

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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is not intended to use as specific legal advice.*



THE BASICS

What Is the Right to Repair Act?

- ◆ In 2004, the Georgia legislature enacted the Right to Repair Act, which severely restricts the rights of associations to sue any contractor for a construction or design defect related to residential dwellings.
- ◆ Prior to the Act, associations were free to pursue a lawsuit against any builder or contractor relating to a defective design or faulty installation. However, now there are a number of procedural hurdles an association must clear in order to file a lawsuit against a contractor. Additionally, associations may only bring claims for defects to common elements or limited common elements.
- ◆ The term “contractor” under the act is very broad. It encompasses anyone required to be licensed under the contractor licensing law. This would not only include builders, but also developers, architects, real estate agents, renovation contractors and repair contractors, along with their owners, officers, directors, subcontractors, suppliers, or even insurers

Procedures Under the Act

- ◆ Ninety (90) days before filing suit, the association must provide the contractor with notice of the defect. The notice must include any supporting documentation establishing the defect, including, but not limited to, engineer’s reports, inspection reports or photographs.
- ◆ Thirty (30) days after the notice, the contractor must deliver a written response to the association. The contractor may offer to settle with monetary payment, repairs, or a combination. The contractor may make a request for inspection prior to a settlement offer. During the inspection, the contractor is entitled to thoroughly examine, document and test the alleged defect. The contractor may reject the claim or fail to respond entirely, at which point the association may proceed with its suit, provided the requirements below are also satisfied.
- ◆ Once the contractor has responded, the association may respond. If the association rejects the settlement offer, it must set forth the reasons for its rejection. The contractor is allowed an additional fifteen (15) days to make a supplemental offer after rejection. Once the fifteen (15) day period has elapsed, the association may proceed with suit, provided the requirements below are also satisfied.
- ◆ If the association accepts an offer of settlement that includes repair, it must allow the contractor unfettered access to the structure for the completion of construction. Once an offer is accepted and performed, the association is barred from ever bringing any claim that was described in the original notice of claim.
- ◆ If an association rejects a reasonable offer, the association cannot recover more than the fair market value of the settlement offer or the actual costs of the repairs made, or the amount of the monetary settlement offer. The association is also barred from recovering attorney’s fees or costs. The reasonableness of the offer is determined by the trier of fact.
- ◆ Any suit filed by an association must preceded by a two thirds (2/3) vote of all the members of the Association.
- ◆ At least three (3) days prior to that vote, the association must provide a copy of the notice of claim to each owner, along with an additional written description of the claims and reasons the Board is recommending the litigation.
- ◆ Prior to suit, the full board of directors of the association and the contractor must meet in person and confer in a good faith attempt to resolve the claim.

Failure to Comply

- ◆ If the association does not comply with the Right to Repair Act prior to bringing suit, the Act allows for any litigation to be halted until such time as the association does comply.

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THREE HOT TOPICS REGARDING MAINTENANCE AND REPAIRS

1. Hiring Volunteers Instead of Professionals

QUESTION: Is the association REQUIRED to hire a “professional” for maintenance and repairs or can the association use a volunteer owner or an uninsured contractor to help with handyman type tasks in the community?

ANSWER: No, the association is not REQUIRED to hire a licensed or insured “professional” for work on the property – but the association should make sure that its D&O insurance covers volunteer or committee activities so the association and board members are properly insured if they are sued for something related to volunteer activities.

If the uninsured laborer or volunteer is injured or causes personal injury or property damage to an owner while doing a job at the association, the association has to pay out of pocket or make a claim on its insurance policy to cover the injury or damage. Any savings from hiring an uninsured contractor or volunteer can be quickly wiped out by paying out of pocket or paying increased insurance premiums.

If the association uses volunteers or uninsured contractors make sure they SIGN RELEASE AND INDEMNIFICATION agreements. The volunteer or contractor releases and holds harmless the association from any liability if the volunteer or contractor is injured or incurs damages during the course of his or her activities. The volunteer or contractor also agrees to indemnify (pay for) any claims brought against the association because of the volunteer or contractor’s actions. The indemnification is only as good as the volunteer’s or contractor’s personal assets, but in many cases, it is better than nothing.

If the association uses uninsured laborers or volunteers give them the least harmful jobs and the tasks that are least likely to cause damage to themselves and others. (No roof repairs!)

2. Contractors Liens

QUESTION: What if the association pays a contractor for maintenance or repair work, but the contractor does not pay his suppliers or subcontractors?

ANSWER: In Georgia, if the association does not obtain a lien waiver, any subcontractor or supplier of materials for the improvement of real estate who has not been paid by the vendor has an automatic lien against the property until they have been paid. These liens are referred to as mechanics and/or materialmen’s liens. (O.C.G.A. §§44-14-360-369)

⇒ The subcontractor or supplier of materials is called a “lien claimant” and can record its lien in the land records of the county where the property is located within 90 days of the last date that work was performed at the property or material was supplied to the property

THREE HOT TOPICS REGARDING MAINTENANCE AND REPAIRS CONT.

