

Managed Insurance Services



Risk Management/Loss Control Manual

Travel Agent
Professional
Liability



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INTRODUCTION

Managed Insurance Services LLC, the Program Administrator for the Liberty Mutual Group of Companies' Travel Agency Errors & Omission program, is pleased to provide you with this Risk Management/Loss Control Guide for your use in initiating and maintaining a Risk Management/Loss Control Program. It is **NOT** intended to be a complete Risk Management Program, but only a guide.

Insurance and risk management companies cannot administer Risk Management/Loss Control programs for their policyholders; they can only offer advice and counsel. Travel Agencies and insurance companies have learned the importance of loss control. Loss control personnel must locate the cause of potential losses and then find a way to reduce or prevent them. There are two (2) parts of loss control:

- Control of Frequency
- Control of Severity

Control of severity is never a substitute for frequency – the number of claims. If you can control the frequency of claims, the number of severe losses will be down. This manual is designed to assist you in controlling these aspects through Travel Agency Business Practices:

- Waivers and Disclaimers
- Travel Risk Management
- Business Management
- Personnel Management

Loss control is a daily responsibility of your individual management. This guideline is not a substitute for your own loss control program. The information provided in this guideline should not be considered as all encompassing, or suitable for all situations, conditions, or environments. Each policyholder is responsible for implementing their own risk management/loss control program and should consult with their legal or other advisors as to the suitability of using the information in this guideline.



Business Management

A client's impressions of the Travel Agency are composites of several impressions formed from the moment they determine they want to book a trip and until the trip is concluded. There are several factors influencing these opinions that can be controlled to favor a Travel Agency's overall image. These include:

For the Client

- accessibility and availability,
- the reception the client receives from the Travel Agency and/or the office staff,
- the Travel Agency's ability to communicate with the client,
- the efficiency of the Travel Agency regarding travel itinerary,
- the quality and comprehensiveness of the travel documents.

Some methods to reduce risks associated with your business management in general are:

- ü Develop guidelines for professionalism within the office that include; attitude, telephone etiquette, and protocols for dealing with clients and suppliers.
- ü Develop client questionnaires to find out the client's perceptions of the duties of a Travel Agent.
- ü Encourage clients to communicate their concerns.
- ü Clarify invoicing procedures and the basis for all charges.

Some methods to reduce risks associated with your business practice in general are:

- ü Require waivers and disclaimers to be signed and dated by the client.
- ü Require declinations of travel insurance to be signed and dated by the client.
- ü Require permission slips for underage travelers signed and dated by legal guardian
- ü Require evidence of insurance from all vendors and suppliers
- ü Request to be an additional insured on vendor and supplier E&O policies
- ü Create a Vendor selection/vetting process

Providing a professional image in conjunction with sound business management practices can reduce or eliminate liability exposures.

Personnel Management

In many instances, Travel Agencies are only as good as their staff. Therefore, prudent Travel Agency owners would be wise to ensure that their staff understand their responsibilities and possess the appropriate skills with which to carry out these responsibilities.

From a risk management perspective, an adequate personnel management process for a Travel Agency would consist of the following:



- ü Ensure employment applications are completed by all applicants.
- ü Conduct reference checks on all applicants
- ü Have a 3 or 6 month probationary period for new employees, and conduct a performance review at the end of this period.
- ü Have an annual performance appraisal process in your office.
- ü Have up to date written job descriptions for all staff.
- ü Maintain confidential personnel files that contain all of the above documentation, attendance records, and records of any adverse incidents.
- ü Provide ongoing training

Sound personnel management is vital to the travel agency's operation, as employees have access to sensitive client information such as credit card data.

Waivers and Disclaimers

The use of waivers and/or disclaimers can be very beneficial to travel agents. Avoiding liability allows the travel agent to control the risks associated with running a travel agency and providing travel services. A waiver is the act of waiving a right, such as the right to make a claim. This act of waiving a right is done by the client. A disclaimer is a statement in which responsibility is disclaimed. This statement is done by the travel agent.

