COLLISION INDUSTRY GUIDE
CHAPTER TWO
REVISED SEPTEMBER 2018

CHAPTER TWO IS A CONTINUATION OF THE RELATIONSHIP BETWEEN THE AUTO BODY REPAIR SHOP, THE CUSTOMER, AND THE INSURANCE COMPANY.

CAUTION: THIS DOCUMENT IS GENERAL IN NATURE AND DEALS WITH VARIOUS LAWS AND REGULATIONS.IT SHOULD NOT BE CONSIDERED LEGAL ADVICE. IT IS RECOMMENDED THAT YOU SEEK THE ADVICE OF AN ATTORNEY SPECIALIZING IN THIS AREA OF THE LAW IF YOU ENCOUNTER A PROBLEM.

(1) Q. I WROTE AN ESTIMATE ON A CUSTOMERS VEHICLE. THE CUSTOMER SIGNED AN AUTHORIZATION TO REPAIR BASED ON MY SHOP ESTIMATE AND LEFT THE VEHICLE AT MY SHOP. THE NEXT DAY, AN ADJUSTER FROM THE CUSTOMER'S INSURANCE COMPANY CAME TO MY SHOP AND WROTE HIS OWN ESTIMATE ON THE VEHICLE AND LEFT A CHECK BASED ON HIS ESTIMATE. THE ESTIMATE WRITTEN BY THE ADJUSTER IS SIGNIFICANTLY DIFFERENT THAN THE ONE I WROTE FOR THE CUSTOMER BOTH IN SCOPE OF REPAIR AND AMOUNT. THE ADJUSTER'S ESTIMATE DOES NOT INCLUDE THINGS HE SAYS "THEY DON'T PAY FOR". IT IS ALSO WRITTEN AT A LABOR RATE LOWER THAN MY RATE. I CANNOT REPAIR THE VEHICLE BACK TO PRE-ACCIDENT CONDITION BASED ON THE ADJUSTER'S ESTIMATE. WHAT ARE MY OPTIONS?

A: THERE ARE SEVERAL SECTIONS OF THE CALIFORNIA FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS THAT ADDRESS THE "WE DON'T PAY FOR THAT" SITUATION.

* SECTION 2695.8(F) REQUIRES THAT AN INSURER PAY TO REPAIR VEHICLES IN ACCORDANCE WITH THE VEHICLES MANUFACTURER'S REPAIR SPECIFICATIONS. CALIFORNIA CODE OF REGULATIONS SECTION 3365 IS CITED IN THIS SECTION.

*SECTION 2695.8(F) REQUIRES THAT AN INSURER THAT USES ESTIMATING SOFTWARE TO PREPARE AN ESTIMATE CANNOT DEVIATE FROM THE STANDARDS, COSTS, OR GUIDELINES PROVIDED BY THE ESTIMATING

SOFTWARE. IN SIMPLE TERMS, THEY MUST USE THE ESTIMATING SOFTWARE AS IT IS DESIGNED TO BE USED. THE INSURER CANNOT CHOOSE TO IGNORE THE PARTS THEY DON'T LIKE.

* SECTION 2695.8(F) 1, 2, &3 DICTATES HOW THE INSURER MUST USE THE SHOP'S ESTIMATE WHEN THE CLAIMANT OR CLAIMANT'S SHOP OF CHOICE CONTENDS THAT THE INSURERS ESTIMATE WOULD NOT ALLOW THE REPAIRS TO BE MADE IN A GOOD AND WORKMAN LIKE MANNER.

AN INSURER MAY DO A LABOR RATE SURVEY TO DETERMINE AND SET A SPECIFIED LABOR RATE IN A SPECIFIC GEOGRAPHIC AREA AND REPORT THE RESULTS OF THE SURVEY TO THE DEPARTMENT OF INSURANCE. THIS SECTION OF THE INSURANCE CODE, 758.5 IS A GENERAL OUTLINE OF THE LAW.

IN 2017, THE DEPARTMENT OF INSURANCE CLARIFIED 758.5 WITH A NEW SECTION OF THE FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS, SECTION "2695.81 THE STANDARDIZED AUTO BODY REPAIR LABOR RATE SURVEY". THIS SECTION HAS SOME SPECIFIC GUIDELINES ON HOW TO COMPLETE AND MAINTAIN A LABOR RATE SURVEY. IF AN INSURER DOES A LABOR RATE SURVEY USING THIS METHOD, THE INSURER WILL BE GRANTED A "REBUTTABLE PRESUMPTION" MEANING THAT THE INSURER HAS ATTEMPTED IN GOOD FAITH TO EFFECTUATE A FAIR AND EQUITABLE LABOR RATE COMPONENT OF A CLAIM SETTLEMENT.

THIS REGULATION DOES NOT PROHIBIT AN INSURER FROM SUBMITTING A LABOR RATE SURVEY THAT IS DONE IN A DIFFERENT MANNER THAN THE "STANDARDIZED AUTO BODY LABOR RATE SURVEY" HOWEVER, THIS TYPE SURVEY WILL NOT BE GRANTED THE "REBUTTABLE PRESUMPTION". MEANING THIS TYPE OF SURVEY CAN BE CHALLANGED. EXAMPLES OF REASONS TO CHALLENGE A NON-STANDARDIZED SURVEY COULD BE:

*THE MARKET AREA SURVEYED IS TOO LARGE AND TOO DIVERSE TO BE FAIR.
* TOO FEW SHOPS SURVEYED IN THE MARKET AREA TO ESTABLISH A FAIR AVERAGE LABOR RATE.
* INSURERS DRP SHOP RATES ARE INCLUDED IN THE SURVEY.
* INSURER "CHERRY PICKED" SHOPS SURVEYED
*THE SURVEY IS NOT CURRENT.

