

Tips for Managing Your Snowplowing Contracts

1. **BYOC (Bring Your Own Contract):** Bring your own contract to the property owner and ask them to use it. Arranging contracts is an area in which the property owners have an advantage. Their lawyers have done a good job of helping them understand how they can shift their responsibilities to the contractor.

The main problem is that most contracts from the property owner include a phrase such as “the contractor agrees to hold harmless and indemnify for any and all actual or alleged, costs, claims, actions, expenses, etc.” Such a phrase is unfavorable if there are no parameters attached to it. This is where you should set some limitations and be specific.

2. **EXCEPTIONS:** Following are some exceptions that you may choose to include in your contracts to address specific conditions.

- In any and all cases in which the damages or injuries to persons or property arise as a result of incidents occurring on areas of the property not serviced by the contractor.
- In any and all cases in which the damages or injuries to persons or property arise as a result of incidents occurring during time in which the contractor is restricted from accessing the property to perform duties.
- In all cases as described above, the property owner agrees to hold harmless and indemnify the contractor for any and all damages or injuries to persons or property or claims, actions, obligations, liabilities, costs, expenses, and fees.

3. **HOLD HARMLESS:** A *hold harmless and indemnification clause due to failure to perform* may appear to limit your obligations; however, this is only when the job specification

can be reasonably performed. When a contract requires that “areas be kept clear of snow” or “snow is to be plowed by 7am” you need to be sure that you can specifically perform those duties or the contract needs to be amended.

4. **NOTIFICATION:** Another area of concern is when there has been a slip and fall that the property owner is aware of, but you receive no notification. Prompt notification would allow you to obtain better information and details that may be important should a liability suit be filed. You may choose to add the following to your contract:

- For any and all actual or alleged incidents resulting in potential or apparent injury or damage, the property owner will notify the contractor within 24 hours of being notified of the alleged injury or damage and assist in obtaining details and information required for potential defense purposes. The property owner agrees that upon failure to do so, it will hold harmless and indemnify the contractor for any and all damages or injuries to persons or property or claims, actions, obligations, liabilities, costs, expenses, and fees arising from the incident.

In all cases, attempt to negotiate a fair balance. Do appreciate that the property owner expects you to be willing to assume responsibility for circumstances that are within your control. Remember that it is not fair or reasonable for the property owner to expect you to hold harmless and indemnify them simply because they want to leverage your desire for the contract into making unreasonable requests to your detriment.

There is no insurance company that will passively accept responsibility for unreasonable contract terms. Don't allow one customer to jeopardize your ability to obtain insurance coverage.

For more information on reviewing or creating snowplowing contracts, contact Mike Pollack or Christine Mistersaro at (800) 462-6435.