- ⇒ The lien has to identify the property improved, the owner of the property, the amount claimed due, and the date the amount came due
- ⇒ The lien claimant has 2 business days after the recording of the lien to send a copy of the lien by certified mail or overnight delivery to the owner of the property
- ⇒ The claim of lien must include:
 - a statement that the lien will expire and become void 365 days after filing if the notice of commencement of construction is not timely filed
 - a statement notifying the property owner of a right to contest the lien
- ⇒ In condominiums, the claim of lien must be recorded against every single unit (for the amount of the unit's percentage share of the total lien amount), not against the condominium association (since the association does not own anything).
- ⇒ The lien claimant must file a "lien action" against the hiring entity within 365 days from the date the lien was filed or the lien automatically expires.
- ⇒ A "lien action" is defined as filing suit, binding arbitration or filing a proof of claim in bankruptcy court.
- ⇒ Within 30 days after filing the "lien action" the lien claimant must record in the county land records a notice under oath stating that the lien action was filed. If the lien claimant misses any of these deadlines, does not include the right information in the lien or fails to comply with any of these requirements, the lien unenforceable.

QUESTION: Is there anything an association can do to protect itself from these kinds of liens?

ANSWER: Yes. The association can get a lien waiver from the general contractor each time a payment is made on the project and getting a final contractor's affidavit before the last payment is submitted.

The association could post at the property and record in the land records a "notice of commencement of construction" within 15 days of commencement of the project. Anyone who might be able to claim a lien in the future must send notice to the property owner or general contractor. The notice must include the name of the subcontractor, the amount of the subcontract and their scope of work. If the sub-contractor does not send this notice, it cannot file a claim a lien against the property in the future.

3. Right to Repair Act

QUESTION: What if the association wants to sue the contractor for defective construction?

ANSWER: In 2004, suing developers or contractors for construction and design defects became highly burdensome for community associations. In that year, the Georgia Right to Repair Act was adopted into law. (O.C.G.A. §8-2-36) The Right to Repair Act is a set of laws which governs the process for bringing claims against contractors by individuals and by community associations. It is a common misperception that the Right to Repair Act only applies to developer or to developer construction defect cases. This is not the case. The Right to Repair Act applies to any claim brought by an association against a contractor required to be licensed under the contractor licensing law.

THREE HOT TOPICS REGARDING MAINTENANCE AND REPAIRS CONT.

In order to comply with the Right to Repair Act, an association has to take the following steps:

- 1) 90 days before filing suit, the association must provide the contractor with a notice of the defect. The notice must include any supporting documentation establishing the defect, including, but not limited to, engineer's reports, inspection reports or photographs.
- 2) The contractor has 30 days to respond, either accepting responsibility, rejecting responsibility, or asking for more information and/or the opportunity to inspect.
- 3) The contractor has 30 days from the date of its response to inspect the property and an additional 14 days in which to submit a proposal to the association, either offering settlement or rejecting the claims.
- 4) The association is required to attempt to meet with the contractor in an attempt to settle the issue in good faith.
- 5) If the association wishes to move forward with a lawsuit, it must obtain approval of 2/3 vote of the membership.

If the association does not comply with the Right to Repair Act prior to bringing suit, the Act allows for any litigation to be halted until such time as the association does comply.

UNDERSTANDING CONTRACTS CLASS

Maggie Vath

July 2008

Maggie:

Welcome and Introductions.

Intro to seminar:

I. Types of Contracts

1. Service Contracts – Management, Landscaping, Pool
2. Project Contracts – Roofing, Siding, Paving, Painting, Fencing, Renovation
3. Settlement Agreements & Promissory Notes – debtor owners
4. Releases & Indemnifications – swim and tennis
5. Facilities – Clubhouse Rental
6. Other Contracts – Zoning Agreements and Loan Documents

II. Initial Steps

1. Can we enter into this Contract?

Check Docs--

2. Do we have the money? do they need to get a loan -- if so THAT may require a vote

- 3.. Investigating the Contractor

Hiring & Investigating the Contractor – recommend the client obtain references and see previous work performed by the contractor.

Getting 3 bids from different contractors is a

good rule of thumb. If the preferred contractor is a friend of one of the Board members, advise the client about conflict of interest issues

-- get other bids

-- interested board member should remove himself from vote

III. Contract Provisions

1. Have a written contract

2. Parties.

- i. The *full and complete name* of the contractor or its corporation and of the Association.
-- especially if doing an addendum, it is so common for the name to be wrong
- ii. If contractor is a corporation, *verify the corporate status* with the state's Secretary of State office.
-- if not incorporated, I like to use d/b/a
- iii. The contract should be *signed by appropriate officers, indicating titles*. The Association should have one or more Board members sign in their official capacity in order to avoid issues regarding personal liability. The Association will want to have a Board meeting and include in their minutes the approval of the officers signing the particular contract.
-- Pres and Secretary or VP
--or Pres with corporate seal

-- most will not be notarized unless in land records
-- but, if notarized-- have NP and separate disinterested witness (explain to client in cover letter)
- iv. *Party names should be consistent throughout*
Owner or Association or Vinings Estates...
Contractor or Vendor or ---

3. SCOPE of WORK

Description of Work. The contract should include, either in its text or as an exhibit, *sufficient and practical details* of the work that is to be accomplished so that the parties are clear as to each other's expectations.
-- Proposal as Exhibit A
-- want to at least review and consult with client. this is what is specific.

- i. Sometimes this may require *a bid or other proposal being prepared by an appropriate professional* so that there are sufficient details. This may be the manager, but often is an architect or engineer.
 - ii. Obtain/reference detailed *specifications from the manufacturer.*
4. Agree to Price for all work / contingencies

Independent Contractor. The contract should state that the contractor is an independent contractor and not an employee of the Association

--- so as to assist in avoiding the contractor being deemed an employee, as this could make the Association liable for the negligent acts of the contractor. Negligent hiring claims, etc.

Indemnification.