THERE ARE MANY OTHER REASONS TO CHALLENGE A SURVEY. IF YOU BELIEVE A SURVEY IS UNFAIR YOU SHOULD REVIEW THE METHODOLOGY THE INSURER USED TO DO THE SURVEY AND CONSIDER FILING A COMPLAINT WITH THE DEPARTMENT OF INSURANCE CHALLENGING THE SURVEY.

IF THE INSURER ELECTED NOT TO DO A SURVEY, THE INSURER WOULD NOT HAVE A BASIS FOR ADJUSTING THE SHOP'S LABOR RATE AND WOULD BE REQUIRED TO PAY THE SHOP'S REASONABLE POSTED RATE.

UP TO DATE LABOR RATE SURVEY INFORMATION IS POSTED ON THE C.A.A. WEB SITE

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(2) Q. THE CUSTOMER'S VEHICLE WAS TOWED TO MY SHOP FROM THE ACCIDENT SCENE. THE VEHICLE WAS BADLY DAMAGED. THE CUSTOMER WANTED THE VEHICLE REPAIRED AT MY SHOP SO I HAD MY CUSTOMER SIGN AN AUTHORIZATION TO TEAR THE VEHICLE DOWN, ANALYZE THE DAMAGE, AND WRITE AN ESTIMATE. THE VEHICLE WAS A TOTAL LOSS. THE INSURANCE COMPANY PAID FOR THE TEAR DOWN BUT REFUSES TO PAY FOR THE DAMAGE ANALYSIS {SET UP & MEASURE} AND MY CHARGES TO WRITE THE ESTIMATE. AM I ENTITLED TO BE PAID FOR THIS? CAN THE INSURANCE COMPANY EXCLUDE THIS? WHAT CAN I DO?

A: YES, YOU SHOULD BE PAID FOR YOUR WORK BY THE CUSTOMER PROVIDED YOU RECEIVED THE PROPER AUTHORIZATION FROM THE CUSTOMER TO DO THE WORK. YOUR BILL MUST ITIMIZE ALL PARTS AND LABOR. [3353 CA. CODE OF REGS.] THE CUSTOMER SHOULD BE REIMBURSED BY THIER INSURANCE COMPANY. YOU SHOULD ENSURE YOUR TEAR DOWN AUTHORIZATION IS PROPERLY DRAFTED TO AVOID THIS TYPE PROBLEM.

UNLESS YOU HAVE A DIRECT REPAIR AGREEMENT WITH THE CUSTOMER'S INSURANCE COMPANY THAT SAYS YOU WILL NOT CHARGE FOR THIS SERVICE, YOU HAVE NO OBLIGATION TO DO THIS WORK FOR FREE. YOUR BILL FOR THIS WORK BECOMES PART OF THE CUSTOMER'S CLAIM AND MUST BE PAID BY THE INSURANCE COMPANY RESPONSIBLE FOR PAYING THE CLAIM. IT IS THE SAME FOR FIRST AND THIRD PARTY CLAIMS. [2695.7-B-1, 2695.8-F-1-2-3]

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(3) Q. THE CUSTOMER'S VEHICLE WAS TOWED TO MY SHOP. ALL THE PROPER AUTHORIZATIONS WERE SIGNED. THE VEHICLE WAS DETERMINED TO BE A TOTAL LOSS. THE INSURANCE COMPANY LEFT THE VEHICLE AT MY SHOP FOR SEVERAL MONTHS EVEN THOUGH I CALLED THEM REPEATEDLY TO REMIND THEM THE VEHICLE WAS STILL AT MY SHOP. I CHARGE STORAGE DAILY AT MY SHOP AND I TOLD THEM THIS.THE INSURANCE COMPANY CALLED ME TODAY TO TELL ME THEY WERE GOING TO PICK UP THE VEHICLE AND THE WILL ONLY PAY $400.00 FOR STORAGE. WHEN I TOLD THE INSURANCE COMPANY REPRESENTATIVE THAT MY

STORAGE CHARGES ARE SIGNIFICANTLY HIGHER THAN $400.00, I WAS TOLD THE LAW LIMITS THE AMOUNT OF STORAGE I CAN CHARGE AND THAT IS ALL THEY WILL PAY. IS THIS TRUE?

A: NO! THE INSURANCE COMPANY IS USING THE WRONG SECTION OF THE VEHICLE CODE AND CIVIL CODE TO TRY REDUCE THE AMOUNT OF STORAGE THEY PAY.

