



VACANT PROPERTY

Even when utilizing degree day programs, propane suppliers rely on their customers to advise them when fuel is low or an out-of-gas condition has been reached. This is reasonable.

A propane supplier cannot be aware of all the conditions present in a customer's home.

Has an appliance been added or are additional people living in the home? Is the home vacant earlier than normal? Is an area of the house now in use that was not in use previously, drawing additional fuel from the tank?

Vacant Property

Risk Engineering

Winter Risks of Unoccupied Property

What are the risks in winter, when the conditions exist for pipe freeze, heating appliances are at their peak use, and customers might leave their home for a month or even months for warmer climates?

This shows why the terms of your agreement with your customer are so important. Both you and the customer must understand what the obligations are.

Customer agreements generally fall into two categories: the Automatic / Scheduled / Keep Full category and the Will Call category. Whatever the category, your agreement with your customer should include a representation by the customer that it will monitor its tank and inform you, the supplier, that the tank has dipped below a threshold that requires a refill.

Here is some language that helps to notify the customer of its duties:

For customers who do not continuously occupy their property, it becomes difficult to forecast fuel usage. You understand that the depletion of your fuel supply varies depending on your use and weather conditions. You agree to contact us if there is any change that may affect the rate of fuel use. You understand and acknowledge that [the fuel supplier] has no ability to be aware of fuel supply tank levels, or occupancy or fuel usage conditions on your property and that it is entirely dependent on you, the customer, to provide information regarding a low fuel condition. Even if you are on automatic delivery service, you agree that your property will be monitored daily for low fuel conditions and that if a low fuel condition occurs, you will promptly notify us so that we can deliver fuel to you. You agree that the term "low fuel condition" means 20% of your fuel supply tank's capacity, and that you have a duty to notify [the fuel supplier] promptly when the fuel in your supply tank reaches 20% of its capacity. Automatic delivery is not a guaranty or promise that customer will not run out of fuel. You agree that [the fuel supplier] is not liable for any damages to personal and real property including, but not limited to, damage resulting from frozen pipes, or other water damage, that occurs as a result of the propane/heating oil system running out of propane.

We have the option of installing a tank monitor on your system so that the amount of fuel in your tank(s) can be monitored. If a tank monitor is installed, the customer will still be responsible to monitor the fuel supply and notify [the fuel supplier] if the supply tank reaches 20%.

If you turn off gas at the fuel supply tank, this is considered an interruption of service and state law and safety codes might require that your fuel supply system be leak checked before gas is turned on at the supply tank. Regarding interruption of service, you agree that you, the customer, are alone responsible for being aware of and adhering to relevant state law and safety codes and you represent that if a leak check is performed, it will be performed by qualified personnel before the fuel supply is turned on.

Vacant Property

Risk Engineering

Agreement Delivery Change

If your customer changes from one type of delivery to another, ensure you have received written instruction from your customer on the change. A notation in the customer's file should be made documenting the name of the person requesting the change, date of the change and method used to confirm the change in writing from the customer (e.g. certified mail, signed work order, or some other method).

There have been cases in which a customer changed from Automatic to Will Call delivery and the supply tank ran out of fuel. The water pipes in the customer's home then froze and burst, and the customer sued the fuel supplier, claiming that it was on an Automatic delivery. Without documentation to show that the type of delivery was changed, it can be hard to defend the fuel supplier. **Phone calls alone should never be accepted to make changes to an account delivery method.**

Limitation of Liability Clauses in Customer Service Agreements

A limitation of liability clause is a provision in a contract that limits the amount of exposure a company faces in the event a lawsuit is filed or another claim is made. If found to be enforceable, a limitation of liability clause can cap the amount of potential damages to which a company is exposed. The limit may apply to all claims arising during the course of the contract, or it may apply only to certain types of causes of action. Limitation of liability clauses typically limit the liability to one of the following amounts: (i) the compensation and fees paid under the contract; (ii) an agreed upon amount of money; (iii) available insurance coverage; or (iv) a combination of two or more of the above. Note that a well crafted limitation of liability clause can also shorten the time period in which a lawsuit can be brought. Here are some examples:

Example 1

In no event shall [the fuel supplier] be liable for any incidental, special, indirect or consequential damages, including, without limitation, loss of profits or business opportunity arising out of any purchase or its breach, even if advised of the possibility of those damages. Notwithstanding the foregoing or anything to the contrary in [Purchaser's] order or any other document, except for personal injury caused by [the fuel supplier's] sole negligence, [the fuel supplier's] liability for any damages howsoever occurring, whether based in tort, warranty, strict liability, negligence or any other theory of law shall be limited to and not exceed the payment, if any, received by [the fuel supplier] for the specific unit of Products or service furnished or to be furnished, as the case may be, which is the subject of any claim or dispute, even if a term of any agreement fails of its essential purpose. [Purchaser] agrees the foregoing exclusion and limitation is a reasonable allocation of risk. No action, regardless of form, arising out of, or in any way connected with, the Products or services furnished by [the fuel supplier] may be brought by [Purchaser] more than one (1) year after the cause of action has accrued.

Vacant Property

Risk Engineering

Example 2

[Purchaser] understands and agrees that if [the fuel supplier] should be found liable for loss or damage from failure of [the fuel supplier] to perform any of its obligations herein, in any respect whatsoever, [the fuel supplier's] liability shall be a sum equal to 10% of the money exchanged at the execution of this agreement or five hundred (\$500) dollars, whichever is greater, as liquidated damages, not as a penalty, and this liability shall be exclusive; and the provisions of this section shall apply to loss or damage, irrespective of cause or origin, which results directly or indirectly to persons or property, from performance or non-performance of the obligation imposed by this agreement, or from negligence, active or otherwise, of the company, its agents, assigns or employees. [Purchaser] has read and understands all of this agreement.

Conclusion

Customers may not want the responsibility for monitoring their property, especially their fuel supply. Having customers on a Will Call agreement is best for those who will be absent for a long period of time. If the customer insists on being on an automatic delivery type program, you should have a written agreement to protect your company. Serving customers who leave their property poses greater risks than serving customers who are at their property every day. Please review your policy and procedures for serving customers who leave their home unoccupied for extended periods. Consider steps to manage your risk. Contact your legal counsel for assisting you in modifying or developing your agreements.

This material is provided for information purposes only and is not intended to be a representation of coverage that may exist in any particular situation under a policy issued by one of the companies within Crum & Forster. All conditions of coverage, terms, and limitations are defined and provided for in the policy. This material was developed as a general guide to safety from sources believed to be reliable and is not intended to provide legal, technical or other professional advice. These materials are not intended to replace any training or education that users may wish or need to provide to their personnel. Crum & Forster does not endorse any of the vendors listed in this publication, nor does it endorse the information, products or services that they offer or provide. Compliance with all Federal, State or local laws and regulations remain the policyholder's responsibility.