- i. The association should seek a contract provision which has *the contractor indemnify the Association for acts, omissions or gross negligence* for property damage or injury to persons caused by the contractor, sub-contractors or their agents, employees, etc.
 - can't waive out of negligence.
 - == paint spray on cars
 - bulldozer going over azaleas
 - If you are anticipating a particular hazard-- put it in! Trees dying, especially.
 - ii. As a general rule in non-management agreements, we seek removal of provisions calling for indemnification of the contractor by the Association.
 - iii. In management agreements, the Association normally indemnifies management for wrongful acts taken at the Association's direction, but only to the extent of insurance.
8. Insurance.
- i. Should persons or property be damaged during the work, the contract should require the contractor to have appropriate *comprehensive general liability insurance*
 - \$1 million
 - ii. The Association should *obtain a certificate of insurance* and this should be in the contract. The certificate of insurance should show the Association as an additional insured with the appropriate liability limits.

- iii. Require *workers compensation* coverage by the contractor – **three or more** employees.
--if required by law

Initiation of Work.

- i. Commencement date; and
- ii. Date by which work should be substantially completed.
- - This clarifies both parties' expectations.

Liquidated Damages Provision -- pool not opening on time, each member would have to pay daily at YMCA, etc.

Allow for rain delays, etc.

Term.

- i. The time over which it will extend if it is a contract for ongoing services.
- ii. How it is to be renewed or, if automatically renewed, how it may be canceled.

Be careful of automatic renewals-- **sometimes can lock into a rate which is good** (usually allows for a % increase from year to year); but sometimes can be complicated.

12. Termination.

- i. Provide for termination if there are *material breaches*.
- ii. It is also very helpful to have the contract provide **examples of items which would be sufficient to cause the breach of the contract.**
- iii. Finally, some contracts, depending upon the type of service being provided, should have provisions which indicate they may be *terminated with or without cause upon 30 days'* written notice by either party.

MAGGIE:

SCHEDULE AND CHECKLIST:

Require that the Contractor Provide and Update a Schedule and Checklist of Work Performed. The contract should specify a schedule for the work to be performed. The contract also should require that the contractor furnish a checklist of the work actually performed each month, week or day, as appropriate. The use of a required checklist gives the association board or manager a greater ability to oversee that the work is being performed properly and on schedule.

Helpful to have a board liaison / one person contact – assn manager.
Liquidated damages / YMCA example

The Work Should Always be Ahead of the Payments.

WORK AHEAD OF PAYMENTS

Power of the purse: The person who has the money controls the work

5. Payments.

The contract should provide how payments are to be made, etc.

Where possible, the contract should specify that the contractor will only be paid after the work has been completed, inspected and approved.

- i. The contractor should *only be paid as the work is substantially completed* on a particular phase or portion.
 - so if there are 5 buildings to be painted; one payment after each building
 - supplies material first
 -
- ii. It is also a good idea to *consider retaining a percent of a particular payment or of the total contract sum* so that this amount is retained for a final “punchlist.”

Payments in advance of performance should be avoided when possible. Additionally, if a down payment is required in order to acquire materials, *the contract should list the materials that will be acquired.* Once the work begins, the association should take steps to ensure that the materials that were to be purchased have in fact been purchased. The contract should provide that title to the materials transfers to the association upon purchase.

Make Sure to Obtain Proper Lien Waivers from the Contractor.

The contract should specifically require the contractor, at the time of final payment, to furnish an affidavit stating that all laborers, subcontractors and suppliers have been paid and relinquishing all lien rights against the association. This is known as a lien waiver. The failure to obtain a lien waiver gives a subcontractor or supplier of materials who has not been paid the right to pursue a claim for payment directly against the real property where the work was performed.

Lien Waivers. The contract should provide that at the time of final payment, the Association will be given the appropriate lien waivers so as to avoid liens from the contractor and any sub-contractors.

Attach lien waiver forms as exhibits.

Project contract: Sub-contractor suit example.

Get Warranties in Writing. Any warranty or guaranty provided by the contractor should be expressly stated in the contract. Most contractors performing projects such as roofing or painting are willing to guaranty their work in some way. Warranties should be against defects in both labor and materials. If there is a warranty for materials, the contractor needs to ensure that the warranty is transferable to the association upon payment.

Warranty.

- i. In the case of a contract that is for construction or other service work, the contract should include a warranty for labor and materials that are furnished under the contract.

-- 1 or 2 years is pretty standard
- ii. Consider inspections by manufacturers representatives.

Consider the Need for a Performance Bond with a Large Contract. With large contracts, it may be beneficial for the association or manager to obtain a performance bond from the contractor. This type of bond ensures that funds will be available to complete a job if for some reason the contractor is unable to do so. Since a performance bond is expensive to obtain, and significantly increases the cost of a contract, most associations or managers usually do not request one except with a large contract.

Require Fidelity Bonds for Workers Handling Money. Any person handling funds of the association should be required to purchase a fidelity bond to cover any loss to the association in the event that the person handling the funds misappropriates or absconds with the association's money.

Follow the Contract When a Problem Develops. When a problem develops with the contract, there is sometimes a tendency to take quick action without considering the obligations that the contract might impose upon the parties. Avoid rash moves. The contract should be carefully followed to ensure that notice requirements and dispute resolution procedures are strictly adhered to.

Legal Disputes/Location for Litigation/Arbitration. The contract should include a provision to indicate the particular county in which any litigation can be brought.

- This avoids traveling to some far jurisdiction where the contractor may be friendly with or more familiar with the court system. It also avoids having to hire local counsel to fight a battle.

Notice via certified mail; right to cure defect; default; number of days.

Open communications with the contractor are important. A good relationship with the contractor can help smooth over and solve unexpected problems and delays. Ultimately a contractor wants a good reference, as that is invaluable to the growth or survival of its business.

