Safety Zone: Artisan Contractor – Do You Have A “Duty To Warn”?

What Does Duty to Warn Mean?

As defined, a *duty to warn* is a concept that arises in the law of torts in several circumstances, indicating that a party will be held liable for bodily injuries and/or property damage caused to another, where the party had the opportunity to warn the other of a hazard and failed to do so.

The Risks Facing Artisan Contractors

In today’s very litigious environment, large and small artisan contractors face a myriad of potential risks when it comes to providing a service or repair at a customer location. A customer often has high expectations, and that customer may be quick to allege negligence in a contractor’s work. Even a simple complaint has the potential to escalate into a legal dispute.

The question at hand is – does this contractor have a “duty to warn” their customer of a potential hazard when called in to service or repair a specifically identified matter?

Here’s an example: the property manager of a multi-unit apartment building hires an electrician to replace an electrical outlet under the sink used to plug in the dishwasher in one of the units. The electrician identifies this as a common outlet in need of replacement when code would require a GFCI type outlet, and as such, replaces the damaged outlet with the GFCI outlet. The question is – does this contractor have a duty to warn the property manager that all the other units should be inspected to identify if they also have non-GFCI electrical outlets near water posing an electrical shock hazard and offer to inspect and replace them?

The answer is predicated upon the property manager having a contract with this electrician, which includes legal wording identifying the contractor’s responsibility to also “inspect” for safety. In this case, the electrician would have a duty to warn. The electrician can be held legally responsible for fraudulent concealment of a known defect and/or hazard by not warning the property manager of the risk.

However, it is quite common for artisan contractors to perform one-off types of services and repair work at the customer’s request without having a contract. In that scenario, it is not specifically the responsibility of the contractor to *warn* of the defect and/or hazard – but it is *good business practice* for the contractor in this scenario to:

1. Warn the customer of the defect and/or hazard – IN WRITING.
2. Offer to inspect and replace the defective or damaged items – IN WRITING.
3. Detail the work necessary to resolve the defect and/or hazard – IN WRITING.
4. Obtain a signed confirmation of the proposal of service from the customer - IN WRITING.
5. Verify and obtain a signed declination of service by the customer – IN WRITING.
6. Maintain and file all offers of service/proposals/confirmations and declinations of service.

Protecting Your Artisan Contractor Business

We live in a very litigious society. The offer of service as identified acts to mitigate potential liability claims. When it comes to liability, the last contractor who “touched” the device, etc., that caused property damage and/or bodily injury is brought into the claim – even if the service or repair performed had nothing to do with the actual claim.

Do artisan contractors hired to perform one-off service and repair work have a duty to warn of a hazard? The answer is no, not really, but to protect your company’s assets, if you see something, say something and – GET IT IN WRITING!

Contact Info:

PHONE: 888.486.7466 ext. 363275
WEB: www.amtrustfinancial.com
EMAIL: AskLC@amtrustgroup.com
MAILING ADDRESS: AmTrust Financial - 2605 Enterprise Road, Suite 290, Clearwater, FL 33759

AmTrust maintains this article as a service for its customers. This information is intended to give you a place to start when finding information about a particular safety question. This article is not intended to provide authoritative answers to safety and health questions. Before using the information here, the accuracy and appropriateness of the information to your specific situation should be verified by a person qualified to assess all the factors involved.

This article contains hyperlinks to information created and maintained by other public and private organizations. Please be aware that we do not control or guarantee the accuracy, relevance, timeliness or completeness of this outside information. Further, the inclusion of pointers to particular items in hypertext is not intended to reflect their importance, nor is it intended to endorse any views expressed or products or services offered by the author of the reference or the organization operating the site on which the reference is maintained.