THE CORRECT SECTION OF THE VEHICLE CODE THAT DEALS WITH INSURANCE CLAIMS AND TOWING AND STORAGE CHARGES IS 22524.5 [A] & [B].
IT STATES AS FOLLOWS:
"[A] ANY INSURERTHAT IS RESPONSIBLE FOR ORDINARY AND REASONABLE TOWING AND STORAGE CHARGES UNDER AN AUTOMOBILE INSURANCE POLICY TO AN INSURED OR ON BEHALF OF AN INSURED TO A VALID CLAIMANT, IS LIABLE FOR THOSE CHARGES TO THE PERSON PERFORMING THOSE SERVICES WHEN A VEHICLE IS TOWED AND STORED AS A RESULT OF AN ACCIDENT OR STOLEN RECOVERY. THE INSURER MAY DISCHARGE THE OBLIGATION BY MAKING PAYMENT TO THE PERSON PERFORMING THE TOWING AND STORAGE SERVICES OR TO THE INSURED OR ON BEHALF OF THE INSURED TO THE CLAIMANT."
"[B] ANY INSURED OR CLAIMANT WHO HAS RECEIVED PAYMENT, WHICH INCLUDES TOWING AND STORAGE CHARGES, FROM AN INSURER FOR A LOSS RELATING TO A VEHICLE IS LIABLE FOR THOSE CHARGESTO THE PERSON PERFORMING THOSE SERVICES".

YOU MAY ALSO WANT TO REVIEW SECTION 2695.8 (K) 0F THE CA. FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS. THIS REGULATION SPECIFICALLY INSTRUCTS AN INSURER HOW TO DEAL WITH STORAGE.

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(4) Q. THE CUSTOMERS VEHICLE WAS TOWED INTO MY SHOP. THE CUSTOMER AUTHORIZED ME TO REPAIR THE VEHICLE AND HIS INSURANCE COMPANY INSPECTED THE DAMAGE BUT DID NOT LEAVE A CHECK TO PAY FOR THE REPAIRS. I ASSUMED THE ADJUSTER WOULD BE MAILING THE CHECK SO I STARTED TO REPAIR THE VEHICLE. IT TOOK THREE WEEKS TO COMPLETE THE REPAIRS. WHEN THE REPAIRS WERE COMPLETED, I CALLED THE CUSTOMER TO LET HIM KNOW THE REPAIRS WERE COMPLETE AND HE COULD PICK UP HIS VEHICLE. I MADE SEVERAL CALLS TO THE CUSTOMER BUT HE DID NOT RETURN THEM. I RECEIVED A CALL TODAY FROM THE LIEN HOLDER AND THEY TOLD ME THAT THEY WERE REPOSSESSING THE VEHICLE AND THEY WERE GOING TO COME AND GET THE VEHICLE. THEY ALSO SAID THAT THEY WILL ONLY PAY $1,500.00 FOR THE REPAIRS AND $400.00 FOR TOWING AND

STORAGE CHARGES. MY BILL FOR THE REPAIR OF THIS VEHICLE IS IN THE THOUSANDS OF DOLLARS. CAN THEY DO THIS? WHAT CAN I DO?

A: **WHEN YOU RECEIVE A CALL FROM A LIEN HOLDER INQUIRING ABOUT THE REPAIR STATUS OF A CUSTOMER'S VEHICLE, YOU SHOULD ACKNOWLEDGE THAT THE VEHICLE IS IN YOUR SHOP, BUT DO NOT OFFER ANY ADDITIONAL INFORMATION REGARDING THE STATUS OF THE REPAIR UNTIL YOU TALK TO AN ATTORNEY OR OTHER LIEN SALE AND REPOSSESSION EXPERTS. YOU CAN LOSE THOUSANDS OF DOLLARS.**

BECAUSE OF THE POTENTIAL FINANCIAL LOSSES YOU CAN SUFFER, YOU AND YOUR EMPLOYEES SHOULD BECOME FAMILIAR WITH THE WARNING SIGNS THAT MAY TIP YOU OFF TO A POSSIBLE PROBLEM AND PROCEED WITH CAUTION. SOME OF THE WARNING SIGNS ARE:

- A CUSTOMER THAT APPEARS TO HAVE LITTLE INTEREST IN THE REPAIRS.
- AN INSURANCE COMPANY THAT CANNOT CONFIRM THAT THERE IS COVERAGE IN EXISTANCE ON THE VEHICLE.
- A LIEN HOLDER CALLS TO FIND OUT IF THE VEHICLE IS IN YOUR SHOP. [SECTION 3068 [A] OF THE CIVIL CODE]

  STORAGE UNDER VC 3068 (A) IS CAPPED AT $1,000.00 AND $1250.00 IF A LEIN HAS BEEN FILED. THE LIEN HOLDER MAY BE USING A LAW, VEHICLE CODE SECTION 10652.5 (A) TO CAP YOUR STORAGE. THIS LAW LIMITS THE STORAGE UNDER CERTAIN CIRCUMSTANCES TO 15 DAYS MAXIMUM. THIS MAY OR MAY NOT BE APPROPRIATE. YOUR LEIN EXPERT SHOULD BE ABLE TO PROVIDE GUIDENCE FOR YOU.