24. **Miscellaneous Provisions.**
Time is of the essence. Supersede / Merger. Conflicts between Scope of Work and Contract.

MISCELLANEOUS

Standard of Care. The contract should include a provision which indicates the *performance standard which the contractor will seek to achieve.*

-- For example, if the work is roofing, the contract might indicate the work is to be performed in a *good and workmanlike manner*, but in accordance with the particular specifications set forth by the manufacturer of the materials.

15. **Taxes.** The contract will want to include a provision indicating who will pay various taxes which may be applicable, such as sales tax or use taxes.
16. Government Regulation Compliance.
- i. If there is a new structure or an addition, be sure to *check the zoning*.
 - ii. The contract should include a provision requiring the contractor to comply with local, state and federal laws.
17. Permits. The contract should include a provision that *the contractor will secure and pay for building permits* and other permits that may be applicable to the work.
18. Clean Up. In those contracts where services are to be performed at the Association on an ongoing basis, the Association will want to add a provision which requires the contractor to *keep the premises clean and free of waste and other garbage on a daily basis.*
19. Work Hours/Work Days. Determine hours/days up front. This will avoid later resident complaints.
-- think through this and don't just put 8-8. Make sure Assoc considers specific events, etc. Get INPUT from client here.
20. Inspections. Especially for work being performed at the Association, the contract should include a provision requiring inspection by the Association, its manager and/or its architect, engineer or other appropriate professional to ensure the work is being performed appropriately on an ongoing basis and at its conclusion. Typical fee is around five (5%) of contract sum.
21. Amendments to Contract. The contract should provide that any modifications, amendments or requests for additional work or funds must be in writing and signed by both of the parties.

22. Safety Precautions. As to work on the property, the Association will want to include a provision requiring that the contractor perform all work in a safe and reasonable manner and otherwise mark the property with appropriate fencing, signage etc. to protect the membership and the public.

-- cottonwood Creek streets

UNDERSTANDING CONTRACTS IN COMMUNITY ASSOCIATIONS

I. Types of Contracts Affecting Community Associations

1. Service Contracts – Management, Landscaping, Pool, Pest, Cable
2. Project Contracts – Roofing, Siding, Paving, Painting, Renovation
3. Facilities – Clubhouse rental

II. Contract Provisions

1. Hiring & Investigating the Contractor – recommend the client obtain references and see the work performed by the contractor.
2. Parties.
 - i. The full and complete name of the contractor or its corporation and Association.
 - ii. If contractor is a corporation, verify the corporate status with the state's Secretary of State office.
 - iii. The contract should be signed by appropriate officers, indicating titles. The Association should have one or more Board member sign in their official capacity in order to avoid issues regarding personal liability. The Association will want to have a Board meeting and include in their minutes the approval of the officers signing the particular contract.
3. Description of Work. The contract should include, either in its text or as an exhibit, sufficient and practical details of the work that is to be accomplished so that the parties are clear as to each other's expectations.
 - i. Sometimes this may require a bid or other proposal being prepared by a professional, such as an architect or engineer, so that there are sufficient details.
 - ii. Obtain/reference detailed specifications from the manufacturer.
4. Initiation of Work.
 - i. Commencement and
 - ii. Date by which work should be substantially completed.
5. Payments.
 - i. The contract should provide how payments are to work, etc. The contractor should only be paid as the work is substantially completed on a particular phase or portion.
 - ii. It is also a good idea to consider retaining 10% of a particular payment or of the total contract sum so that this amount is retained for a final "punch list."
 - iii. Stay ahead in payment -- The payment arrangement should be fair, but also, in my experience, be structured so that the contractor has sufficient incentive to continue to finish the work.
6. Lien Waivers. The contract should provide that at the time of final payment, the Association will be given the appropriate lien waivers so as to avoid liens from the contractor and any sub-contractors.

7. Indemnification.

- i. The association should seek a contract provision which as the contractor indemnify the Association for acts, omissions or negligence for property damage or injury to persons caused by the contractor, sub-contractors or their agents, employees, etc.
- ii. As a general rule, we seek removal of provision calling for indemnification of the contractor by the Association.

8. Insurance.

- i. Should persons or property be damaged during the work, the Association will want the contractor to have appropriate comprehensive general liability insurance.
- ii. The Association should obtain a certificate of insurance and this should be in the contract. The certificate of insurance should show the Association as an additional insured with the appropriate liability limits.
- iii. Workers compensation – three or more employees.

9. Independent Contractor. The contract should state that the contractor is an independent contractor and not an employee of the Association so as to avoid the contractor being deemed an employee, as this could make the Association liable for the negligent acts of the contractor.

10. Term.

- i. The time over which it will extend if it is a contract for ongoing services.
- ii. How it is to be renewed or, if automatically renewed, how it may be canceled.

11. Termination.

- i. Provide for termination if there are material breaches.
- ii. It is also very helpful to have the contract provide examples of items which would be sufficient to cause the breach of the contract.
- iii. Finally, some contracts, depending upon the type of service being provided, should have provisions which indicate they may be terminated with or without cause upon 30 days' written notice by either party.

12. Standard of Care. The contract should include a provision which indicates the performance standard which the contractor will seek to achieve. For example, if the work is roofing, the contract might indicate the work is to be performed in a good and workmanlike manner, but in accordance with the particular specifications set forth by the manufacturer of the materials.

13. Warranty.

- i. In the case of a contract that is for construction or other service work, the contract should include a warranty for labor and materials that are furnished under the contract.
- ii. Inspections by manufacturers representatives.