Waivers

A waiver of liability is a written acknowledgement made by a person who is engaging in an activity. In making the acknowledgement, the person usually gives up their right to sue the other party if they suffer an injury, damages, or some other kind of loss while undertaking the activity. Normally, waivers are used for travel that may have a large amount of risk associated with it, such as adventure travel.

Sample Waiver

I (print name), _____, HEREBY ACKNOWLEDGE that I have voluntarily applied to participate in the travel arrangements I have chosen with ABC Travel Inc., as indicated in the itinerary outline I have signed. I am aware that during my participation in a trip of this sort certain risks and dangers may arise, including, but not limited to: [list hazards - i.e. the hazards of travelling in mountainous terrain, high altitudes, or undeveloped areas]; travel by train, plane, automobile, horseback, or by other means of conveyance, or on foot; roads, trails, hotels, vehicle, or other means of conveyance which are not operated nor maintained to standards common in the United States; the forces of nature; civil unrest; terrorism; accident or illness without access to means of evacuation or availability of medical supplies; physical exertion for which I am unprepared; consumption of alcoholic beverages; negligence (but not willful or fraudulent conduct) by ABC Travel Inc., its principals, guides, agents or others; or factors known or unknown. I am also aware that medical services or facilities may not be readily available or accessible during some or all of the time that I am participating in the trip and that it is my responsibility to have full medical evacuation insurance coverage for the duration of this trip. I agree that ABC Travel Inc., its principals, guides and agents are not liable for the adequacy or availability of any equipment or supplies that may be provided in conjunction with this trip, or for the adequacy or availability of any first aid or medical care, or the negligent provision of first aid or medical care by it or by its guides or agents, participants, or by any physician, emergency care facility or any other person.



I AM VOLUNTARILY PARTICIPATING IN THESE ACTIVITIES WITH KNOWLEDGE OF THE DANGERS, DELAYS, LOGISTICAL AND OTHER PROBLEMS IN CONNECTION WITH THE TRIP THAT MAY BE INVOLVED AND HEREBY AGREE TO BE RESPONSIBLE FOR MY OWN WELFARE AND ASSUME ANY AND ALL RISKS OF ILLNESS, INJURY, EMOTIONAL TRAUMA, AND DEATH AND HEREBY RELEASE AND DISCHARGE ABC TRAVEL INC. AND ITS AGENTS OR ASSOCIATES FROM ALL ACTIONS, CLAIMS, OR DEMANDS FOR DAMAGES RESULTING FROM MY PARTICIPATION IN THE TRIP.

I agree that under no circumstances, including negligence, shall liability to the applicant, his/her heirs, executors and administrators and all members of his/her family, of ABC Travel Inc., its principals, guides or agents exceed the total amount of funds paid by the applicant under the contract. The exclusions and limitations on the liability of ABC Travel Inc., its principals, guides and agents as set out in this Liability Waiver and in the Conditions of Travel herein, are effective, and apply to claims in contract or in tort, including negligence, and whether or not there is a fundamental breach of the contract.

I agree that the foregoing obligation shall be binding upon me personally, as well as upon my heirs, executors and administrators, and all members of my family, including any minors accompanying me.

I HAVE READ THIS DOCUMENT CAREFULLY AND I ACKNOWLEDGE MY RESPONSIBILITIES AND I VOLUNTARILY SIGN THIS WAIVER AND I UNDERSTAND THE EFFECT OF THIS LIABILITY WAIVER.

Signature of Applicant: _____

(Print Name) _____

Requirements of a Waiver:

- ü Be in large print and prominent
- ü Language used must be unambiguous
- ü Apply only to negligent actions
- ü Should not involve an activity that is an essential service that cannot be obtained elsewhere
- ü The client was given time to review the waiver

Even a waiver that is not enforceable can still be used positively as a basis for other defenses. It can be used to establish that the person was aware of the risk of the activity, or the itinerary that they were taking - and assumed that risk.

