

The new generation of trade vendor agreements

Balancing expectations and liability with compensation

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April 2, 2015 11:22AM



The relationship between default mortgage field services providers and vendors that perform fieldwork has been in transition since the 2008 economic downturn. As an unprecedented number of properties fell into foreclosure, the number of default mortgage property inspectors and contractors rose exponentially. As the field services industry encountered new legislation to manage foreclosure inventory, vendors encountered new service expectations outlined in trade vendor agreements. While the spirit of a trade vendor agreement is to document, define and set expectations of the client-vendor relationship, a new generation of agreements is forcing both sides to determine the true cost of doing business.

Today's vendor trade agreements are complex. The decision to accept the terms of these legal contracts is further complicated by the pace in which these agreements are evolving and vendors are asked to renew the agreement. For vendors, it is vitally important to take the time to thoroughly understand their ability to meet service expectations and accept the legal components of a trade vendor agreement.

Balancing Expectations and Liability with Compensation

A major cause of changes to trade vendor agreements is in part, due to federal, state and local legislative measures introduced and passed since the 2008 foreclosure crisis. These measures include auditing, risk management and increased oversight of third party vendors. Risk adverse

clients are drafting agreements that reflect legislative language redefining property maintenance standards, services and liability. As a result, property inspectors and preservation contractors that perform work in the field are signing agreements that hold them ultimately liable for a large portion of the preservation process. Vendors must understand the financial impact of trade vendor agreements, which may include extending payment terms, transferring liability and waiving rights to collect money for non-payment for services.

As the standards of property preservation services increase, vendors are finding that the compensation for these services is not keeping pace. When foreclosure inventory rose, many municipalities required work beyond basic property maintenance outlined in Investor/Insurer guidelines that typically spanned services such as grass cuts, debris removal and securing of the property from unauthorized entry. Amended ordinances called for more comprehensive lawn maintenance and rehabilitation services of default property regardless of status of foreclosure action. These services add time, cost, and risk resulting in vendors making sizeable investment in governance programs, human resources, building materials and technology. Unfortunately, many trade vendor agreements have not adjusted vendor compensation to meet these increased demands and associated costs. In many cases, vendors are experiencing rate compression for services while service levels and liability exposure increase.

Traditionally, trade vendor agreements are drafted to protect both parties and to keep the relationship on solid ground. However, a one-size-fits-all approach has the tendency to cascade expectation and liability from loan servicers, to national, to regional, and finally to the local vendor in the field. An example of language added in some agreements state that liability assessment is at the sole discretion of the client, removing arbitration rights of the vendor, which would appear to be contradictory to the spirit of these agreements.

All parties in the value chain of providing default property inspection, preservation and repair services take on responsibility for oversight, compliance and liability. These new governance demands increase overhead costs and can erode available funds established to perform field services. This new paradigm drives the need to credential service providers before engagement and establish clear expectations of the relationship using the trade vendor agreement as the vehicle to do so.

Recognizing Risky Language in Trade Vendor Agreements

The **National Association of Mortgage Field Services** (NAMFS) reached out to its members to discuss some of the language and risk associated in accepting trade vendor agreements. Many vendors are concerned that refusing to sign such agreements will result in no work, or will put them at risk of not receiving compensation for work already performed. However, for field services providers, assessing risk is vital to a sustainable business.

When reviewing a trade vendor agreement, it is important to pay close attention to language that defines your rights as a service provider. Examples of such language are:

- Waiver of right to lien property for unpaid services
- “Hold harmless” language that transfers all liability to the vendor

- Liability assessment at the sole discretion of the client
- Vendor chargeback policies
- Arbitration provisions
- Extended payment terms OR “paid when they get paid” language

All parties recognize that trade vendor agreements are necessary and key in defining a relationship. However, before signing the agreement, it is important that vendors thoroughly understand the document, seek clarity where terms or expectations are ambiguous, and resist the temptation to blur the line between what the relationship appears to be versus what the written agreement declares it to be.

The National Association of Mortgage Field Services is the premier trade association for the mortgage field service industry. NAMFS is dedicated to working with all entities of the industry from the Government Agencies, Mortgage Services, investors and those that provide services to support industry standards.