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Insurance With Assurance

Answering Objections to Contracts

by Rick Janis

Your prospect is almost your customer. If you've gotten to the point of having a prospect agree to your services, the last thing you want is for him to object to sign the contract because of one of the clauses.

In my last article we focused on the three clauses in a standard contract which assist in protecting your interests. Those three clauses that we consider mandatory for insurance purposes are: the Liquidated Damages Clause, the Third Party Clause, and the Indemnity Clause. Because they protect the interests of the alarm/monitoring company, many subscribers allege that the three clauses are unfair and inequitable. Many are voicing honest concerns. How would you answer them?

A prospect might object to the Liquidated Damages Clause because it limits your liability to a specified dollar amount. They might also object because the clause states clearly that it is not possible to accurately fix a value on property damaged in any fashion due to the failure of the alarm system to function.

Does this mean the subscriber cannot sue you and that they have no rights? No. The subscriber can sue and that is one reason that you carry Liability/Errors & Omissions insurance. However, this clause lets subscribers know that they are responsible for the loss whether or not they are covered by insurance. You are not an insurer and therefore not responsible because they are either not insured or under insured.

After all, a homeowner's or business owner's policy insuring the subscriber's property (and that of his customers) is first party coverage. Any such insurance coverage is the exclusive remedy of the subscriber for loss of property. Without this clause, the subscriber would have no reason to purchase homeowner's or business owner's insurance, relying instead upon you and your insurance carrier to pay the bill in case of a loss. Conversely, if your installation was faulty in some respect and caused an electrical fire resulting in damage to the premises and injury to persons, that subscriber does have the right and ability to sue you for negligent work. The subscriber can also sue you and hold you liable if the system you designed did not properly protect all the openings. For instance, if the house was successfully burglarized because the second floor window over the garage was not protected due to a design or installation oversight.

An individual who objects to the Liquidated Damages Clause and refuses to sign the contract is really saying that they do not want to be responsible for themselves. At the first opportunity they will look to you to solve their monetary loss of property.

A prospect might object to the Third Party Clause because the subscriber, not the alarm dealer is responsible for the loss to a third party's property. The law of torts is quite clear that a homeowner or business owner is directly responsible to a third party for any damage or loss to that third party's property or life while at the homeowner's or business owner's premises. This concept is held under the doctrines of "social invitee" and "business invitee," both of whom are owed a certain due care and diligence and are entitled to a certain presumptive standard of the premises' condition by the owner of the premises. On the commercial side, the Third Party Clause equivalent is called the Waiver of Subrogation Clause. Because many, if not most of your business customers have willingly signed lease agreements that include this clause, they would have no reason to complain to you that it is unfair. This Third Party Clause is similar to the concept of no-fault insurance. Each party will be responsible for their own property and therefore their own losses.

What do we say when a prospect says "Fine, I'll accept that, but I won't accept the Indemnity Clause. I do not want to hold the alarm/monitoring company harmless nor indemnify them when

a third party suffers personal injury or death?" Again, the subscriber is responsible for providing the proper insurance, in this case the Liability under the homeowner's and business owner's insurance policy. As we pointed out in previous articles, this contract is solely between you and the subscriber. No one else is party to this agreement. Would the subscriber be willing to accept language stating that the monitoring company or anyone else you injured while installing and/or servicing their alarm had the right to sue and collect from the subscriber? Of course not. An intelligent and astute subscriber would say that you have the primary responsibility to the injured party caused as the negligent result of your action and/or condition at the time of loss.

Contracts are needed in the alarm industry to prevent subscribers and third parties from unfairly asking you the alarm dealer or monitoring company, to pay for their uninsured or under insured property losses. A subscriber who is responsible and adequately covered by the proper insurance will have no reason to object to any of these clauses.

In the next few months we will examine the most often requested changes to contracts, and the purchase of additional insurance to cover a subscriber.

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