14. Taxes. The contract will want to include a provision indicating who will pay various taxes which may be applicable, such as sales tax or use taxes.
15. Permits. The contract should include a provision that the contractor will secure and pay for building permits and other permits that may be applicable to the work.
16. Clean Up. In those contracts where services are to be performed at the Association on an ongoing basis, the Association will want to add a provision which requires the contractor to keep the premises clean and free of waste and other garbage.
17. Inspections. Especially for work being performed at the Association, the contract should include a provision requiring inspection by the Association and/or its architect, engineer or other appropriate professional to ensure the work is being performed appropriately on an ongoing basis and at its conclusion.
18. Disputes. The Association may want to consider a provision requiring arbitration rather than litigation.
19. Safety Precautions. As to work on the property, the Association will want to include a provision requiring that the contractor perform all work in a safe and reasonable manner and otherwise mark the property with appropriate fencing, etc. to protect the membership and the public.
20. Legal Disputes/Location for Litigation. The contract should include a provision to indicate the particular county in which any litigation can be brought. This avoids traveling to some far jurisdiction where the contractor may be friendly with or more familiar with the court system. It also avoids have to hire counsel to fight a battle.
21. Amendments to Contract. The contract should provide that any modifications, amendments or requests for additional work or funds must be in writing and signed by both of the parties.

III. Enforcement of Contracts

1. Liquidated Damages/Penalties. The Association might consider a contract with a liquidated damages provision. If the work is not completed by the date set forth in the contract, then a liquidated damages provision allows the Association to get a specific dollar amount of damages, typically on a daily basis, when actual damages may otherwise be difficult to prove.
2. Retainage/Withhold Payment.
3. Substitution/Cover/Replacement.
4. Specific Performance.
5. Damages/Legal Action/Attorney's Fees.



37 Peppertree Court Marietta, GA 30068
OFFICE: 770-579-7663 | FAX: 770-579-0955

Name: _____ Date: 6-18-12

Address: _____

Phone: _____

Peachtree Roofing, Inc. hereby proposes, for the amount stated below, to furnish the labor, tools, and materials required to perform, Roof Replacement, in a workmanlike manner, with warranty and according to manufacturer's specifications. The scope of work & description of materials to be used on your job are as follows:

(Buildings 100 & 200)

- To remove all existing roofing material (One Layer) down to bare deck.
- To secure and re-nail any loose decking. (*Cost to replace decking- see options below*).
- To install #15 asphalt felt underlayment over entire deck.
- To install Ice & Water Shield Leak Barrier in all valleys and water collecting/dead areas.
- To install **25 year 3-tab shingles**
Color: Charcoal (to be determined from manufacturer's stock colors)
- To install starter shingles around roof's perimeter (including eaves and rakes for extra protection).
- To replace all soil pipe boot flashings.
- To remove any existing vents, cut vent opening & install shingle-over ridge vent on all horizontal ridge lines..
- Install new metal step flashing and/or coil stock as necessary.
- To paint all roof penetrations.
- To leave your property free of construction debris. All remnants will be properly disposed of at job completion.
- Nail pick-up magnets will be used to collect stray nails around premises.
- All material to be installed according to manufacturer's specifications and meet or exceed current building codes.
- Manufacturer's **25year warranty**.

Other Options, and/or Additional Provisions:

To replace any additional unforeseen deteriorated decking \$50.00 per sheet; \$3.85 per foot (if boards)

- Estimated time to complete job: **4 Days**
- Limited Labor Warranty : **10 Years** (Independent of Manufacturer's Warranty)

We propose hereby to furnish material and labor – complete in accordance with above specifications, for the sum of:

Twenty Six Thousand Nine Hundred Eighty Five Dollars and 00/100.....\$26,985.00

This proposal is good for 15 Days.

Payment to be made as follows: **Upon Completion. NO MONEY DUE IN ADVANCE**

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Peachtree Roofing Inc. will supply the worker's compensation & general liability insurance. Peachtree Roofing, Inc. ("PTR") is not responsible for defective siding above the roof line, defective existing skylights, nor the condition of rafters and decking. Any cost required to re-tune a satellite dish will be paid for by the customer. PTR shall not be held responsible for damage occurring to homeowner's property due to delivery and/or removal of dumpster or materials. PTR shall not be responsible for damage to A/C or electrical lines located within 3 inches of the underside of roof decking. Any additional roof layers found beyond the estimated count noted above in this contract will be an additional charge to the customer of \$20.00 per square. Customer acknowledges that any color variation is warranted by manufacturer and is not a liability of this contract. Further, in the event there is present a pinch-in-place type aluminum gutter screening, PTR cannot be responsible for its preservation and/or condition if retained. PTR recommends complete removal or replacement. When remitting payments with a credit card please add three percent (3%) surcharge to cover bank's processing fees. 18% interest per annum will be imposed on all past due balances.

Authorized Signature: _____ Date: _____

Acceptance of proposal - The above price, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Owner's Signature: _____

Date: 6/20/12

Return recorded copy to :

Mike Langston

Building Supply Association, Inc.

5655 Lake Acworth Drive, Suite 310

Acworth, GA 30101

(770) 439-0101

FILED
2010 10-1-12 PET
Clerk of Superior Court

**Materialman's and Mechanic's Claim of Lien
State of Georgia, DeKalb County**

Building Supply Association, Inc., engaged in the business of improving real estate by performing services, furnishing labor, materials and/or equipment, claims a lien thereon as provided by law beginning 7/16/2012 upon a certain building and the real estate upon which it is erected and owners.

