

HOW TO USE THE AUTHORIZATION TO REPAIR FORM

The Authorization to Repair form that accompanies these materials meets the requirements of various Massachusetts statutes and regulations that govern repair shops, and it also meets the requirements of Massachusetts law for entering into a binding contract with your customer. Importantly, it meets the strict requirements of the Mass. Attorney General's Auto Repair Consumer Protection Regulation, 940 CMR 5.05

You may use the form as is, or you may use it as a guide to develop your own. If your shop's policies are different from some of those set out on the form, you should modify the form accordingly. (e.g., what are your shop's storage policies? Do you charge for an appraisal, and, if so, under what circumstances?)

WHEN USING THE FORM, YOU MUST ADDRESS ALL OF ITS REQUIREMENTS. IF SOME INFORMATION IS NOT COMPLETED, OR IF A "CHECK BOX" IS NOT CHECKED, THEN YOUR CONTRACT WITH YOUR CUSTOMER MAY NOT BE ENFORCEABLE, AND YOU MAY BE SUBJECT TO PAYMENT OF MULTIPLE DAMAGES AND ATTORNEY FEES IF YOU ARE SUED BY A CUSTOMER.

When using the form, note the following:

Masthead Information. Make sure that your shop's name, address, telephone number, and RS number is on the form. The original of your Repair Shop Registration should also be posted in your shop, and you need to put your RS number on all advertisements. See M.G.L., c. 100A, §§ 7 and 8.

Customer Information and Vehicle Information. All of the information in these sections of the form is required by 940 CMR 5.05. The information **must** be filled in before you start repair work on a car.

Description of Repairs. 940 CMR 5.05(e) requires that you record "The specific repairs requested by the customer, or, if the customer has not requested specific repairs, a brief description of the problems the customer has encountered with the vehicle which caused him to bring it to the repair shop."

Repairs Authorized. 940 CMR 5.05(3)(a) - (d) allows four alternative ways for a customer to authorize repairs; however, this form lists only the three types of authorizations that are most common to the collision repair business. (The fourth type of authorization can be used if you have posted charges for specific types of work, and you obtain written authorization for that work. Examples might be flat fees for an oil change, an alignment, etc. This generally does not apply to collision repair work which is typically different for each job. If you do certain flat-rate work for which your charges are posted, you may modify the form.)

It is a *per se* violation of the Massachusetts Consumer Protection Act to charge for repair work unless your customer has authorized it in advance. The only exception is if your customer brings their car to your shop for immediate repairs after hours, or if you repair a vehicle off-site. See 940 CMR 5.05(3)(e)

With regard to the three types of authorizations listed on the form, please note the following:

Box 1 - Written Authorization of Specific Repairs. If you can get it, written authorization for specific work to be performed is the preferred type of authorization, because you will have a signed, written record of the repairs for which your customer has contracted. In the auto body repair business, however, you often may not be able to properly obtain this type of authorization. ***Do not check Box 1 unless your customer is, at the time of signing, authorizing specific repairs as listed on an itemized appraisal at the exact price set out on that appraisal.*** If you check this first box, then the applicable appraisal must be attached to the Repair Authorization form at the time that the customer signs the document. Do not check this box without a written appraisal agreed to by your customer. Remember, without an itemization of work, the customer has authorized nothing. Although some shops accept an authorization to repair "as to be agreed between shop and insurer," be aware that the regulation does not allow for this type of authorization.

Box 2 - Subsequent Authorization. If you do not yet know what repairs will be required, then fill out the rest of the form and have your customer give you a further written authorization by fax or email, or get a subsequent oral authorization. Again, written authorization for specific repairs is the preferred type of authorization, even if it is given after the customer drops their car off.

Oral Authorization is acceptable under the regulation, as long as the information specified on the "**Record of Oral Repair Authorization**" form is recorded. If you do not know what the cost of repair will be when a customer leaves his car with you (for example, you may have to appraise the damage or negotiate with an insurer), then you may accept subsequent oral authorization for repair. **ALSO, YOU ARE REQUIRED BY THE REGULATION TO GET CUSTOMER AUTHORIZATION FOR ALL WORK, INCLUDING SUPPLEMENTS, AND ORAL AUTHORIZATION IS PARTICULARLY SUITED FOR**

SUPPLEMENTS. See 940 CMR 5.05(7). Make sure you record the following: the date and time authorization was received; the name of the person at your shop who obtained authorization; the name of the person who gave authorization (i.e., the customer); the nature of authorization received (e.g., “repair all items according to written appraisal of repairs agreed with insurer for \$1,500.00”); and the telephone number you called to get authorization. It is good practice to also contemporaneously fax or email the appraisal on which the authorization is based to your customer.

