

We Understand
Community
Associations!



Contracts... *How to do it Right!*

Before you know it, summer will begin turning into fall, and with it comes a busy season of tasks for community associations and their property managers: annual meeting preparation, budget preparation, and for many communities, renegotiation or renewal of many association vendor contracts. Contracts for community services or projects dictate how your Board of Directors operates and maintains the community and deserve real attention by the Board. Common contracts include those for pool maintenance, lifeguard service, landscaping, pest control, internet and television service, property management, roofing repair, building repair and painting, community enhancements, and many more that need your attention.

While it may seem daunting, reviewing your community contracts doesn't have to be an olympic task!

Here is our five-step guide to the most critical elements of most contracts:

⇒ **Scope of Work**

Don't skip the details! To avoid disputes over what work is supposed to be performed, don't rely on conversations. Instead, include a detailed written scope of work. Be

specific about your exact expectations and whether specific items are included in the contract price or cost extra.

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 a contract. When trying to assure that the contract covers the scope of the work, three components are needed: (1) the details of the work; (2) the schedule and the completion dates for the work to be performed; and (3) the quality or performance level expected for the work or service to be provided.

When it comes to defining the details of work in a contract, less is definitely not more. It is vital to detail your exact expectations for each stage of the work and the final work or service to be provided. How often are bushes to be pruned? Is the pool company expected to test water quality weekly or daily? Are natural areas to be cleared by the landscaper? Specifications often can be obtained from product manufacturers, and, in some instances, hiring a professional (such as an engineer) to develop the scope of work is invaluable.

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Lazega & Johanson LLC is a law firm dedicated to representing community associations. We believe in building and maintaining long-lasting relationships with community associations and their managers by providing personal attention and superior services. We take pride in being a part of the team of experts you rely on to ensure the successful operation of your community.

⇒ **Payment and Payment Terms**

Pay close attention to the payment terms. There are two major types of contracts: (1) service contracts, such as contracts for pool services, landscape services, or pest control; and (2) project contracts, such as for painting, siding, roofing, or amenity improvements or additions. When possible, any type of contract should seek to state a total “all-in” price for labor and materials expected for a specific service or project. When fixed pricing is not possible, try to negotiate for and specify price caps and a written pre-approval requirement before vendors incur extra expenses. Another option is to seek to include provisions that address the “what-ifs.” By specifying the additional fees for typical contingencies or items that may be expected, the association can minimize surprises.

As to paying for work, as much as possible, try to stay ahead of the work with your payments, meaning schedule your payments to cover work that has been completed. For some projects it may be reasonable to pay some funds up front for materials, but try to negotiate for protections that quickly get the vendor to complete the initial work before additional money is paid. The remainder of the work performed under the contract should ideally be ahead of the payments. This will give the association leverage to ensure the quality and completion of the work. (If the vendor has not yet earned its profit, the vendor is more likely to keep working properly). Finally, when

making final payment on project contracts, Georgia law provides for the opportunity to obtain a lien waiver from the general contractor that can protect against later arising liens claimed by subcontractors. A specific affidavit form must be used and the general contractor must sign it at the time of final payment for the project. It is extremely important to get these lien waivers and payment affidavits.

⇒ **Term and Termination**

When it comes to service contracts, such as for landscaping or pool maintenance, the term and termination provisions can be the most important provisions of the contract. Some vendors choose term and termination provisions that make it very difficult for associations to terminate the contract and end the relationship. Common sense dictates that vendors have less incentive to meet your expectations if you cannot easily terminate the contract.

Contracts for services ideally should be subject to termination “without cause” with a short notice period, such as 30 or 60 days. This is fair and reasonable. This allows an association to end 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, including providing alternatives such as bringing in a replacement vendor to finish the job, and holding the first vendor liable for any increases in cost.



Contact Us:

To learn more about the services and programs we offer our clients, please feel free to contact us directly at:

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⇒ **Insurance**

Insurance may be the most critical element to any service or project at your community. The contract with your vendor should require the vendor to carry sufficient liability insurance to cover any claims against personal injury and property damage from the work or services being performed. Be sure to include that the vendor must provide a certificate of insurance directly from the vendor's insurance agent showing the proper insurance coverage prior to the commencement of the work. The contract should also 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**

Indemnification provisions in a contract go hand-in-hand with insurance provisions. An indemnification provision basically requires the vendor to cover the association if the association is sued because of the actions of the vendor. The contract should 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. 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.

While not all vendors will agree to each of these recommended items, it's important for the Board of Directors and your association attorneys to try to negotiate for these association protections.

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**Individual situations may vary. This document is not intended to use as specific legal advice.*