(5) Q: A CUSTOMER'S VEHICLE WAS TOWED TO THE POLICE IMPOUND LOT AND LATER TO MY SHOP FOR REPAIRS. MY CUSTOMER SIGNED AN AUTHORIZATION TO TEAR DOWN, ANALYZE THE DAMAGE, AND WRITE A REPAIR ESTIMATE ON THE VEHICLE. AFTER THE ADJUSTER FROM THE CUSTOMER'S INSURANCE COMPANY INSPECTED THE VEHICLE AND LEFT A CHECK TO COVER THE REPAIRS, I OBTAINED AUTHORIZATION FROM THE CUSTOMER TO REPAIR THE VEHICLE. BEFORE I WAS ABLE TO START REPAIRS ON THE VEHICLE, I RECEIVED A CALL FROM THE LIEN HOLDER TO INFORM ME THAT THEY WERE REPOSSESSING THE VEHICLE. THEY TOLD ME THAT THE WERE GOING TO MOVE THE VEHICLE TO ANOTHER SHOP FOR REPAIRS. THEY ALSO TOLD ME THAT THEY WOULD NOT PAY FOR

MY LABOR [$300.00] TO TEAR DOWN, ANALYZE THE DAMAGE AND WRITE THE REPAIR ESTIMATE, AND THEY WOULD ONLY PAY $400.00 FOR THE ADVANCE CHARGES AND STORAGE AT MY SHOP. I CHARGE STORAGE AT MY SHOP AND THE ADVANCE FEES ALONE EXCEED $400.00. CAN THEY DO THIS?

A: **YOU SHOULD SEEK ADVICE FROM AN ATTORNEY OR OTHER LIEN SALE AND REPOSSESSION EXPERT BEFORE RELEASING THE VEHICLE.** YOU MAY NOT BE ABLE TO CHARGE ADDITIONAL STORAGE WHILE YOU ARE SEEKING THIS ADVICE.

SECTION 22524.5 OF THE VEHICLE CODE WHICH WAS QUOTED IN AN ANSWER TO A PREVIOUS QUESTION, MAY REQUIRE THE INSURANCE COMPANY OR THE LIEN HOLDER TO PAY ALL THE ADVANCE FEES AND STORAGE CHARGES. GENERALLY, THE CUSTOMER'S INSURANCE POLICY WILL HAVE WORDING THAT WILL OBLIGATE THE INSURER TO PAY FOR ALL REASONABLE COSTS INCURRED AS A RESULT OF A DIRECT AND ACCIDENTAL LOSS TO THE COVERED VEHICLE. IN THIS CASE, THE INSURER MAY ARGUE THAT THE COSTS TO TEAR DOWN, ANALYZE THE DAMAGE, AND ESTIMATE THE DAMAGE WOULD NOT HAVE BEEN INCURRED IF THE LIEN HOLDER HAD NOT DECIDED TO MOVE THE VEHICLE TO ANOTHER REPAIR FACILITY. THEREFORE, THEY MAY REFUSE TO PAY THESE CHARGES. THE LIEN HOLDER MAY BE RESPONSIBLE FOR THESE CHARGES. YOU SHOULD ASK YOUR EXPERT ADVISOR FOR DIRECTION.

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(6) Q: I WANT TO CHARGE FOR WRITING ESTIMATES ON NON-DRIVEABLE VEHICLES THAT END UP BEING "TOTALED" BY THE INSURANCE COMPANY.THE INSURANCE COMPANY ADJUSTERS TELL ME THAT INSURANCE COMPANIES ARE NOT REQUIRED TO PAY SHOPS FOR WRITING ESTIMATES. IS THIS TRUE?

A: ASSUMING YOU HAVE PROPER AUTHORIZATION FROM YOUR CUSTOMER FOR AN "ESTIMATE CHARGE", YOU SHOULD BE PAID FOR YOUR LABOR.GENERALLY, YOUR CUSTOMER'S INSURANCE POLICIES WILL OBLIGATE THE INSURER TO PAY FOR ALL REASONABLE COSTS INCURRED AS A DIRECT AND ACCIDENTAL LOSS TO THE COVERED VEHICLE.
IN THIS CASE, IF THE CHARGES TO WRITE THE ESTIMATE WERE PROPERLY AUTHORIZED BY THE CUSTOMER, THE CUSTOMER BECOMES LEGALLY OBLIGATED TO PAY THIS BILL. THE INSURANCE COMPANY THEN BECOMES OBLIGATED TO REIMBURSE THEIR INSURED OR THIRD PARTY CLAIMANT FOR THE ESTIMATE CHARGES. UNLESS THE INSURER CAN STATE TO THEIR CUSTOMER, IN WRITING, THE POLICY PROVISION,

LIMITATION, OR LEGAL REASON WHY THEY ARE NOT REQUIRED TO PAY THE BILL, THE MUST PAY. [2695.7 [B-1]

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(7) Q. I HAVE BEEN NOTIFYING INSURANCE COMPANY ADJUSTERS OF SUPPLEMENTS AFTER I OBTAIN APPROVAL FROM THE CUSTOMER FOR THE SUPPLEMENTS. GENERALLY THE ADJUSTER APPROVES THE SUPPLEMENT AND TELLS ME TO MAIL IT TO HIM / HER. LATELY, IT SEEMS THAT ADJUSTERS IGNORE THESE BILLS. AFTER MAKING NUMEROUS CALLS TO THE ADJUSTER, AND SENDING ADDITIONAL COPIES OF THE BILLS, I AM NOT GETTING PAID. I AM THINKING OF REFUSING TO RELEASE THE CUSTOMER'S VEHICLE TO HIM / HER UNTIL THE SUPPLEMENT IS PAID. CAN I DO THIS?

