

Recovery Association Proposes Changes in a COVID-19 World

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One of the largest recovery associations in the country recently proposed implementation of a COVID-19 surcharge and a new set of post-pandemic policies and also issued a white paper setting forth uniform standards for operating in this changed environment.

The American Recovery Association is advising that all recovery agencies, forwarders, and creditors immediately implement a "Post Recovery Safety Surcharge," a specific fee charged by the recovery agency to the creditor. This fee reportedly will be used to partly offset some of the additional costs to provide safety equipment and security measures relating to the repossession and post-repossession and redemption process.

The ARA explained that the COVID-19 guidance from the Centers for Disease Control and Prevention to keep all parties safe and wear personal protective equipment comes with increased costs for recovery agencies. The purchase of PPE is an added layer of expense that was not prevalent before the pandemic and was not factored into the agencies' operating costs.

In addition, the ARA explained that operating in a COVID-19 environment means an added level of compliance, possible litigation for COVID-19-related issues, increased liabilities, and higher workers' compensation rates. The ARA posited that there are coronavirus risks due to unknown exposures that the industry will be required to handle when engaging in collateral recovery. These potential exposures to the virus increase liability to recovery agencies and result in higher costs. In addition, the ARA theorized that employees may seek to file workers' compensation claims due to the exposure they incurred. Finally, consumers may claim that they contracted COVID-19 as a result of their cars being repossessed and/or their property being mishandled by the recovery agent.

The ARA proposes that the surcharge be implemented through an addendum to the recovery agency's repossession agreement with the creditor. The draft addendum prepared by the ARA does not designate a specific amount for the surcharge; I assume it will be up to each recovery agency and creditor to negotiate the appropriate amount.

Additionally, the ARA recommends that every recovery agency adopt a new set of post-pandemic policies and procedures addressing its operations in a COVID-19 environment, including:

- Wearing of PPE (gloves, masks, gowns, etc.);
- Social distancing of employees and consumers while in the agency's facilities (including breaks and mealtimes);

- Following strict CDC guidelines for dealing with the public and their property;
- Following a 72-hour "do not access" policy where the recovery agency would not access any repossessed or recovery vehicle to itemize and remove personal property for a period of no less than 72 hours after the time of repossession (although this might upset the timing on a recovery agent's duty to remove and itemize personal property left in a vehicle within a shorter state-mandated time period after recovery of the collateral); and
- Disinfecting equipment, shared vehicles, and consumer service areas.

Finally, the ARA outlined some of the proposed policies in its summary white paper "Setting Uniform Standards for Operating in a Changed Environment," which is available on its website. The white paper compares the employment wages, equipment pricing, fuel costs, technology fees, compliance fees, and secured vehicle storage costs in 2000 versus 2020 and makes the case for change within the industry and ways in which all parties can help build a viable and sustainable business model that provides a network of quality recovery professionals. If the dollar figures in the white paper are accurate, one can easily see how much more it costs to operate a recovery agency now than it did 20 years ago; in this post-Consumer Financial Protection Bureau/post-COVID-19 world, that's a lifetime ago.

The white paper also provides for uniform operating standards and terminology by outlining an agreed-upon consensus among recovery industry personnel and forwarding clients on 18 different issues concerning the repossession industry. Some of the more challenging issues to implement include:

- Personal property inventory and storage (storage and removal of property "must now be compensated");
- Reverse indemnification ("New contract language must be provided that specifies liability resides with the appropriately responsible parties."); and
- Compliance education requirements ("Professional recovery agencies should choose which compliance program they offer and should not be mandated by the lender or forwarder. If a lender or forwarding company requires an additional compliance program, all additional compliance expenses become the financial responsibility of the requiring party.").

The ARA indicated that it is confident that if agencies, forwarders, and creditors work together, they can develop a more sustainable model for the recovery industry that can serve all parties into the future.

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