

***The following article was published in the June 2010 edition of  
Body Shop Business***

[http://www.bodyshopbusiness.com/Article/48547/june\\_cover\\_story\\_protect\\_your\\_interests.aspx](http://www.bodyshopbusiness.com/Article/48547/june_cover_story_protect_your_interests.aspx)

**JUNE COVER STORY: Protect Your Interests**

**With the proper legal advice, you can use these documents to establish you and your customers' rights, obligations and interests at the outset of your business relationship.**

**By E. L. Eversman, J.D.**

6/3/2009

How many times have you said in frustration, "But I had a signed repair authorization!" after a customer gets steered right out your door and down the street to a competing collision repair facility?

It's a problem that boils the blood of body shop owners all over the country because it results in lost jobs that they had already initiated repair processes for. One of the reasons this problem occurs is because many shops don't prepare themselves – as other professional businesses do – with important office documents addressing the rights and obligations of the customer and the business entity from the very beginning of the business relationship.

**How Did We Get Here?**

The business of collision repair has evolved over time. Likewise, so have the documents used in the business. These documents that detail repair processes work well to ensure that a customer's vehicle is repaired in a streamlined manner.

They outline the procedures technicians must follow, tasks to be performed in a particular order, and where and how items removed from the customer's vehicle must be stored to guarantee that bolts, fixtures and other items are returned to the proper vehicle. They also enable shops to identify the critical path a vehicle must take through the repair process, each task along that path, which tasks are dependent upon the performance of other tasks before they can be completed, the technicians responsible for each task, the equipment that must be used for each task and where bottlenecks in the process will likely occur. Without detailed process documents like these, attempting to repair a consumer's vehicle would be a chaotic mess.

These documents outlining specific standard operating procedures are fine and dandy, but where are the documents – other than those required by law and regulation – that identify the rights and obligations of both the consumer and the collision repair facility?

Most shops provide the consumer with an "estimate" and obtain his or her signature on a repair authorization, which permits them to repair the consumer's vehicle. They do this typically because state consumer protection laws require it. But this is about the only document remotely addressing shop-consumer rights that they provide. As a result, problems often arise. Consumers don't realize that by signing the authorization, they may have binding obligations to the shop. And repairers take no action when they lose a customer – often because their rights are tenuous and legal action is cost prohibitive.

Which brings us right back to this article's opening sentence, "But I had a signed repair authorization!" Yes, you may have had a signed repair authorization, but what good did it do you? Did it keep you from losing the job? Did it pay you for that loss? No. The repair authorization is just that: permission to do something to a consumer's personal property. It doesn't serve as a repair "contract," which is something shops desperately need to implement. So there's a dire need for collision repair businesses to have effective documents designed to help them run a professional operation.

*NOTE: These forms are tools that, like any others, can be effective or equally dangerous and thus should be not be used ill-advised or by someone who isn't proficient in the topics they cover. I highly recommend seeking legal guidance before using them.*

### **1. Damage Analysis and Blueprint for Repair**

Most consumer protection laws require that a collision repair facility provide a consumer with an "estimate" advising the consumer of how much it will cost to perform repairs to the vehicle. This made sense when more consumers were paying for their own repairs without reimbursement from insurance companies. Today, however, the cost of the repair is less important to the consumer – unless he or she is paying out of pocket – than the manner in which the vehicle will be repaired and how safe it will be upon completion. As a result, it's a better practice for repairers to provide their customers with an analysis of the damage, a blueprint for repairing the vehicle and the anticipated cost to perform the repair. This allows a customer to agree to the recommended repairs and cost with truly informed consent.

### **2. Collision Repair Contract**

After creating a damage analysis and blueprint for repair, the most important document collision repair businesses need to manage their relationships with customers is a contract for collision repair. This is not an authorization. This is a full contract outlining both parties' rights and responsibilities.

The collision repair contract is important because it identifies who the true customer is, what activities the shop will undertake, which party has decision-making power over certain aspects of the repair, who's responsible for paying, and when the vehicle will be released. It can also make provision for the shop to be paid in full, even if the customer is persuaded to remove the vehicle prior to completion.

### **3. Parts Notice and Authorization**

State law typically requires repairers to inform their customers that they plan to use non-original equipment or aftermarket parts, used OE parts, recycled, remanufactured or rebuilt parts in the repair. State laws vary, of course, but these are common types of parts that repairers must disclose to consumers if they're going to use them. Some states, like Ohio, even require the consumer to expressly authorize the use of aftermarket parts under Ohio Revised Code § 1345.81(B).