A: YOU HAVE SOME OPTIONS:

*YOU COULD HOLD THE CUSTOMERS VEHICLE UNTIL THE INSURER SENDS THE PAYMENT.

*YOU COULD REQUIRE THE CUSTOMER PAY THE OUTSTANDING SUPPLEMENT BILL WHEN HE/SHE COMES IN TO PICK UP THE VEHICLE.

*YOU AND YOUR CUSTOMER COULD FILE DEPARTMENT OF INSURANCE COMPLAINTS AGAINST THE INSURANCE COMPANY FOR VIOLATING SECTION 560 OF THE INSURANCE CODE. THE CODE REQUIRES INSURANCE COMPANIES TO PAY THESE BILLS NO LATER THAN 10 DAYS SUBSEQUENT TO RECIEPT OF AN ITIMIZED BILL OR INVOICE COVERING REPAIRS AUTHORIZED BY THE INSURER WHICH HAVE BEEN SATISFACTORILY COMPLETED.

YOU MAY WANT TO CONSIDER SENDING SUPPLEMENT BILLS IMMEDIATELY INSTEAD OF WAITING TILL REPAIRS TO THE VEHICLE ARE COMPLETED. WHEN YOU SEND SUPPLEMENTS, YOU MAY WANT TO CONSIDER ATTACHING A LETTER WITH THE SUPPLEMENT TO THE INSURER AND CUSTOMER THAT TELLS THEM WHEN THE VEHICLE IS SCHEDULED FOR DELIVERY, WHEN THE SUPPLEMENT WAS APPROVED BY THE CUSTOMER. WHEN IT WAS APPROVED BY THE ADJUSTER, AND THE VEHICLE WILL NOT BE RELEASED FOR DELIVERY UNLESS THE SUPPLEMENT IS PAID IN FULL BEFORE THAT DATE. IF THE INSURER FAILS, THEN YOU MUST DECIDE YOUR NEXT COURSE OF ACTION. DELIVER THE VEHICLE WITHOUT PAYMENT OR MAKE THE CUSTOMER PAY THE SUPPLEMENT. EITHER WAY, IF PAYMENT IS NOT MADE BY THE INSURER A DEPARTMENT OF INSURANCE COMPLAINT WOULD PROBABLY BE THE NEXT COURSE OF ACTION.

(8) Q: CAN I HOLD THE CUSTOMER'S VEHICLE UNTIL I GET PAID? DON'T I HAVE A RIGHT TO LEVY A MECHANICS LIEN AGAINST THE VEHICLE? WE TELL OUR CUSTOMERS THAT WE WON'T RELEASE THE VEHICLE UNTIL WE RECEIVE PAYMENT IN FULL.

A: YOU HAVE A RIGHT TO PLACE A LIEN AGAINST A VEHICLE TO ENSURE YOU RECEIVE PAYMENT FOR YOUR WORK. YOU HAVE A LIEN DEPENDENT UPON POSESSION OF THE VEHICLE FOR THE COMPENSATION TO WHICH YOU ARE LEGALLY ENTITLED FOR THE WORK YOU PERFORMED ON THE VEHICLE. THE LIEN ARISES AT THE TIME A WRITTEN STATEMENT OF CHARGES FOR COMPLETED WORK OR SERVICES IS PRESENTED TO THE REGISTERED OWNER OR 30 DAYS AFTER THE WORK OR SERVICES ARE COMPLETED, WHICHEVER OCCURS FIRST.

YOU CAN HOLD THE CUSTOMERS VEHICLE UNTIL THE CUSTOMER PAYS OR MAKES ARRANGEMENTS FOR PAYMENT. YOU HAVE TO BE CAREFUL BECAUSE YOU CAN LOSE YOUR RIGHT TO PLACE A LIEN ON THE VEHICLE IF YOU MISS THE TIME FRAMES OUTLINED IN SECTION 3068 OF THE CIVIL CODE.

IF YOU ANTICIPATE THAT YOU MAY HAVE A PROBLEM COLLECTING PAYMENT FOR WORK YOU HAVE PERFORMED ON A VEHICLE, YOU SHOULD PROBABLY SEEK THE ADVICE OF AN ATTORNEY OR AN EXPERT ON LIEN LAW.

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(9) Q. I REPAIRED MY CUSTOMERS VEHICLE AND RELEASED IT TO HIM. I HAVE NOT BEEN PAID FOR THE JOB. I CALLED HIS INSURANCE COMPANY AND WAS TOLD THAT THEY SENT A CHECK FOR THE ORIGINAL ESTIMATE AMOUNT AND A CHECK FOR THE SUPPLEMENT AMOUNT TO THE CUSTOMER, THIER INSURED. I'VE CALLED THE CUSTOMER SEVERAL TIMES WITHOUT A RESPONSE. I'VE BEEN TOLD THE INSURANCE COMPANY IS REQUIRED TO PUT THE BODY SHOP'S NAME ON THE CHECK. WHAT DO I NEED TO DO TO GET THE INSURANCE COMPANY TO PAY ME FOR THIS JOB?

A: THERE ARE TWO ANSWERS TO THIS QUESTION DEPENDING ON THE CIRCUMSTANCES.

