

How to Respond to a Customer Injury

By Naomi Angel, DASMA Legal Counsel

The summer 2009 issue of this magazine reported on three garage-door-related accidents that occurred in the first half of 2009. Two of the accidents resulted in the deaths of children. The third resulted in minor injury to a child, but it could have been much worse.

Accidents like these are tragic and traumatic for the families involved. These events also pose a difficult situation for any garage door installation company that is involved. You want to be

compassionate to the family, but you also must consider the critical legal issues involved.

Product liability investigations typically focus on two key areas: (1) facts about what happened and (2) knowledge of the product and its causative link, if any, to the injury. At the time of an incident, you cannot be sure what or who, if anyone, is at fault.

First Things First

As soon as possible, a trained company investigator with technical knowledge and familiarity with the job or product should collect information about what happened, how it happened, why it happened, and what should be done to prevent it from happening again. Notify your insurer immediately, but don't wait for your claims adjuster or agent to make the initial investigation.

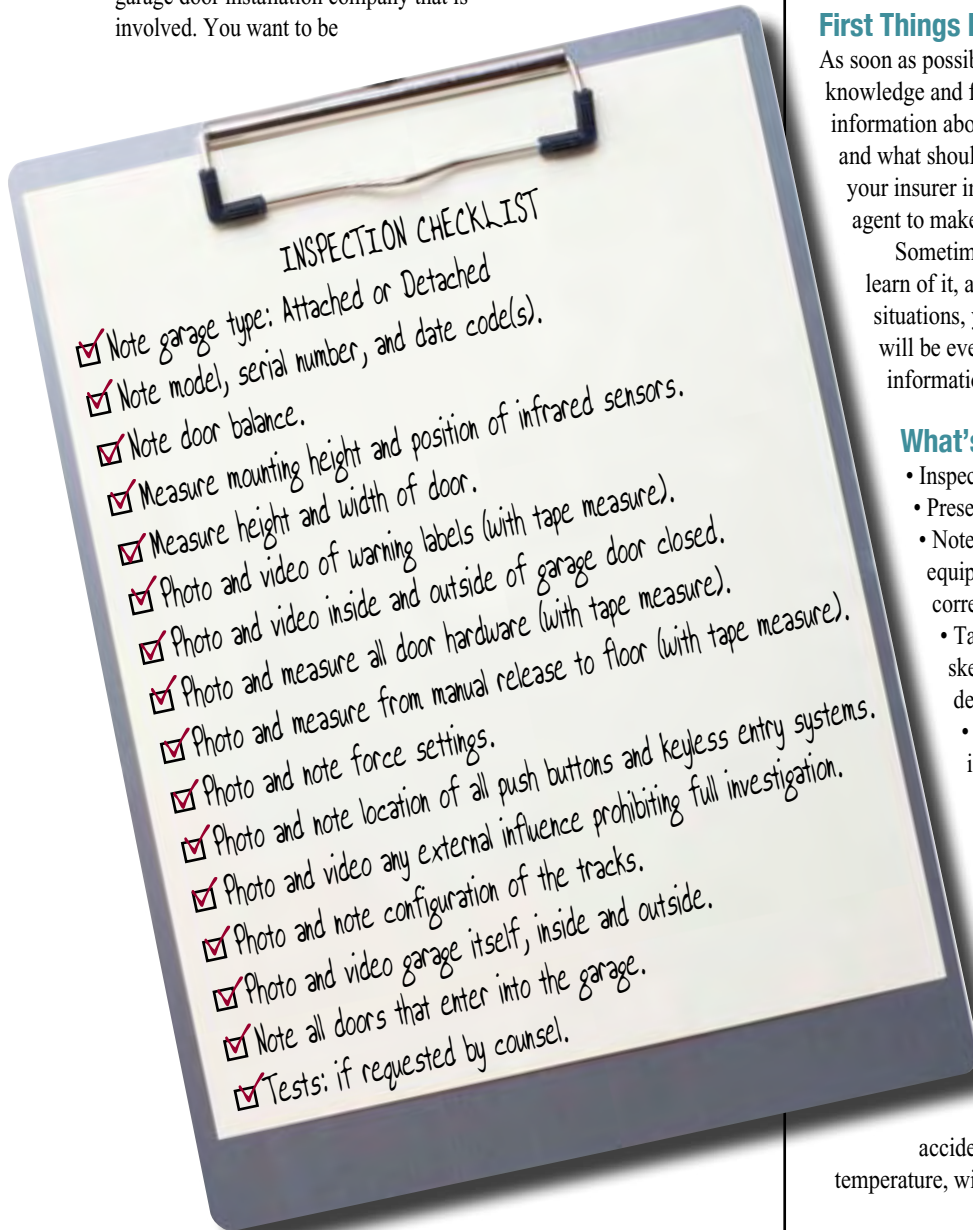
Sometimes, the incident will have occurred long before you learn of it, and the product may have been replaced. In these situations, your records and your business practices policy will be even more critical. Work with your attorney to gather information and documents about the location and product.

What's the Right Thing to Do?

- Inspect the site and product as soon as possible.
- Preserve any physical evidence.
- Note the prevailing conditions—weather, condition of the equipment and environment, maintenance of the premises, correctness of the equipment for the application, etc.
- Take photographs, video, measurements, and sketches. Look for appropriate labeling and optional safety devices.
- Interview persons involved and witnesses, if possible. Get home and work phone numbers and names.
- Show human concern. Much time and expense can often be avoided by simply saying, "I'm sorry this happened." That's not admitting fault. It's just showing concern.

Ask These Questions

- Did malfunctioning equipment or a hazardous condition contribute to the incident?
- Did the location or position of the equipment or the user of the equipment contribute to the accident? Note the location, space, time of day, ventilation, temperature, wind, noise, vibration, and other relevant factors.





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- Was a “Do-It-Yourselfer” involved in any adjustment?
- Should any specialized tools or personal protective equipment have been used?
- Did the work ticket adequately identify and describe the problem and the corrective procedures taken? Did those corrective procedures contribute to the incident?

What Never To Do

Admissions: Don’t admit fault or liability. That can only be determined after an investigation of the facts and laws.

False assurances: Don’t make statements about things you do not know or cannot control, such as, “Don’t worry, we’ll take care of your

medical bills,” or “The manufacturer will give you a new one.” Don’t make promises that you can’t keep.

Delay: Don’t delay reporting the incident. Supply additional information as soon as possible.

Statements: Don’t give statements to or share opinions with unknown or unauthorized persons. You may also want to instruct your employees not to talk to friends or strangers about incidents and claims. This includes investigators, attorneys, experts, and the media. ■

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