware of or agent that I know (because of E&O concerns) can provide written confirmation that the contractor will abide by all the terms of their written contract, including sections requiring the contractor to fully reimburse the client for costs they pay out to settle any claim for damage. The insurance company has no way of knowing if the contractor will honor that obligation or not. An insurance policy is a transfer of risk from one entity to another. The insurance company has the right and duty to respond to claims covered by the insurance policy and does not agree to fully reimburse anyone for claims they did not have an opportunity to adjust. Due to E&O concerns, an insurance agent is not going to confirm an insured is adhering to any specific or all of their client's requests. The insurance agent is not involved in the insured's day to day operations.

8. Am I allowed to give one client access to all of my records if required by an audit?

Many lenders are requiring audits of their contractors. Some agreements are requiring you to give the client access to all of your records during an audit. – Providing a client access to ALL of your records exposes you to potential disclosure concerns as well as giving the client, forwarder, or 3rd party access to unrelated debtor information or your other client data. Many agreements are also allowing the client to charge you a fee for this audit without limiting the frequency they can chose to audit your office.

9. Am I covered if I subcontract an account to an independent contractor?

You should note that most agreements prohibit subcontracting or assignment of duties without the written consent of the client. In the event that you are allowed to subcontract the account, you may

also be agreeing that you will be responsible for the actions of the subcontractor as if you did the work yourself. As with every other policy that we are familiar with, your policy with RSIG does not provide subcontractor liability coverage. Our policy does provide \$125,000 of physical damage coverage for the repossessed vehicle while in the subcontractor's control, but if the subcontractor allegedly injures the debtor, causes a breach of peace or wrongful repossession there is no coverage for the actions of the subcontractor.

10. Are Service Level Expectations considered part of my contract?

We believe it would be the intent of any client to incorporate their specific expectations, fee schedules, additional forms, etc. into their contracts. You will also want to make careful note of any Service Level Expectations where you agree to specific timing of acknowledgement and updates, providing indoor storage for all recreational vehicles, fees to be assessed for failure to perform certain duties and fees assessed for a wrongful repossession. These fees are not considered insurable losses.

We also know that times are tough and money is tight. Please pay particular attention to any fees associated with receiving expedited or electronic payments to see what type of an impact this may have on your business and bottom line.

As always, it is ultimately your business decision on whether or not to sign any specific agreement. And if you have specific questions you are encouraged to reach out to your own legal counsel for their legal advice and opinions. ~ dlfi 032013