*CIRCUMSTANCE 1- THE CUSTOMER AUTHORIZES YOU TO REPAIR THE VEHICLE. THE CUSTOMER SUBMITS THE ESTIMATE TO THE INSURER FOR

PAYMENT. THE INSURER PAYS THE CUSTOMER FOR THE REPAIRS BASED ON YOUR ESTIMATE WITHOUT INSPECTING THE VEHICLE.

IN THIS SITUATION, THE INSURER WILL PAY THE CUSTOMER DIRECT FOR THE ORIGINAL BILL PLUS ALL SUPPLEMENTS. THIS IS A RARE OCCURANCE EXCEPT FOR DRIVE-IN TYPE SITUATIONS WHERE THE ADJUSTER WRITES THE ESTIMATE AT THE INSURER'S OFFICE OR AT A CUSTOMER'S HOME OR BUSINESS. THIS WOULD APPLY TO THIRD PARTY CLAIMANT VEHICLES ALSO.

*CIRCUMSTANCE 2- THIS THE MOST COMMON SITUATION WHERE THE INSURER'S ADJUSTER INSPECTS THE VEHICLE AT THE SHOP AND AGREES TO THE SCOPE AND COST OF THE REPAIRS. IN THIS SITUATION, THE INSURER IS REQUIRED TO ISSUE THE CHECK TO THE REPAIRER OR JOINTLY TO THE INSURED AND THE REPAIRER. THE FULL TEXT OF SECTION 560 OF THE INSURANCE CODE IS WRITTEN BELOW:

" EVERY INSURER ISSUING AN AUTOMOBILE COLLISION POLICY, AS DEFINED IN SUBSECTION [D] OF SECTION 660, OR A POLICY FOR COMPREHENSIVE COVERAGE FOR A MOTOR VEHICLE AS DEFINED IN SECTION 11580.07, SHALL, IN THE EVENT OF DAMAGE TO A COVERED AUTOMOBILE OR OTHERWISE AND THE ELECTION BY THE INSURER TO HAVE SUCH AUTOMOBILE REPAIRED BY THE REPAIRER, MAKE PAYMENT BY CHECK OR DRAFT, PAYABLE TO THE REPAIRER OR TO THE NAMED INSURED JOINTLY, NOT LATER THAN 10 DAYS SUBSEQUENT TO RECIEPT OF AN ITIMIZED BILL OR INVIOCE COVERING REPAIRS AUTHORIZED BY THE INSURER WHICH HAVE BEEN SATISFACTORILY COMPLETED.THE PROVISIONS OF THIS SECTION SHALL INCLUDE ALL CASES WHERE THE INSURED HAS RECEIVED ACTUAL NOTICE THAT THE REPAIRER IS DOING WORK PURSUANT TO A CONTRACT APPROVED BY THE INSURANCE COMPANY IN WHICH CASE THE PAYMENT SHALL INCLUDE THE NAME OF THE REPAIRER."

PLEASE TAKE NOTE OF THE FACT THAT THIS DOES NOT APPLY TO THIRD PARTY CLAIMANTS.

SO WHAT DO YOU DO WHEN THE INSURER FAILS TO PROTECT YOUR INTERESTS AS REQUIRED?

YOU MAY CONSIDER CALLING THE INSURANCE COMPANY TO DETERMINE IF THEY PROPERLY PROTECTED YOU ON THE CHECK. IF THEY DID PROTECT YOU, ASK THEM TO SEE IF THE CHECK HAS BEEN CASHED. IF IT HAS, YOU MAY HAVE TO PROCEED IN CIVIL COURT AGAINST YOUR CUSTOMER AND THE BANK THAT CASHED THE CHECK.

IF THE INSURER FAILED TO PROTECT YOUR INTEREST AS REQUIRED, AND THE CHECK HAS NOT BEEN CASHED, ASK THE INSURER TO CANCEL THE CHECK AND RE-WRITE IT IN YOUR NAME ONLY.

IF THE CHECK HAS BEEN CASHED, YOU SHOULD ASK THE INSURER TO PAY YOU AS REQUIRED. THEY WILL BE RESPONSIBLE FOR COLLECTING THE DUPLICATE PAYMENT FROM THEIR CUSTOMER. IF THEY REFUSE TO DO THIS, YOU SHOULD CONSIDER FILING A COMPLAINT WITH THE DEPT. OF INSURANCE AND SEEK LEGAL ADVICE TO DETERMINE WHAT YOUR NEXT COURSE OF ACTION WILL BE.

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(10)Q. I'VE BEEN HAVING MY CUSTOMERS SIGN A POWER OF ATTORNEY SO I WON'T HAVE TO HAVE THEM TO RETURN TO MY SHOP TO SIGN SUPPLEMENT CHECKS AFTER THEY HAVE TAKEN DELIVERY OF THEIR VEHICLE. RECENTLY I'VE HEARD THAT THIS USE OF A POWER OF ATTORNEY MAY IMPROPER. IF IT IS, WHY? ALSO, IF IT IS IMPROPER, WHAT CAN I USE IN ITS PLACE?

A: IN GENERAL, THE USE OF A POWER OF ATTORNEY IS NOT RECOMMENDED. HERE'S WHY:

THE WAY A POWER OF ATTORNEY IS EXECUTED IN THE BODY SHOP ENVIORNMENT IS IMPROPER. A POWER OF ATTORNEY IS LEGALLY SUFFICIENT IF ALL THE FOLLOWING REQUIREMENTS ARE MET:

A] THE POWER OF ATTORNEY CONTAINS THE DATE OF EXECUTION

B] THE POWER OF ATTORNEY IS SIGNED BY THE PRINCIPAL [THIS WOULD BE YOUR CUSTOMER] OR IN THE PRINCIPAL'S NAME BY ANOTHER ADULT IN THE PRINCIPAL'S PRESENCE AND AT THE PRINCIPALS DIRECTION.