The Lien amount claimed is:

\$12,012.28

(plus applicable interest).

Property owner(s), for satisfaction of a claim which became due on 7/16/2012 for building, repairing, improving or furnishing, material and labor for a building or structure. Said labor, materials, equipment, or service(s) were furnished at the request of:

Peachtree Roofing

209 Powers Ferry Road

Marietta, GA 30067

The real estate in DeKalb County being more particularly described as follows:

This notice and Claim of Lien is filed for record, in the Office of the Superior Court of the county where the property is located, pursuant to the provisions of O.C.G.A. 44-14-360 et. seq. within 90 days since last furnishing or performance of the aforementioned labor, materials, equipment or service(s) by Lien Claimant as follows:

Building Supply Association, Inc.

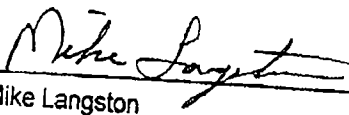
3194 Florence Road

Powder Springs GA 30127

(770) 439-0101

9/28/2012

By:


Mike Langston

This claim of lien expires and is void 395 days from the date the claim of lien was filed if no notice of commencement of lien action is filed in that time period. Pursuant to O.C.G.A 44-14-368, the owner of the real property described herein, or the owner's agent or attorney, or the contractor or contractor's agent or attorney shall have the right to elect to contest this lien and shorten the time prescribed in which to commence a lien action to enforce this claim of lien by recording in the Superior Court Clerk's office a notice to contest lien all as provided for in O.C.G.A. 44-14-368.

This instrument is hereby canceled, and the Clerk of Superior Court of the aforementioned County is hereby authorized and directed to satisfy it of record. This _____ day of _____

By:

Building Supply Association, Inc.

File # 7942-267782-45231

Contract Pointers For Associations

*Mindy C. Waitsman
Attorney at Law*

Board Members and managers enter into contracts all the time. Generally, the types of contracts Associations enter into are either service contracts or project contracts. Examples of service contracts include management, landscape, pool, pesticide, cable television and legal agreements. Project contracts may include roofing, drainage, siding and painting contracts. Although most people do not think about the possibility of a dispute when hiring a contractor, disputes and disagreements with contractors are a reality. This article provides Associations and managers with practical tips to consider before entering into a contract. The goal is to minimize the risk of a dispute over the contract terms and reduce the potential legal exposure of a Board member or manager.

Investigate the Contractor's Background. If you are considering using a contractor that you are not familiar with, carefully investigate the contractor's background. Ask the contractor to supply you with a list of references. Go see other work that the contractor has done to satisfy yourself that he can do a good job for you. Contact the Better Business Bureau to see if anyone has ever complained about the contractor's work before. On large projects, you also can ask the contractor for a list of suppliers and call to see if the contractor is current on payment of invoices to the suppliers. If not, it could indicate a problem.

Have a Written Contract. This is extremely important. If you have a disagreement with the contractor, the terms of the contract determine the rights and liabilities of each party. Having the terms of the contract in writing and as specific and detailed as possible will protect the Association or manager from the unwitting contractor who does not understand what he is agreeing to or from the unscrupulous contractor who understands the agreement but then tries to change it.

Clearly State the Names of the Parties Entering into the Contract. Failing to state the proper legal names of the parties to a contract can result in an innocent party being inadvertently drawn into a lawsuit on the contract. For example, if the Association owns common property or buildings, the contracts it enters into should be written using the proper legal name of the corporation to insure that the directors, officers and members are shielded from legal liability. If the president of the Association is signing a contract on behalf of the corporation, the contract should state that the individual is signing as an officer of the corporation rather than as an individual. Similarly, if a management company is signing a contract on behalf of the Association, the contract should clearly state that the manager is entering into the contract as the agent for the Association.

Provide as Detailed a Scope of Work as Possible. The contract should specify as much as possible the scope of work to be performed, the time period in which the work is to be done, and a minimum performance level. For example, compare the following two typical landscape contract provisions.

- Contractor shall mow all grass areas as needed; or
- Contractor shall mow all grass areas as needed, but at least once a week during the months of May through September, and at least once every two weeks from October through April. All grass areas shall be maintained in a neat and attractive appearance.

It often is helpful to get information to prepare a scope of work from outside professionals. For example, painting specifications frequently can be obtained from a paint manufacturer. For larger or complicated projects, it may be wise to pay an engineer or architect to develop the scope of work.

Agree to a Price for all Work. This price should include all of the work described in the Scope of Work. If possible, it should include contingencies that may occur and impact the price. For example, the landscape contract may include fertilization of shrubs, maintaining grassy areas and trimming shrubs and trees. If pests or diseases occur, try to include a price for this additional service in case it is needed. If the parties cannot determine an exact price of an item when entering into the contract, the contract can provide that the price “will be determined” but will not exceed a certain amount.

Require an Indemnification Provision. The contractor should agree to indemnify or hold harmless the Association or manager from all damages and claims that are caused by the contractor or contractor's employees. For example, an owner gets sick because of excessive chemicals in the swimming pool and sues the Association for damages. If a contractor who has indemnified the Association were performing the pool cleaning, the contractor would pay for all of the Association's costs of defending the claim and any judgment obtained against the Association in a court of law.

Be Wary of Having to Indemnify the Contractor. Contracts often may require the Association or manager to indemnify the contractor. For example, cable television contracts often require the Association or manager to indemnify the cable company for any damage done to the cable television equipment on the property, whether done by tenants or otherwise. Since the contractor is in a position to protect itself through insurance against damage to its equipment, I recommend that these provisions generally be deleted from contracts.