The purpose of these disclosure requirements is to obtain the consumers' informed consent for the types of parts used. In other words, the consumers must know about the intended use of such parts and what their use may mean for the future safety or value of the consumers' vehicle before they can be considered to have given meaningful consent for their use.

As a result, it's beneficial for a repairer to have a document setting out the differences in the types of parts which may be used in the repair and explaining specific warranty issues that may occur if repairs are made with any parts other than new OE parts. The document will also allow the customer to elect to choose or not choose which parts may be used in the repair and serves to obtain the consumer's express authorization for the use of parts other than new OE parts. In this way, a repairer fulfills the state's requirement of notice and/or authorization in a manner which gives true meaning to the purpose for which the statute was enacted.

#### **4. Notice of Deficiency**

A notice of deficiency is designed to put the consumer on notice that the insurer paying for the repair has written a cost estimate that fails to include an amount necessary to pay for safe and proper repairs, as may be evidenced by an intention to:

- pay for parts or a repair method contrary to the vehicle manufacturer's recommendations;
- pay for parts or a repair method that will violate the manufacturer's warranty;
- exclude repair procedures deemed necessary;
- exclude necessary materials; or
- fail to pay the necessary amount of sales tax.

This document puts the consumer on notice that the insurer reimbursing him or her for repair costs is suggesting an unrealistic amount be reserved for payment of his or her actual loss.

#### **5. Notice of Delay**

The notice of delay to be sent to a customer serves two purposes: First, it obviously provides the customer with notice that there's a delay in the repair process and the vehicle will not be finished as early as anticipated. Second, it advises the customer of whether any charges will be assessed for the delay.

For example, necessary parts may be on back order, causing a delay beyond the control of the collision repair business and the customer but for which no delay fee will be assessed. Conversely, if the customer's insurer neglects to promptly inspect the vehicle for a supplement and causes delay, the shop will impose a delay fee on the invoice.

#### **6. Assignment of Proceeds**

An assignment of proceeds enables a customer to assign his or her right to receive payments for the cost of repairs directly to the collision repair business. An assignment like this is commonplace and occurs in doctors' offices and medical facilities around the country on a daily basis. In the collision repair context, it may have even more weight.

Although an assignment of proceeds can be included as a provision in the repair contract, it functions more often as a stand-alone document and separate agreement between the consumer and the collision repair facility. The reason for this is, whether by statute and the adoption of the Uniform Commercial Code or by common law, collision repair businesses generally obtain a possessory lien upon the vehicle which has been repaired to secure payment for the repairs made. This possessory lien, however, requires the repairer to maintain possession of the vehicle until the invoice has been paid in full. Releasing the vehicle prior to full payment extinguishes the lien, and the collision repair business is left only with ordinary mechanisms to collect the monies owed.

A shop that uses the assignment of proceeds at the close of repair allows the consumer to take his or her vehicle without having to pay the full amount owed on the repairer's invoice, in exchange for receiving his or her right to receive payment from the insurer or some other person or entity.

In the first party context, the assignment mechanism is particularly effective for those shops willing to undertake litigation. Currently, for there to be full collection from the responsible insurer, the consumer must pay the collision repair business in full and then seek recovery from his or her insurer. When the consumer files suit against the responsible insurer, the shop must become involved to help the consumer prove the cost of repairs and why the dollar amount was necessary and proper to complete those repairs. Removing the consumer as the main party in the lawsuit significantly streamlines the action.

Considering a suit brought by a shop against the customer's insurer on an assignment of proceeds, Judge Jonathon Nerenberg of the Butler County, Ohio, Municipal Court stated, "In fact, the Court believes that this procedure is a more efficient procedure instead of making the insured proceed with action." *Mercedes-Benz of West Chester v. Liberty Mutual Insurance*, (Butler Cty. Muni. Ct., December 5, 2007), CVF0700949, p. 2.

The assignment of proceeds document allows a collision repair business that's willing to undertake legal action to be fully compensated in a way that avoids angering or burdening the customer by retaining the vehicle until full payment is made – or worse, simply swallowing the loss of earned but uncollected revenue. Collecting all earned revenue is key to maintaining a successful and profitable collision repair business.

### **Mind the Front**

Collision repair businesses must remember that their front office activities need to be equally as sophisticated as any repair project procedures on the shop floor. They must demonstrate their ability to operate professionally by setting forth how they will satisfy the needs of their customers and what their customers owe to them in turn.

One of the best ways collision repair businesses can operate successfully is to make use of documents like the ones outlined above to set forth the rights, obligations and interests of the consumers and themselves. By better customer management, repairers can be certain their profits will increase.

These documents can be obtained for a fee at [www.vehicleinfo.com](http://www.vehicleinfo.com).

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