Box 3 - Waiver. If you know what the upper limit for repair costs is likely to be and if your customer is willing to waive their right to know of the costs in advance of the repair work being done, then you may fill in an appropriate figure and have the customer sign in this section. Be careful if you use this type of authorization. Make sure that your customer knows what they are signing, particularly if a loss is covered by insurance and there may be a question of waiver of deductible or taking of betterment.

Note: It is not sufficient to have an agreed cost of repair with your customer’s insurer, either on an original figure or on a supplement. Under the “direct payment” system of auto damage claim settlement, which has become the primary (if not universal) manner of settling collision claims in Massachusetts, your customer may choose what repairs, if any, they want done. Your customer must authorize all repairs that you do. If more than one supplement is needed, get authorization from your customer for all of them, recording the required information for each.

Additional Terms (bottom of front, and back page of for). You are required to state your shop policy for most of these issues. Again, if your shop policy differs, modify the form accordingly. With regard to each issue, note:

- ♦ Authorization to negotiate with insurer. Probably not required in Massachusetts (see 212 CMR 2.04(1)(e) “The appraisers representing the insurance company and the registered repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs.”)
- ♦ Authorization to insurer to release information to shop. Not required, but can be helpful in getting an insurer to disclose coverage, deductible, and liability information, since you are getting their insured’s specific authority to do so.
- ♦ Authorization for operation of vehicle for various purposes. Unless you have your customer’s authorization, you can only operate their vehicle for a “test drive or delivery”. You may need to do other things, like getting an insurance or lien holder inspection.
- ♦ “Hold harmless” clause - customer will not hold you responsible for damage. May not be enforceable to the extent that you would like, but does give you some protection from liability.
- ♦ Acknowledgment of customer’s personal liability to pay for repairs, or garage keeper’s lien, and agreement to pay costs of collection to shop. The acknowledgment of personal liability and of the lien is actually not necessary. BUT, it makes it clear to the customer, and assures that they have been informed that they have entered into a contract for which they are liable. The garage keeper's lien arises by operation of law, without customer acknowledgment, for a shop’s “proper” charges, under M.G.L. c. 255 §§ 25 and 26. *It is important to have the customer agree to pay the costs of collection, because these are generally not allowed to a shop in a law suit, unless there is a specific agreement by the customer.*
- ♦ Effect of waiver. If you want to use the “waiver” option to get your customer’s authorization for repair, and if you want to make sure that your customer is not going to subsequently complain that there was certain work they did not want done, then it is a good idea to have the customer acknowledge that you have authority to repair their vehicle to pre-accident condition.
- ♦ Storage charges. 940 CMR 5.05(4)(a) requires you to inform your customer in advance “The conditions under which the repair shop may impose storage charges and the daily or hourly amount of such charges.” It is a good idea to put this on your Repair Authorization form, but you are not required to if you have the information conspicuously posted in your shop. See 940 CMR 5.04 (4), final paragraph.
- ♦ Replaced parts policy. 940 CMR 5.04(4)(b) requires you to notify your customer that they have a right to have any parts replaced by the shop returned to them, or to inspect the parts if the shop is required to return them to the manufacturer or some entity under a warranty or rebuilding arrangement. This information can also be posted conspicuously instead of on your Repair Authorization.
- ♦ Estimate charges. 940 CMR 5.05(4)(c) requires you to let your customer know of your estimate or diagnosis charges before getting their authorization to perform work. This also can be posted instead.
- ♦ Time for completion of repairs. 940 CMR 5.05(6) requires you complete repairs on the day you get your customer’s car into your shop - probably because the regulations were written with mechanical repairs in mind. BUT, the regulation allows you to get your customer’s authority to take longer.
- ♦ Flat rate hours. 940 CMR 5.05(9)(g) requires that you designate on your final bill whether your charge for labor hours on an actual or flat rate basis. It is good practice to have a specific acknowledgment on your Repair Authorization.
- ♦ Additional damage / expedited appraisals. Since the regulation generally requires you to get your customer’s separate authority for supplements, it is good practice to disclose this on the form, so they do not wonder why you are calling to get additional approval. You are required by the ADALB regulations to get your customer’s authority to utilize the Expedited Supplemental Appraisal procedure set out in those regulations. See 212 CMR 2.04(1) (i). **MAKE SURE THAT THE BOX GETS CHECKED!**