Require That the Contractor Maintain Adequate Liability Insurance. The contractor should be required under the contract to have liability insurance to cover claims against personal injury and property damage. Liability insurance is critical with any indemnification provision in that liability insurance is typically the source of funds to pay the obligation to indemnify. The contractor should be required under the contract to furnish a Certificate of Insurance showing proper insurance coverage prior to the commencement of work. Additionally, the contract should require that the liability insurance policy be kept current during the entire term of the contract.

Require that the Contractor Carry Worker's Compensation Insurance. In addition to liability insurance, the contract also should require the contractor to carry worker's compensation insurance. When a contractor has obtained worker's compensation insurance for his employees, it is often the best evidence that the person performing work for the contractor is in fact the contractor's employee and not the employee of the Association or manager. This greatly reduces the risk of suits against the Association and manager for on-the-job injuries to workers and for suits for damages caused by the contractor to third parties.

Include a Good Termination Provision in the Contract. Termination provisions are extremely important in contracts for both ongoing services (such as security or landscaping) and projects (such as roofing). Service contracts should be subject to termination without cause with a short notice period (such as 30 days). This way, the Association or manager does not need to state reasons for ending the contract. Contracts then could be terminated for any reason, including a better price. Project contracts also should have a termination provision that permits the Association or manager, if the contractor is not performing properly, to withhold payment, fire the contractor, complete the job with another contractor, and hold the first contractor liable for any increased costs.

Clearly State the Starting and Completion Date. If it is important to complete a project by a specific date (such as painting the buildings before the cold winter weather starts), then the contract should clearly state the starting and completion dates and that time is of the essence. These fixed dates help judge whether a contractor is in default. Often, failure of a contractor to finish a project on time causes damage to the Association in ways that cannot easily be measured monetarily, such as lost potential tenants. In these cases, a provision could be added to the contract requiring the contractor to pay liquidated damages for each day work is delayed, not as a penalty, but as a reasonable estimate of damages caused by the delay. If it is a service contract, it is important that a beginning date, termination date, and any renewals of the contract are clearly stated. If you enter into a contract that automatically renews if not terminated by a certain date, be sure to calendar a reminder to the Association Board to consider terminating the contract before the termination date.

Require that the Contractor Provide and Update a Schedule and Checklist of Work Performed. The contract should specify a schedule for the work to be performed each week or month. The contract also should require the contractor to furnish a checklist of the work actually performed each month, week or day, as appropriate. The use of a required checklist gives the Association Board or manager a greater ability to oversee that the work is being performed properly and on schedule. The checklist also helps reduce the Association and manager's exposure to liability. For example, a swimming pool service contractor's checklist becomes important to the Association or manager in the event that a swimmer is injured in or around the pool. This checklist may be the only evidence that the Association or manager has to show that it carried out its maintenance responsibility for the pool in a reasonable manner.

The Work Should Always be Ahead of the Payments. This is a simple, but often overlooked concept. The person who has the money controls the work. If the contractor has performed more work than money received, then the Association or manager has leverage over the contractor to ensure quality and completion of the work. Where possible, the contract should specify that the contractor will only be paid after the work has been completed, inspected and approved. Payments in advance of performance should be avoided when possible. When payment is made on the front

end, the contract should require that a sufficient percentage of the value of the contract be withheld until all work has been performed under the contract. This type of provision serves as an inducement for the contractor to complete all work under the contract. Additionally, if a down payment is required in order to acquire materials, the contract should list the materials that will be acquired. Once the work begins, the Association should take steps to ensure that the materials that were to be purchased have in fact been purchased. The contract should provide that title to the materials transfers to the Association upon purchase. This may be the most important protection under a contract.

Make Sure to Obtain a Proper Lien Waiver from the Contractor. The contract should specifically require the contractor, upon each progress payment or prior to final payment, furnish an affidavit stating that all laborers, subcontractors and suppliers have been paid and relinquishing all lien rights against the Association. This is known as a lien waiver. The failure of an Association or manager to obtain a lien waiver gives a subcontractor or supplier of materials who has not been paid the right to pursue a claim for payment directly against the real property where the work was performed. Additionally, the contract and lien waiver should provide that title for the work paid for by any progress payment and final payments transfers to the Association upon payment.

Get Warranties in Writing. Any warranty or guaranty provided by the contractor should be expressly stated in the contract. Most contractors performing projects such as roofing or painting are willing to guaranty their work in some way. Warranties should be against defects in both labor and materials. If there is a warranty for materials, the contractor needs to ensure that the warranty can transfer to the Association upon payment.

Consider the Need for a Performance Bond with a Large Contract. With large contracts, it may be beneficial for the Association or manager to obtain a performance bond from the contractor. This type of bond ensures that funds will be available to complete a job if for some reason the contractor is unable to do so. Since a performance bond is expensive to obtain, and significantly increases the cost of a contract, most Associations or managers usually do not request one except with a large contract.

Require Fidelity Bonds for Workers Handling Money. Any person handling funds of the Association should be required to purchase a fidelity bond to cover any loss to the Association in the event that the person handling the funds misappropriates or absconds with the Association's money.

Follow the Contract When a Problem Develops. When a problem develops with the contract, there is sometimes a tendency to take quick action without considering the obligations that the contract might impose upon the parties. Avoid rash moves. The contract should be carefully followed to ensure that notice requirements and dispute resolution procedures are strictly adhered to. **Open communications with the contractor are important.** A good relationship with the contractor can help smooth over and solve unexpected problems and delays. Ultimately a contractor wants a good reference as that is invaluable to the growth/survival of their business.

