



## AYCA Newport, RI Seminar June 24, 2021

**Objective:** Demise contract review and the Triad Relationship of understanding of important points of the Demise contract between the Charter Broker, Charterer and Charter Captain and crew.

Points of Interest:

- The Coast Guard does not acknowledge the Demise Contract as a legal and applicable charter contract for yacht charter. Use of the Demise Contract is considered a “shade of grey”.
- The Captain of each Port, in each Marine Safety District, has the right to interpret “shades of grey” for the Demise contract use including deciding that in their Marine Safety District the Demise contract is not a correct charter contract arrangement which can result in a variety of fines and ultimately seizure of the yacht. Any fines or penalties may require a court challenge to try to have fines reversed. The Captain of the Port can rotate every 3 years.
  - It behooves our industry to be aware of the “view” of any Captain of the Port in regard to the Demise Contract for major industry marine safety districts.

The Charter Broker is responsible for educating the Charterer.

The Charter Manager is responsible for educating the Captain and crew.

The main interest of the Coast Guard if scrutinizing a Demise Contract relationship when boarding a charter yacht with the Charterer on board is, amongst what could be other concerns:

- Checking to see if a true bareboat situation exists
  - The nature of the bareboat situation should be well documented with provisioning requests made by the Charterer and full accounting and receipts for those items bought at the Charterer’s request from the Charterer’s expense deposit (APA)
- Checking to see if the Charterer hired and supplied the Captain and crew and made the choice of which Captain to hire and supply
  - Charterer should be offered the Captain that has already been trained and currently on board as approved by the yacht hull insurance provider to be in control and command of the yacht with explanation of the required approval of the hull insurance provider for any Captain to be on board for the charter to be in control and command of the yacht.
  - Captain should be well aware that the Charterer hired the Captain for the time period of the charter and that the Captain is working for the Charterer.



- Checking to see if the Charterer has been made completely aware of the increased liability exposure for the Charterer in chartering the yacht via the Demise contract rather than choosing to charter a yacht on the Uninspected Passenger Vessel Contract where the Owner supplies the Captain and crew.
  - Charterer should have been offered to purchase Charterer's Legal Liability Insurance by the Charter Broker before the charter.

The NVIC for Guidelines for the Passenger Vessel Safety Act 7-94 outlines 7 points of which all or a majority should be in place as understood by the Charter Broker, Charterer, and Captain to support the Demise contract with the Charterer hiring or supplying the crew.

**Seminar Discussion: The 7 points outlined in NVIC 7-94.**

- **Note: Having the majority or all 7 points in place to support the Demise Contract is very important, but does not guarantee that the Coast Guard will accept any Demise Contracted charter as a legal charter.**

To delineate that a Demise Contractual relationship is in place, a written agreement must exist. The person leasing the vessel is taking on significant legal obligations for the vessel and the safety of the passengers. If a written agreement does not exist, it is automatically considered by the USCG to be an uninspected passenger vessel charter, which it not required to have a charter contract.

**7 points defined in the NVIC of Guidelines for the Passenger Vessel Safety Act are:**

**1. The charterer must have the option of selecting the crew. Although a master or crew may be furnished by the owner, full possession and control must be vested in the charterer. This does not preclude the charterer from taking advice from the master and crew regarding hazardous conditions such as, inclement weather, navigational obstructions, etc.**

- If a crew is supplied it must be supplied or hired by the Charterer.
  - The Captain and crew, while on a charter booked by a Demise contract, may be the Owner's crew, but during the time period of the charter, the Captain and Crew have been hired by the Charterer via the Vessel Services Agreement, as supplied by the Contractor for hire.
- The Captain, while this is not a USCG requirement, must be approved by the hull insurance provider for the yacht to be on board and in command and control of the yacht during the charter. This is a requirement for the hull insurance to remain valid during the time period of the charter.

**2. The master and crew are paid by the charterer.**

- Whichever crew are supplied or hired by the Charterer, which should be a crew approved by the hull insurance provider to safely operate the yacht, the Charterer and the Captain and crew must understand that the crew are:



- Hired or supplied by the Charterer not the Owner

### **3. All food, fuel, and stores are provided by the charterer.**

- As outlined on the Vessel Services Agreement but explained by the Charter Broker to the Charter client.
- The Captain should fully document expenditures in the APA to provide proof that that food, fuel and stores were provided or purchased on behalf of the Charterer.
- The Charterer should complete in writing all provisioning and itinerary requests to support that the food, fuel and stores were provided by the Captain and crew on behalf of the Charterer and at the Charterer's request. The Captain should have a copy of the provisioning form and all emails about itinerary and provisioning requests on board during the charter.

### **4. All port charges and pilotage fees, if any, are paid by the charterer.**

- As outlined on the Vessel Services Agreement but explained by the Charter Broker to the Charter client.
  - All emails about dockage, mooring ball requests, and pilot fees, if any, should be on board during the charter as support that all port charges and pilotage fees are due to itinerary requests by the Charterer.

### **5. Insurance is obtained by the charterer, at least to the extent of covering liability not included in the owner's insurance. A greater indication of full control in the charterer is shown if all insurance is carried by the charterer.**

- In general, it is difficult for the Charterer to buy hull insurance for a yacht that the Charterer does not own. The Charterer can supply:
  - Two types of Disability Insurance that should be provided as required by the Jones Act to the Captain and crew
    - This insurance is located in most hull insurance policies
      - For this insurance to be available to the Captain and crew, it is believed that the Contracting Company should be included on the hull insurance policy so that the Contractor can provide access to these two types of Disability Insurance as required by the Jones Act on behalf of the Charterer.
      - Medical insurance may be available to be provided to the Captain and crew as well by the Contractor on behalf of the Charterer if the Contracting Company is included on the hull insurance policy
        - Having the Contracting Company included on the hull insurance policy may then provide liability insurance



- coverage for the Contracting Company as a party to the Vessel Services Agreement.
- The Charterer can buy Charterer's Legal Liability Insurance. The Coast Guard has indicated that they would like to see that every Charterer that charters a yacht under the Demise Contract has been offered Charterer's Legal Liability Insurance.

**6. The Charterer may discharge, for cause, the master or any crew member without referral to the owner.**

- While this is true which should be explained to the Charterer by the Charter Broker, the Charterer must have a Captain and crew that has been approved by the hull insurance provider for the charter to proceed. Discharging same, may be an issue for any charter to proceed.

**7. The vessel is to be surveyed upon its delivery and return.**

- This can occur. It is understood that support to establish that a true Demise contract is in place, is having all OR a majority of the 7 points in place. Whether all or a majority of the 7 points are in place, the legitimacy of any Demise contracted charter will still be determined ultimately by the Coast Guard.

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**Companies currently selling Charterer's Legal Liability Insurance:**

American Marine Insurance [www.americanmarineinsurance.com](http://www.americanmarineinsurance.com)

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