Disclaimers

There are two theories of liability under which a client may initiate a lawsuit against a Travel Agent and/or Travel Agency. The first is a simple negligence theory under which the client asserts that the actions or omissions of the travel agent were a direct cause of the client's damages. The second theory of liability is also known as vicarious liability. Under this theory, a Travel Agent and/or Travel Agency can be held liable for the negligence of a third party (examples of a third party are hotels, excursion operators, etc.).



Disclaimers allow one party to repudiate a legal right or claim of another. This disclaimer is normally written into the client's travel contract or on the invoice with language that negates the right of the client to sue the travel agent/agency for certain acts of negligence during the course of the contract.

There are two types of disclaimers that are typically used by travel agents. The first type (and the most common) is a disclaimer pertaining to the acts of a third party.

Sample Third Party Disclaimer

ABC Travel Inc., acts only as agent for the client in acquiring transportation, hotel accommodations, sightseeing, and other privileges, or services for the clients' benefit, and on the express condition that ABC Travel Inc. shall not be responsible for any loss, accident, injury, delay, defect, omission or irregularity which may occur or be occasioned, whether by reason of any act, negligence or default of any company or person engaged in or responsible for carrying out any of the arrangements, or otherwise in connection therewith.

The second type of disclaimer, which disclaims the travel agent's own negligence (First Party) - is less common and looked less favorably under the law.

Sample of a First Party Disclaimer

ABC Travel Inc. shall not be liable for any injuries or any damage to any client or be subject to any claim, demand, injury, or damages, whatsoever, including without limitation, those damages from acts of passive or active negligence on the part of ABC Travel Inc., its officers, employees, or agents. Client acknowledges that he/she has carefully read this paragraph and fully understands that this is a waiver and release of liability.

Requirements of a Disclaimer:

- ü Intent to disclaim liability must be clear
- ü Language used must be unambiguous
- ü Disclaimer provision requires that the notice is conspicuously located in the contract document
- ü Must not be against public policy or detrimental to society as a whole
- ü Cannot arise from a contract in which one party has such a greater bargaining power that the other party had no other choice but to accept
- ü Reckless or intentional acts cannot be disclaimed

Just like the waiver, even a disclaimer that is not enforceable can still be used positively as a basis for other defenses. It also can be used to establish that the person was aware of the relationship between each of the parties- and assumed that risk.

Travel/Trip Insurance

Travel Agency Professionals should always recommend travel insurance to all of their clients. The offering of this product should be well documented, including the different options and/or the declination.

Requirements for Trip Insurance Offerings:

- ü Document which plans were offered and have the client initial



- ü Document all Trip Insurance purchase declines by having client sign a statement

Newsletter

The purpose of the Travel Agency's newsletter is to inform potential, current, and past clients of trip opportunities, travel tips, and current travel conditions.

When writing a Newsletter, you should do the following:

- ü Do not copy another source's work in its entirety - quote it or use a short excerpt and a link to the original article (if electronic email).
- ü Proofread the document for transposed numbers.
- ü Electronic newsletters must comply with the CAN-SPAM Act and include an opt-out mechanism and ensure that the "To", "From", and subject line information are not misleading.

Lawsuit

What do you do when you receive a summons and/or complaint:

- ü Notify your insurance carrier immediately. If you have been served with a lawsuit, there are only a limited number of days in which to file a response on your behalf.
- ü Do not discuss the case with the client or client's attorney or any other person involved in the travel arrangements. These contacts may be named as co-defendants or called as witnesses. Any comments or discussions you have with them will be disclosed and possibly used against you. Gather and secure your records for the trip and make sure that no one makes any corrections or adds anything to the records.

