

LOSS CONTROL BULLETIN

Snowplow Contracts

Winter is the time for many landscapers and contractors to begin snowplow operations. The language in the snowplow contract is a key factor in deciding who is responsible for a claim, such as a slip and fall loss. Many times, the contract determines who will be responsible for the loss - is it the snowplow contractor or the property owner?

As with any contract, it is a good idea to consult a lawyer in your state for a legal review before finalizing and signing the agreement. The following five concepts will serve as a starting point toward developing a good snowplow contract:

- The snowplow contractor should define specifically when and where he/she will perform operations.
- Avoid providing 24-hour ice watch or property monitoring.
- The snowplow contractor should not take on the burden of deciding when he/she should go out and perform duties.
- The contract should define the property owner's obligations.
- Avoid accepting responsibility for the property owner's negligence.

Define your obligations by identifying *when* and *where* plowing, sanding or salting operations are to take place, such as:

- "Snowplow contractor will *only* plow the premises upon an accumulation of two inches of fresh snowfall."
- "Snowplow contractor will only apply sand, salt or other melting agent to the premises upon specific request by the property owner. A separate charge for this service will apply."
- "Premises subject to this contract are defined as driving lanes of rear parking lot only (or as shown on the attached diagram)."
- "Premises include driving surfaces and specifically exclude parking spaces and pedestrian walkways."
- "Property owner will direct where snow is to be piled."

(Tip: Create diagrams of the property to capture exactly where your operations are to take place on the property and have the owner initial and date the diagram when the contract is signed. You may also use aerial photos of the premises that can be downloaded free at Google Earth, Zillow.com, or Bing.com.)

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Define the property owner's obligations under the contract, such as:

- "Property owner maintains the responsibility for monitoring and inspecting premises."
- "Snowplow contractor is not responsible for the melting and/or re-freezing of snow, ice or rain after application of salt or melting agent(s) as directed by the owner."
- "Services of snowplow contractor are deemed to be satisfactory unless property owner notifies contractor of a problem within 24 hours of the services being performed."
- "Snowplow contractor is not responsible for injuries or loss that occur after the contractor leaves the premises."

Never accept wording that obligates you to an almost impossible task, such as "snowplow contractor agrees to perform continuous monitoring of premises."

If the property owner insists on an indemnity clause in the contract, it should not indemnify the owner for anything more than your own negligence. Avoid accepting responsibility in the contract for the property owner's negligence (such as a faulty drain pipe that leads to a reoccurring ice condition). You and your attorney may want to consider the following language:

- "Snowplow contractor agrees to indemnify and hold harmless the property owner from any claims, suits or demands of damage or loss arising out of *the sole negligence of the contractor.*"
- "Snowplow contractor agrees to indemnify and hold harmless the property owner from any and all liability arising as a result of the contractor's own negligence."

Avoid language such as:

- "Snowplow contractor agrees to indemnify, defend and hold harmless property owner from and against any and all claims and liabilities incurred by owner based upon, arising out of or **in any way related** to the services contemplated by this contract."
- "Snowplow contractor hereby agrees to indemnify and hold harmless property owner from and against any and all liability, claims, suits or demands of damage or loss arising out of either **direct or indirect** activity of the contractor."

If you are the one drafting the agreement, consider adding reverse indemnification language:

- "The property owner agrees to defend and hold harmless the snowplow contractor from and against any and all damage and/or liability arising out of any incident that occurs either before the contractor performs his/her duties under the contract or after the contractor has left the premises."
- "Property owner agrees to indemnify and hold harmless the snowplow contractor from any and all liability arising as a result of the owner's own negligence."
- "Property owner will add the snowplow contractor as an additional insured on his/her liability policy."



No one wants to think about suffering a loss. In the unfortunate event you do have a loss, our ANPAC Five Star Claim ServiceSM is designed to provide assurance and confidence to our policyholders throughout the claims process.

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