

THE PROPERTY LINE

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Contracts 101: The Basics for HOAs

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Community associations contract with vendors for a wide variety of services. Imprecise and incomplete contracts can present significant legal and financial issues for associations and their managers. Some contracts contain boilerplate or generic language that could expose the association to liability and/or limit its right to recover for poor or faulty work. The issues below should be taken into account when reviewing vendor contracts. However, each vendor contract is different and can present its own potential challenges. We strongly encourage associations and their managers to seek the advice of legal counsel before entering into contracts.

Insurance. An association should always require its vendor to carry appropriate insurance. An association and its management company should also be named as "additional insureds" under the vendor's commercial general liability (CGL) insurance policy. This gives the association and its management company the same coverage that is available to the vendor under the vendor's insurance policy. It is important to obtain an actual endorsement to the policy from the vendor's insurance carrier to procure valid additional insured status. An "additional insured" certificate from the vendor's insurance broker is typically worthless without an endorsement from the carrier. Even with the proper endorsement, we strongly recommend a review of the vendor's entire insurance policy by legal counsel to ensure that there are no provisions or exclusions that may prevent coverage. Otherwise, an "additional insured" endorsement may not be worth the paper it is written on!

Indemnification. A vendor should always agree that it will indemnify and hold the association harmless for any damages to the association or any third party arising out of the vendor's work. This should be in addition to the vendor carrying appropriate insurance in the event that coverage for an incident or event is not available under the vendor's policy.

Warranty. A vendor should provide the association with a strong contractual warranty regarding the quality and adequacy of the work performed and the materials provided. An association should not agree to any provisions that disclaim any warranty or workmanship.

Scope of Work. A contract should specify exactly what the vendor is being hired to do for the association. The scope of work description should be precise and specific to avoid any misunderstanding of what is expected of the vendor.

Contracts define legal rights and obligations. A well-written contract can protect an association. A poorly drafted contract can leave the association exposed. We routinely review contracts on behalf of associations and would be happy to assist yours in negotiating its next contract.

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