What should you expect after you notify your insurance company:

- Your insurance carrier will assign your case to a defense attorney (if one was not assigned during any pre-lawsuit notification).
- You will be contacted by your assigned defense attorney who will further advise you as to what to expect as it pertains to:
 - ü Discovery items
 - ü Depositions
 - ü Experts
 - ü Witnesses
 - ü Mediation
 - ü trial

Travel Risk Management (TRM)

Travel Agents need to understand the importance of a Travel Risk Management (TRM) program and the proactive components that encompass it. It is important to establish a continuous process loop which



includes training, monitoring, traveler tracking, and feedback from recent travelers or other people in the travel area.

The components that make up a TRM program include:

Duty of Care
Duty to Disclose
Standard of Care

Duty of Care

A travel agent has a legal responsibility to do everything "reasonably practical" to protect the health and safety of their clients. Ignoring the risk can open the travel agent and/or the travel agency to litigation if a traveler is hurt or killed.

Travel Agent's Specific Duties of Care:

- A safe environment - this extends to hotels, airlines, rental car companies, tour operators, etc.;
- Providing information and instructions on potential hazards;
- Employment of qualified persons to provide travel advice;
- Monitoring travel conditions around the world;
- Knowing the industry reputation of the travel suppliers you use;
- Booking the type of trip the traveler requests.

Understanding the Specific Duties of Care that a Travel Agent Professional needs to follow can reduce potential liability for the travel agency. It is always preferred when a travel agent can visit the sites that they recommend, as it allows the travel agent to investigate the safety and security factors of where a hotel is located, or the condition of the transportation.

Duty to Disclose

This reinforces the need for the travel agent to monitor and disclose potential travel safety risks to their clients.

Travel Agent's Specific Duties to Disclose:

- Monitor to see if there is any civil unrest in a region of the world
- Check State Department announcements and warnings
- Communicating any detrimental information about a supplier

Disclosing potential travel safety risks is an obligation that the travel agent must perform, especially if the information is readily available to the travel industry, but not as easily available to the general public. The traveler has a right to make an informed decision whether to travel or not. A travel agent could claim that



they had no knowledge of the risk, however a court would likely ask, "should the travel agency or agent have known?" With the number of available sources of information, including free sources such as governmental travel warnings, cable news, and low cost third party resources - a claim of ignorance may not hold up in a court.

Standard of Care

A travel agent is considered an expert in their industry, and thus as all professionals, they are measured by the Standard of Care doctrine.

Travel Agent's Standard of Care:

- Track Client Itineraries (Traveler Tracking)
- Provide Pre-Trip Information (Risk Disclosure)
- Explain any disclaimers or waivers
- Keep Clients informed of ongoing or new risks

Standard of Care is a moving target, subject to change as new practices are adopted within the travel industry. A travel professional must show that it was not reasonably practical to do more and that the travel agent exercised due diligence to meet their Standard of Care obligations.

Risk Transfer/Insurance Information

Insurance

No matter how careful you are, or even with the most successful loss control program in place, you will never be able to eliminate the risk of being sued. You or an employee might make a mistake that injures someone or damages property. Your mistake could harm the reputation or invade the privacy of a client, competitor, or someone from the general public. In that event, you may be legally liable to pay damages to the person or company that suffered a loss due to your actions. To protect yourself, it is important to utilize some sort of risk management. The most common risk management technique is risk transfer, and the most common risk transfer mechanism for a Travel Agent or Travel Agency is insurance.

