

THE BASICS

- A binding contract has four basic elements:
 - ⇒ identification of the parties to the contract;
 - ⇒ identification of the subject matter of the contract;
 - ⇒ time for performance;
 - ⇒ and consideration or price.
- Consideration is something of value given by both parties to induce them to enter into the contract. For example, a promise to pay money in exchange for services provided is consideration. Contracts can be legal without a price specified, such as when plumbers are engaged to perform emergency leak repairs. The law applies a reasonable price or the vendor's customary charge.
- Any contract should contain the proper legal name of the parties for the contract. For example, if the legal name of the Association is Green Acres Condominium Association, Inc., the contract should not state Green Acres or the management company name as the contracting party.
- Associations should investigate the stated vendor name in the contract to ensure it is the proper legal name for the vendor and that the vendor is in good legal standing with the state. This could be a red flag for potential risks or problems.
- If directors of an association are signing a contract on behalf of the association, the contract should specify that the director is signing as an officer or director of the association to avoid potential personal liability under the contract.

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KEY CONTRACT TERMS AND PROVISIONS:

- ◆ **Scope of Work.** One of the main areas that often ends up in the center of a contract dispute is the scope of work or services covered under the contract. When it comes to defining the scope of work in a contract, less is definitely not more. It is vital to detail the exact expectations of the parties with respect to the work or the services to be provided. Avoid language that is vague or allows room for interpretation. The scope of work should be fully identified to specify expectations as to the level of service, quality of materials and quality of work. Specifications often can be obtained from product manufacturers, and, in some instances, hiring a professional to develop the scope of work is invaluable.
- ◆ **Payment and Payment Terms.** Pay attention to payment terms. Look for hidden or additional fees. Many contracts will include provisions addressing additional fees for items that may be expected as part of the scope of work, but not included in initial pricing.

When possible, the contract should state the total price for all the labor, materials and services expected under the agreement. When fixed pricing is not possible, try to negotiate for and specify price caps and requirements of written approval before vendors incur these unknown expenses.

If the contract calls for scheduled payments, then, other than reasonable down payments for project start-up costs, the remainder of the work performed under the contract should always be ahead of the payments. This will give the association leverage over the vendor to ensure quality and completion of the work. If a down payment is required in order to acquire materials, the contract should list, where possible, the materials that will be acquired with the down payment.
- ◆ **Term and Termination.** When it comes to service contracts, such as pool vendors, landscape companies or cable providers, the term and termination provision can be the most important provision of the contract. In most cases, the term and termination provision is not favorable to the customer and makes it very difficult for the customer to terminate the contract and end the relationship. Contracts for the provisions of services should always be subject to termination without cause with a short notice period, such as 30 or 60 days. This allows an association to get out of a contract for any reason, and will allow for better ease in terminating a bad relationship. Project contracts should have a detailed procedure affording a fair right to terminate if a vendor is not performing.
- ◆ **Insurance.** Require the vendor to carry liability insurance to cover any claims against personal injury and property damage from the work or services being performed. Obtain a certificate of insurance directly from the vendor's insurance agent showing the proper insurance coverage prior to the commencement of the work. Specify that the vendor must maintain the insurance for the term of the contract. If the vendor is not properly insured or not insured at all, the association could be held responsible for any claims of damages or injuries caused by the vendor.
- ◆ **Indemnification.** The indemnification provisions go hand-in-hand with insurance provisions. Require the vendor to indemnify and hold harmless the association and all related parties from damages and claims that are caused by the vendor or the vendor's employees or agents. An indemnification provision basically requires the vendor to cover the association if the association is sued because of the actions of the vendor. Often, the indemnification is covered by the vendor's insurance carrier, so it is important to ensure that there is insurance to cover the indemnification obligation. Otherwise, the indemnification obligation is only as good as the worth or assets of the vendor.

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