C] THE POWER OF ATTORNEY IS ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR SIGNED BY AT LEAST TWO WITNESSES WHO ARE:

A] ADULTS

B] THE ATTORNEY- IN- FACT MAY NOT ACT AS A WITNESS. [THE ATTORNEY-IN-FACT WOULD BE THE BODY SHOP OWNER OR EMPLOYEES]
C] EACH WITNESS SIGNING THE POWER OF ATTORNEY SHALL WITNESS EITHER THE SIGNING OF THE INSTRUMENT BY THE PRINCIPAL OR THE PRINCIPAL'S ACKNOWLEDGEMENT OF THE SIGNATURE OF THE POWER OF ATTORNEY.WHAT ALL THIS MEANS IS THAT FOR A POWER OF ATTORNEY TO BE LEGAL, IT HAS TO BE NOTORIZED, ORWITNESSED BY TWO PEOPLE THAT ARE NOT THE BODY SHOP OWNER OR EMPLOYEES.

WHAT THIS MEANS IS WHEN A POWER OF ATTORNEY IS IMPROPERLY USED, YOU ARE FORGING A SIGNATURE WHEN YOU SIGN THE CUSTOMERS NAME TO THE CHECK.

INSTEAD OF A POWER OF ATTORNEY, YOU MAY WANT TO CONSIDER DEVELOPING A BILLING DOCUMENT THAT YOU SEND TO THE INSURANCE COMPANY ON BEHALF OF THE CUSTOMER THAT INCLUDES A "DIRECTION TO PAY" AND THE ENTIRE TEXT OF SECTION 560 OF THE INSURANCE CODE WITH THE SECTIONS HIGHLIGHTED THAT INDICATE THE TIME FRAME THE INSURER HAS TO MAKE THE PAYMENT AND WHO THEY PAY. IN THE CASE OF A VEHICLE THAT HAS BEEN DELIVERED, YOU WOULD INSTRUCT THE INSURANCE COMPANY TO MAKE THE CHECK PAYABLE TO YOU ONLY.

YOU MAY WANT TO CONSIDER USING THIS FORMAT FOR THE ORIGINAL ESTIMATE AND EACH SUPPLEMENT.

THE "DIRECTION TO PAY" IS ONLY VALID ON FIRST PARTY CLAIMS. IN THIRD PARTY CLAIMS, THE INSURER IS OBLIGATED TO PAY THE CLAIMANT DIRECT SO YOU MUST COLLECT YOUR PAYMENT FROM THE THIRD PARTY CUSTOMER.

A SIMPLE DIRECTION TO PAY COULD LOOK LIKE THIS:

DIRECTION TO PAY

CUSTOMER NAME CLAIM NUMBER
CUSTOMER ADDRESS
CUSTOMER PHONE NUMBER

I, JOE CUSTOMER AUTHORIZE HAPPY INSURANCE COMPANY TO PAY GOOD BODY SHOP, ADDRESS AND PHONE NUMBER DIRECT FOR THE REPAIRS --- OR SUPPLEMENTAL REPAIRS TO MY 2000 WOMBAT V.I.N. NUMBER ----------IN THE AMOUNT OF $ 10000.00.
I HAVE TAKEN POSSESION OF MY VEHICLE AND IT HAS BEEN REPAIRED TO MY SATISFACTION.

SIGNED: JOE CUSTOMER

THE BEST OPTION IS TO ALWAYS GET PAID BEFORE RELEASING THE VEHICLE.

[SECTION 2400 CIVIL CODE, SECTION 400-4034 PROBATE CODE, SECTION 4120, 4121, 4122 PROBATE CODE SECTION 560 INSURANCE CODE]

(11) Q: I HAVE A FRIEND THAT OWNS A TOWING COMPANY. HE HAS OFFERED TO TOW VEHICLES TO MY SHOP FROM THE ACCIDENT SITE. I WOULD PAY A “FINDERS FEE” TO HIM IF I GET THE JOB. IS THIS LEGAL?

A: **NO!**

SECTION 12110 [C] OF THE VEHICLE CODE CLEARLY PROHIBITS THIS.

(11)Q: MY CUSTOMER BROUGHT HIS VEHICLE TO MY SHOP FOR REPAIRS. HOWEVER, WHEN HE NOTIFIED HIS INSURER THAT HIS VEHICLE WAS AT MY SHOP AND HE WANTED ME TO REPAIR THE VEHICLE, HIS INSURANCE CO. ADJUSTER TOLD HIM THAT HE WOULD HAVE TO TAKE HIS VEHICLE TO THE INSURANCE COMPANY D.R.P. SHOP FOR AN ESTIMATE FIRST, THEN HE COULD RETURN THE VEHICLE TO MY SHOP FOR REPAIRS. THIS APPEARS TO BE A FORM OF "STEERING" IS THIS LEGAL?

