How to borrow & lend

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TT Club, as a leading international freight transport and cargo handling insurer, recognises equipment-sharing agreements as an efficient use of resources but flags potential liability issues if appropriate insurance cover is not in place. The first in our new advice document series, Risk Bytes, provides guidance on how to be on good terms with your neighbour. The following piece outlines the key considerations.

The benefits of good neighbour agreements are well recognised and utilised by cargo handling operators and others in the supply chain to successful effect. Sharing infrequently used equipment gives greater flexibility in operations and can cut costs significantly. These arrangements are, however, not always formally outlined in well-defined contracts.

Hello neighbour, can I borrow your st(u/a)ff?

So, what are good neighbour agreements? Why do they exist? And what are the risks of not formalising the arrangement with an exchange of contracts?

A good neighbour agreement describes a situation where operators with a close working relationship arrange to borrow or lend equipment, vehicles and staff for a certain period. They are beneficial to both the borrower and the lender. They are usually reciprocal arrangements, with both parties having something the other may need at one time or another.

For the borrower, the benefits can mean avoiding buying equipment that is only used infrequently; it also avoids hiring additional staff for short periods and results in potentially not insignificant cost savings. The lender gets greater use from its assets and receives additional revenues. At the same time, for all interested, it means working with an entity they know well and may create other reciprocal opportunities on an ongoing basis.

However, an arrangement of a casual nature, though often workable and agreeable to both parties, can lead to potential risks where liability and responsibility in the unfortunate event of an accident or breakdown may not be clear. The owners are financially exposed when the equipment or machine gets lost or damaged during the loan period. In addition, this might severely impact business operations, cancel out any benefit gained from the arrangement, and severely damage years of a good working relationship with the neighbour.

Clarity in writing

Our primary advice covers the provisions that should be made in a formalised written contract, clarifying where the risk and liability rest during the operation of any shared asset and providing the opportunity for thorough due diligence to be carried out before the agreement is signed.

When involved in a good neighbour arrangement, you must be aware that when your neighbour takes possession of your property – or the other way around – several legal relationships can arise under English law (the details of other nations' legislation may differ and should be checked). But the following liabilities should always be considered whatever the legal jurisdiction.

You may have a verbal contract between you, with expressed or implied terms of which you are not aware. You might have a duty of care to your neighbour to exercise reasonable care and skill. You may have created a 'bailment,' where you (the 'bailor') grant exclusive possession of your equipment to your neighbour (the 'bailee'). You might instead have a licence, where you (the 'licensor') grant non-exclusive possession of your equipment to your neighbour (the 'licensee'). Each of these relationships can give rise to different legal duties and obligations, shifting the legal burden of proof in cases of dispute.



Photo: Canva

The ifs

Before entering a good neighbour arrangement, it would be wise to put your agreement in writing. Without it, there could be any number of issues. For example, under a bailment, there is, in effect, a temporary transfer of property rights from you to your neighbour. In other words, your neighbour is entitled to the exclusive use of your equipment during the bailment period. This means that if your operational needs suddenly change, you will not be entitled to get your equipment back until the bailment has come to an end.

If your neighbour damages your equipment, you may not recover sufficient compensation to repair or replace it in the absence of a specific contractual provision.

If your equipment is defective, and your neighbour's or someone else's property is damaged, or an individual is injured – even though it is not your fault – you could get caught up in legal proceedings and have to make contributions for the losses suffered by someone else.

If your equipment is not defective but is damaged or causes damage or injury while in your neighbour's possession – but with neither of you being at fault – there could be a dispute as to which of you is liable.

Your manufacturer's warranty could become void, either by giving your equipment to your neighbour or because your neighbour breached the warranty conditions by not being aware of them, resulting in loss or damage.

A written contract helps you define what your equipment is being used for, how long, and your respective rights, duties, obligations, liabilities and insurance needs. It would help if you also undertook due diligence checks prior to entering an agreement. Among others, you ought to be satisfied that your neighbour's employees have sufficient training to use your equipment; ensuring adequate training will mitigate the risk of damage to the equipment as well as reduce the chance of accidents involving it.

If you do not have adequate insurance coverage, or your insurer is unaware of the agreement, your loss might not be covered. This might severely impact your business operations and finances, once more potentially cancelling any benefit gained from the good neighbour agreement. While a formal written agreement defining the precise conditions of your loan may mitigate the risks, you must advise your insurer of such arrangements. In doing so, you are protecting your business by ensuring that any liabilities are covered, whether they arise under a written contract or not.

Of course, TT Club recommends checks on financial stability and whether sufficient and appropriate insurance cover is in place. But we also offer advice on adequate staff training and health and safety provisions. Moreover, our *Risk Bytes: Good Neighbour Agreements* includes a readily recognised case study of a typical asset-sharing operation.

At risk

In summary, as a lender in a good neighbour agreement, it is vital to conduct thorough due diligence to know who will be using your equipment and how it will be used, remembering that any equipment warranty may be affected. As a borrower, you must consider whether you can meet your contractual obligations if you damage the loaned equipment.

In either position, it is your responsibility to notify your insurer of any good neighbour agreements to lend or borrow equipment or staff. You must declare all equipment to your insurer to be covered under your policy, including new property acquired during an account year and equipment borrowed for temporary use. It is at risk of not being covered if it is not declared. ■

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