

Shifting Legislative Landscape Casts New Light on Inclusion of Automatic Renewal Provisions

By Wendy Carlisle

Automatic renewal provisions, which are also called “evergreen clauses,” provide for automatic renewal of a contract for a set period of time after the initial term expires. They are common in alarm monitoring contracts, but recent trends may cause you to rethink whether to include the clause in future contracts.

A typical clause reads something like this:

The Agreement shall remain in force and effect for an initial term of three years. After the expiration of the initial term, the Agreement shall automatically renew for successive three-year terms until terminated in writing by either party by giving the other party notice at least 30 days prior to the termination.

There are two reasons for including this type of clause in a contract. First, it ensures a recurring source of revenue from monthly or quarterly payments. Once the contract expires, if no

action is taken by the customer, the contract continues and so does the customer’s obligation to pay you. This is important in the alarm industry because alarm installers often rely on monitoring fees to recoup losses from any discounts provided on equipment and installation.

Second, automatic renewals are administratively efficient. They allow you to focus on sales and monitoring, rather than the busy work of keeping track of which contracts are up for renewal. When the initial term expires, you can continue to provide service without giving the contract another thought.

Even with these benefits, however, this is one clause you may want to avoid, or at least curtail to a very short renewal period.

Increasingly, automatic-renewal provisions are being scrutinized and subject to state laws banning or restricting their use. They have drawn attention from legislators

mainly through lobbying by consumers and small business trade groups, who are dissatisfied with these clauses in other areas, such as real estate leases. But the effect of these laws reaches beyond leases into many types of renewable contracts, including alarm monitoring.

At least 16 states have laws banning or restricting contracts that automatically renew – including Arkansas, California, Connecticut, Florida, Hawaii, Illinois, Maryland, New Mexico, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Utah and Wisconsin.

Each state’s law is a little different, plus new legislation is being enacted all the time, so educate yourself on your state’s requirements and follow them. Some laws specifically apply to certain types of contracts (such as security alarm services, health club memberships and leases) while others are broadly worded to apply to any contract for services. And some laws apply only to contracts with consumers, as opposed to commercial contracts.

Broadly speaking, the laws fall into two categories: those that require conspicuous disclosure, and those that require conspicuous disclosure plus notice of the renewal before it happens.

For example, California law applies to consumer contracts, rather than commercial, and is very specific in its requirements. When entering into a consumer contract that automatically renews or continues



until cancellation, the company offering the contract must:

- Present automatic renewal offer terms clearly and conspicuously before the consumer makes the purchase.
- Obtain affirmative customer consent before charging or billing for the automatic renewal.
- Provide the customer with the terms of the automatic renewal and cancellation policies.
- Offer user-friendly means of service cancellation.
- Notify customers of material changes to the service agreement throughout the subscription period.

California law also defines what it means to be conspicuous: larger than the surrounding text, on in contrasting type, font or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language.

By contrast, the law in Wisconsin applies broadly for the lease of “business equipment” – regardless of whether it is a commercial or consumer contract – where the contract renews for more than one year. It requires disclosures about the automatic renewal at the time the customer enters into the contract and again before the automatic renewal, and requires the customer to sign the disclosure and initial the contract.

At least 15 days but not more than 60 days before the deadline to decline renewal or extension, the customer must be provided with a written notice containing:

- A statement that the contract will be renewed or extended unless the

customer declines renewal or extension.

- The deadline for the customer to decline renewal or extension.
- A description of any increase in charges to the customer that will apply after renewal or extension.
- A description of action that the customer must take to decline extension or renewal.

Again, these are just two examples of the variations in state law. Check your state’s law for the requirements imposed upon you.

Penalties for non-compliance with these laws range from making the automatic renewal unenforceable to deeming your behavior a

Foremost, you’ll have happy customers. Customers don’t like being forced into contracts, even for services they benefit from and expect to continue using. Plus, they don’t like having one more thing added to their list of things to remember – their alarm services contract expiration date.

Also, if you have to enter into a new contract with your customer every time their contract expires, it will ensure that your customer’s contract is up-to-date with the latest terms that comply with your state’s laws.

Laws change, and you need to assess your contract terms regularly. If you have to enter into a new contract with your customer every couple of years, this provides the perfect opportunity



deceptive trade practice. The latter can subject you to a civil lawsuit or attorney general enforcement action with the potential for stiff fines and penalties.

Alternatively, you can avoid the morass of compliance with automatic contract renewal laws altogether by removing the automatic renewal provision in your contract. I know this will increase your administrative work and require you to be more organized about your contracts. But the upsides are numerous.

for you to stay abreast of any changes in the law that affect your contract. It also provides a natural opportunity for you to get your customers to sign a new contract. Signing a new contract because the last one expired is more palatable than having your customer sign a new contract simply because the laws changed and you want your customer to sign a contract that has more favorable terms for you.

Finally, interacting with your customer to sign a new contract every couple of years allows you a

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tremendous opportunity to meet face-to-face. This can solidify your connection and personal relationship with the customer. It also allows you an opportunity to inspect the alarm system to make sure it is working correctly, to suggest upgrades to the system, and to let your customer know about new state-of-the-art products. In other words, it provides you with more sales opportunities.

If you can't meet the administrative hurdle of making sure all of your customers are under contracts that have not expired (admittedly a big hurdle for many businesses), I suggest shortening the renewal period to 30 days. This period of time is not long enough to run afoul of

automatic renewal laws, but it will make sure your customer is under contract after the initial term expires. This can buy you the time you need to sit down with your customer and enter into a new up-to-date contract, but will not leave you exposed when a customer's contract expires and you don't have a new contract yet.

In the end, you must decide what is right for your business. Certainly there are benefits to contracts that automatically renew. If you stick with automatic contract renewals, just make sure you follow the law in your state exactly.

But don't continue with the practice just because that's what you've always done. Think about deleting this provision from your

contract. There are plenty of positive aspects for a business that is organized and intent on providing good customer service.



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