A. NO! THIS IS A CLEAR VIOLATION OF SECTION 2695.8 (E-5) OF THE CALIFORNIA FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS IT STATES:

"AFTER THE CLAIMANT HAS CHOSEN AN AUTOMOTIVE REPAIR SHOP, NO INSURER SHALL REQUIRE THE CLAIMANT TO HAVE THE VEHICLE INSPECTED AT OR BY AN AUTOMOTIVE REPAIR SHOP WHERE THE INSURER HAS A DIRECT REPAIR PROGRAM, OR BY ANY OTHER REPAIR SHOP IDENTIFIED BY THE INSURER."

SECTION 758.5 OF THE INSURANCE CODE ALSO DEALS WITH THIS "STEERING" ISSUE. THE AUTOBODY REPAIR CONSUMER BILL OF RIGHTS [SECTION 2695.85 OF THE CALIFORNIA FAIR CLAIM SETTLEMENT PRACTICES ALSO DEALS WITH THIS ISSUE.

ONCE THE CUSTOMER HAS CHOSEN A REPAIR SHOP, SECTION 758.5 OF THE INSURANCE CODE STATES THAT "NO INSURER SHALL SUGGEST OR RECOMMEND THAT AN AUTOMOBILE BE REPAIRED AT A SPECIFIC AUTOMOTIVE DEALER UNLESS EITHER OF THE FOLLOWING APPLIES"

[A] A REFERRAL IS SPECIFICALLY REQUESTED BT THE CUSTOMER OR,

[B] THE CUSTOMER HAS BEEN INFORMED IN WRITING OF HIS/HER RIGHT TO SELECT THE AUTOMOTIVE REPAIR DEALER.

HOWEVER, BOTH SECTIONS 2695.8 (E-5) AND 758.5 GIVES THE INSURER THE RIGHT TO PROVIDE THE CUSTOMER SOME SPECIFIC TRUTHFUL AND NON DECEPTIVE INFORMATION REGARDING THE SERVICES AND BENEFITS

AVAILABLE TO THE CUSTOMER DURING THE CLAIM PROCESS. THIS EXPLANATION CAN INCLUDE ITEMS LIKE THE INSURERS DIRECT REPAIR PROGRAM, WARRANTIES, TYPE OF PARTS THAT WILL BE USED, TIME TO REPAIR ETC.

THIS IS WHERE INSURERS AND THEIR ADJUSTERS GET OFF TRACK. THEY FREQUENTLY VIOLATE THIS SECTION OF THE LAW BECAUSE THEY ARE TRYING TO "STEER" THE CUSTOMER TO THE D.R.P. SHOP BECAUSE THAT IS ONE OF THE MEASUREMENTS THAT ADJUSTER'S PAY RAISES ARE BASED ON.

SOME INSURERS SELL A POLICY THAT INCLUDES PENALTIES IF THE CUSTOMER TAKES THEIR AUTOMOBILE TO A REPAIR SHOP THAT IS OUT OF THEIR SYSTEM. THE PENALTY IS TYPICALLY REQUIRES THE CUSTOMER TO PAY 20% OF THE REPAIR BILL IN ADDITION TO THE DEDUCTIBLE. IN THESE SITUATIONS, THE DISTANCE FROM THE CUSTOMER'S HOME OR BUSINESS IS IMPORTANT IF THE INSURERS NEAREST D.R.P. SHOP EXCEEDS A "REASONABLE" DISTANCE, DEFINED AS "CITIES OR URBAN AREAS WITH A POPULATION OF 100,000 OR HIGHER, MORE THAN FIFTEEN (15) MILES AND FOR ALL OTHER AREAS OF THE STATE, MORE THAN TWENTY FIVE (25) MILES FROM WHERE THE VEHICLE IS LOCATED AND MADE AVAILABLE FOR INSPECTION BY THE CLAIMANT". SECTION 2695.8 (E-4) CA. FAIR CLAIM SETTLEMENT PRACTICES REGULATIONS.

WHEN AN INSURANCE ADJUSTER VIOLATES THESE REGULATIONS BY INSISTING THE CUSTOMER TAKE THE VEHICLE TO THE INSURERS D.R.P. SHOP FOR AN ESTIMATE, YOU MAY CONSIDER CALLING THE ADJUSTER OR HAVE THE CUSTOMER CALL AND ASK WHERE IN THE POLICY IT STATES THE CUSTOMER IS REQUIRED TO TAKE THEIR VEHICLE TO THE INSURERS D.R.P. SHOP FOR AN ESTIMATE BEFORE LEAVING IT AT YOUR SHOP FOR REPAIR.
MOST INSURANCE POLICIES DO NOT HAVE THIS. IF IT IS NOT SPECIFICALLY REQUIRED IN THE POLICY, THE ADJUSTER CANNOT REQUIRE THE CUSTOMER COMPLY. IF YOU OR THE CUSTOMER DO NOT HAVE SUCCESS WITH THE ADJUSTER, YOU OR THE CUSTOMER MAY WANT TO COMPLAIN TO THE CLAIM OFFICE MANAGER. IF THAT FAILS, THE ONLY OPTION IS TO FILE A COMPLAINT WITH THE DEPARTMENT OF INSURANCE.

THE C.A.A. HAS SAMPLE COMPLAINT FORMATS TO ASSIST YOU OR YOUR CUSTOMER TO FILE THE COMPLAINT