

THE ABC'S (and D's) OF WORKING WITH CONTRACTORS

In these difficult economic times, most associations are choosing to spend as little money as possible. Unfortunately, that often translates into the retention of contractors to perform work without a written contract (or without consulting the association's attorney).

"Do we really even need a written contract?", "Can't our manager review it?", and "But we've got an engineer on the Board!" are some of the more frequent refrains we hear. The answers to the first two questions are "YES!", you do need a written contract, and "NO!", your manager is not paid to review that contract to make sure that it is legally adequate.

Furthermore, although it is best to have smart and qualified professionals on your association's board, those volunteer board members should not act in their professional capacities when conducting association business. Consulting the association's attorney is the best way to protect both the board members themselves (relying on the advice of appropriately qualified professionals) and the association, as there are often provisions that are omitted from vendor contracts that would provide critical protection to associations.

"A" is for Additional Insured Endorsements *and* Attorneys' Fees. Always insist that the association and its management company be named as additional insureds on the contractor's liability policy, and be sure to get a copy of the endorsement prior to commencement of work. This will provide additional protection if the association or manager ever is sued for reasons related to the contractor's work.

Also, be sure to include a clause in the contract stating that if there is ever a lawsuit between the association and the contractor related to the work, the prevailing party in that action will recover its attorneys' fees and costs. These clauses can discourage contractors from not performing their duties and can provide effective leverage to settle disputes without filing suit.

"B" is for Boilerplate Contracts. "Form" vendor contracts often do not contain critical provisions that would protect the association, including an attorneys' fees provision to benefit the prevailing party in any potential legal dispute, an indemnity clause, insurance requirements, or dispute resolution procedures. In fact, the indemnity clauses contained in many boilerplate vendor contracts often require the association to indemnify the contractor, rather than the other way around (which exposes the association to unnecessary, significant risk).

"C" is for (Written) Contract *and* Change Orders. All contracts and change orders should be in writing to eliminate disagreement, ambiguity and confusion.

"D" is for Dollar Amount of the Contract. No matter how "small" the contract amount, any time a contractor performs work at your development, an accident can occur or something could go wrong. Legal protection and a good written contract in advance are the only ways to adequately protect the association's interests.

Because all associations, contractors and contracts are different, there will be specific issues to consider for every project. Feel free to contact us – we can help you avoid expensive mistakes before they occur.