- Professional Liability Insurance
 - ü Also known as errors & omissions insurance
 - ü Protects you if someone claims they have suffered financial damage because of your actions as a Travel Agency/Agent
 - ü Most vendors require proof that you have this insurance
- General Liability Insurance
 - ü Protects you or your company from a bodily injury, property damage, and/or advertising claim that may occur during the performance of your duties
 - ü Protects you both on and away from your premises



- Business Owner Policy (BOP)
 - ü Combines General Liability with Business Property Insurance
 - Ø Building
 - Ø Business Personal Property (contents)
 - ü Protects your company, building and your business property if:
 - Ø Someone injures themselves on your premises
 - Ø A fire or theft occurs at your premise
 - Ø Your business income is interrupted because of a covered disaster
- Workers Compensation Insurance
 - ü Protects you and your employees if injured on the job
 - ü Most states mandate companies with employees to have this insurance (check your state requirement)
 - ü Protects your company from being sued by an injured employee
- Commercial Auto Insurance
 - ü Required if your company owns or leases a vehicle
 - ü Protects your company from property damage and bodily injury caused to others from vehicles used for business purposes
 - ü Many personal auto policies do not cover your vehicle when being used for business purposes
- Misc. Liability Insurance
 - ü Hired/Non Owned Auto Coverage
 - Ø Protects your company from bodily injury and/or property damage caused by a vehicle you hire (including rented or borrowed vehicles) or caused by non-owned vehicles (vehicles owned by others, including vehicles owned by your employees)
 - Ø Example: You send an employee to pick up lunch or any other business errand
 - Ø Example: You rent a vehicle while on a business trip
 - Ø Can be purchased with either your General Liability or BOP Policy and is included in your Commercial Auto Policy

*The Risk Transfer/Insurance methods above should not be considered the only appropriate insurance policies for your business. You should consult a licensed insurance agent for a complete evaluation of your insurance needs.



Misc. Information

Sample multi-encompassing disclaimer/waiver/trip insurance form.

I understand that [your travel agency name] is not the source or supplier of the travel services I have requested, and acts solely as an agent for the actual suppliers of such services. I have been advised that the suppliers whose names appear in the information supplied to me are those who are actually responsible for providing the travel services I have purchased. I consent to and request the use of those suppliers and agree not to hold [your travel agency name] responsible should any of these suppliers: 1) fail to provide the travel services I have purchased; 2) fail to comply with any applicable law; or 3) engage in any negligent act or omission that causes me any sort of injury, damage, delay or inconvenience.

I accept that [your travel agency name] is not responsible for, nor will I attempt to hold it liable for, any injury, damage or loss I may suffer on account of any conditions, actions or omissions that are beyond its reasonable control.

I will review my travel documents for accuracy upon receipt and understand that I may contact [your travel agency name] if I have any questions. I understand that discounted fares typically involve restrictions and that changing any aspect of my travel arrangements may result in the payment of additional money.

I have been advised to use a credit card as this may offer me the opportunity to dispute the charge should a vendor cease operating.

I have been advised that [Insert names of airlines operating under Chapter 11 bankruptcy protection] are currently operating under Chapter 11 bankruptcy protection. [Update as needed]

I understand that the Transportation Security Administration (TSA) requires me to carry a government issued identification card in order to board a flight. I have been advised that the name, date of birth and gender that appears on the identification card must exactly match the same such data that is listed on my airline ticket and in my booking records. I acknowledge that my failure to strictly comply with these requirements may result in denied boarding or an undue delay at an airport security checkpoint causing me to miss my flight.

I understand that if traveling internationally, I must have a valid passport and depending upon my destination and nationality, I may need to obtain one or more visas.

Note to Client: Passport and visa information may be obtained by contacting the Travel Advisory Section of the U.S. State Department at 202.647.5225 or by visiting the State Department's Web site at www.state.gov. Non-U.S. passport holders should be sure to contact the embassies of their destination and transit countries to obtain entrance requirements. To obtain medical information, you may contact the Centers for Disease Control at 404.332.4559 or visit the CDC's Web site at www.cdc.gov.

I understand that I may purchase travel insurance to cover certain risks inherent in travel such as supplier bankruptcy and the inability to travel due to a medical or personal emergency. *Please check and initial your acceptance or refusal of travel insurance below.*

I wish do not wish to purchase travel insurance. _____ (client's initials)

Client's Signature: _____

Date: _____



Notes