Trees-Are-Us



Landscaping & Irrigation

PROPOSAL

3-18-02
MB/#3/PP
Deere Lake

JANE O'DOE

123 Sesame Street

Atlanta, GA 30305

H: 770-555-1235

C: 770-555-1233

12
4
48
5
240 sq. ft.

- * 1 5 Open landing steps- 4' x 12', filled with sod \$487.50
- 2 Final step to have gravel filled & end at water's edge \$455.00
- 2 14 steps of side of hill filled w/ decorative Egg rock \$5500.00
- 3 15 x 30 platform deck (Vinyl flooring), w/ rail affixed to rear. Gravel to be placed under deck \$250.00
- * 1 1 pallet sod ~~Deere Lake~~ 1/2 pallet \$50

ESTIMATED TOTAL: \$6692.00

Thank you very much for your consideration!

ALL MATERIALS ARE GUARANTEED TO BE AS SPECIFIED. ALL WORK IS TO BE COMPLETED IN A WORKMANLIKE MANNER ACCORDING TO STANDARD PRACTICES. ANY ALTERATION OR DEVIATION FROM ABOVE SPECIFICATIONS INVOLVING EXTRA COSTS WILL BE EXECUTED ONLY UPON WRITTEN ORDERS AND WILL BECOME AN ADDITIONAL CHARGE OVER AND ABOVE THE ESTIMATE. ALL AGREEMENTS ARE CONTINGENT UPON ACCIDENTS OR DELAYS BEYOND OUR CONTROL. THE ABOVE BID IS ONLY AN ESTIMATE. IF ADDITIONAL MATERIAL IS REQUIRED, I.E.: DIRT, SOD, TIMBERS OR SUCH, AN ADDENDUM WILL BE WRITTEN BEFORE ANY EXTRA MATERIALS ARE DROPPED. FOR ANY MATERIALS THAT IS NOT USED, CREDIT WILL BE ISSUED ACCORDINGLY.

Authorized Signature: _____

THE ABOVE PRICES, SPECIFICATIONS AND CONDITIONS ARE HEREBY ACCEPTED. YOU ARE AUTHORIZED TO DO THE WORK AS SPECIFIED. PAYMENT WILL BE MADE AS OUTLINED ABOVE.

Date Accepted: _____

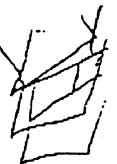
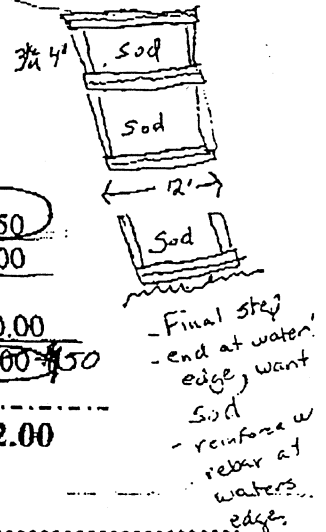
Signature: _____

Signature: _____

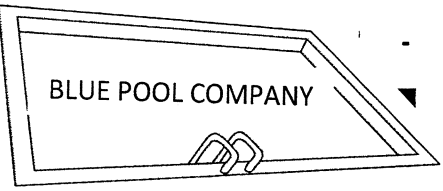
Start Fri (rained Fri night)
Come Sat. - never shaved - to fix irrigation
Mon - I called (Pintie) be there tonight on Tues AM
Tues - Hauled dirt, did bottom step
- talked to Kandy, rechecked
dead sod, not matching
- Wed would call from
Kevin arrange to meet

Excuse too wet to lay
Total \$637.50

333 ARBOR HWY
DECATUR, GA 30033
P: 404-555-6666 F: 404-555-5555



Attention
- Upman



FF 770.429.1158
Fax 770.429.1158
Cell 404.640.7647

Homeowners Association
- Homeowners

- contact person in charge
- Brown

770.429.1158 6/770.1158
Phone Fax
Date 4-28-03

Stock
Ship Date ASAP

TERMS <u>50% dp.</u>	CUST ORDER NO	P.P.D. <input type="checkbox"/>	COLLECT <input type="checkbox"/>	SHIP VIA <u>air Stock.</u>
SOLD BY <u>Jones</u>	BUYER <u>above</u>	C.O.D.		
FLOOR COLOR <u>white</u>	WALL HEIGHT	CORNERS RADIUS 6" <input type="checkbox"/> 2" <input type="checkbox"/> 4" <input type="checkbox"/> 50" <input checked="" type="checkbox"/>		
WALL COLOR <u>plaster</u>	OTHER <u>90"</u>			

PRODUCT CODE	QTY	PR.	DESCRIPTION	PRICE	TOTAL
plaster	12)		Prep old plaster and Banding agents to assure a good Bond.		
	13)		Cut under Tile line and all Drain inlets etc.		
	14)		2"x2" non-skid step tile markers.		
	15)		and 100% white Portland & marble plaster. at 3/8" to 1/2" in thickness.		
	16)		Check for leaks and all areas around return, Drains, and Shimmer treatments.		

SPECIAL REMARKS

We will also Pressure Test plumbing lines.

Thank-you for Your Business
Maintain P.H. for the 1st several weeks.

Thanks

SUBTOTAL	4,750.
FREIGHT	
TOTAL	
DEPOSIT	2,375.00
BALANCE	2,375.00

upon filling of Jones also stock up.
Bal. may please call 404.640.7647

Paid \$2375.00
CK# 24 on 4/23/03

Final Payment
Paid \$2375.00
CK# 1079 5/29/03