



Bailee or Warehouseman - What is Your Liability?

To determine your potential liability as a bailee or warehouseman and identify the proper insurance protection, you must first understand the laws that govern these relationships.

A bailee is a party to whom personal property has been entrusted by another party. Bailees include dry cleaners, repair shops, parking garages, storage facilities and transportation companies.

In a bailee relationship, the bailee generally does not provide a written agreement (such as a warehouse receipt or bill of lading) to the other party. In the absence of an agreement, the bailee is required to act in good faith and to provide a reasonable standard of care with the property. This is tort law, also known as common law. Note that “reasonable care” is subject to court interpretation.

If a bailee has a written agreement with the owner of the personal property, that agreement will define the scope of liability that the bailee assumes for the property. Note that this scope cannot fall far outside normal business practices, or the agreement may not be valid under contract law.

A typical agreement may limit the bailee’s liability to a specific dollar amount, and to specific acts of the bailee. For example, the Standard Contract’s Terms and Conditions for Merchandise Warehousemen (prepared by the International Warehouse Logistics Association) narrows the warehousemen (bailee) to loss or damage of the property only if caused by negligence on the part of the bailee. Negligence is also subject to court interpretation, but generally means a standard of care that would be exercised by a reasonable and prudent person.

The Contract mentioned above further limits the bailee’s responsibility to \$0.50 per pound when they are negligent, but allows the other party to increase that amount for an additional charge. This offer to increase liability is typically required in all contracts of bailment.

Okay, now that you know all the legal jargon, how do you go about insuring this property? Do you even need to? The answer is YES! Bailees that do not have specified terms and conditions for property in their care, custody or control can be responsible up to the replacement or invoice value of the goods. A “Bailee’s Customers” or “Bailee Liability” policy generally provides “all risks” approach that will pay for loss or damage the same way as if you owned the goods in question.

Bailees have a historical problem of not knowing what the goods in their custody are worth, so how does one select a limit of insurance? You must make a point of knowing what types of property and their corresponding values are in your custody in order to estimate a maximum value of your exposure. Keep in mind that different types of property can require different standards of care in handling those goods.

A comprehensive bailee policy will not contain a coinsurance clause, like many standard property insurance forms do. Coinsurance applies a penalty if your insurance limits do not equal the value of your property in storage. If you’re underinsured, you pay a portion of your own claim – even for partial losses!

A good bailee policy will also include coverage for defense of allegations made against you, for example, if a customer alleges that damage occurred in your custody when it actually did not.

If you issue a receipt or bill of lading that limits your liability, congratulations! You're on the right track. BUT...remember the statements made earlier about "subject to court interpretation"? You need to be defended if a customer feels that your limitation isn't satisfactory, and be able to pay a higher amount if a court decides to throw out the limitation. The appropriate coverage for this scenario is called Warehouse Legal Liability.

Look for a Warehouse Legal policy with only a few exclusions, and a broad definition of the types of property covered. It's a good idea to have the policy limits apply to each claim, rather than all claims occurring during the policy terms. Also, check that defense costs do not fall within the insurance limits; this gives you more coverage for actual payment of claims.

Note that both policy forms typically list the locations where coverage applies. You may or may not be able to purchase insurance at "unnamed" locations.

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