

# APRIL 2023

## *Community Associations Newsletter*

### **Quick Tips for Contract Review**

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**C**ontracts are intended to define the agreement of the parties and to establish expectations regarding performance. Once signed, they form the legal terms by which the parties are bound. Many vendors use form contracts that are incomplete in the terms and conditions or are very one-sided to the benefit of the contractor and the detriment of the Association. As a result, it is necessary to review all contracts- even those currently in effect – with a close eye. It is imperative that the contract provide adequate protection for the Association and include all the terms and conditions to which the parties have agreed. There are a few areas that should always be reviewed in a proposed contract, even ones of low monetary value or for limited work.

#### **Scope of Work and Exhibits**

Often, relevant terms and conditions of the express scope of work to be performed are not included in form contracts. For example, if you have exchanged emails with a contractor regarding logistics for the work, consider attaching the email exchanges to the contract as an exhibit. That way, the contractor is bound by those representations in the emails, removing any ambiguity in the agreement. At the very least, it is important to have written documentation of all discussed terms and work. If you have a discussion in person or over the phone about what work will be included, make sure to follow up the phone call with an email summarizing the discussion and agreement, and then incorporate that email or the terms into the final contract.

#### **Timing**

One term that is often not included in contracts – especially ones for a limited scope of work or a phased contract (e.g., design) – is timing. The contract should state the start date for the work, and if necessary, milestones for completion of any performance phases. Without these parameters, a contractor has no set boundaries, and the Association may be waiting for weeks before the work starts. While a contractor might tell you orally when the work will start, it needs to be included in the contract so that if the contractor fails to comply, we are able to take action to terminate the agreement. Also, payment terms may be associated with the completion of various

phases of a contract. Moreover, if there is no estimated or proposed timeline or completion date, the work could drag on far longer than expected. While many contractors might be reluctant to commit to a firm date in a contract, including a proposed or estimated timeline is important in the event the work far exceeds the time expected and it is not due to supply or other issues out of the contractor's control.

### **Terminating the Contract**

Every contract should have language that allows the Association to terminate the agreement without cause and without penalty. Often, form contracts will not provide this option, so it is especially important to review termination provisions. If you have a multi-year contract, the contractor may not agree to this language during the first year of the contract but may accept it in subsequent years. If the work is limited in scope and does not require materials to be ordered (e.g., tree trimming), you may want to add language that allows the Association to cancel the contract before any work is commenced without penalty. There should also be language allowing for termination with cause, especially if the termination without cause language is not within the initial term of the agreement. Likewise, any automatic renewal provisions should be reviewed and noted. Often, contracts will renew automatically unless a party provides written notice by a certain date, sometimes as much as six months to a year before the end of the contract terms.

### **Indemnification**

Any time a third party comes onto the Association's property to do work at the behest of the Association, the Association needs protection. Indemnification provisions establish protection for the Association in different possible scenarios under the contract. The contract should always expressly note that the vendor is an independent contractor of the Association and not an employee. If the contractor causes injury or damage to person or property, the indemnification section should establish that the Association is not liable for the damage. Moreover, the indemnification provision should address lawsuits relating to any damage or work performed and assign the contractor responsibility in the event of litigation. This is language that should be reviewed by an attorney to ensure that the Association is fully protected.

### **Unapproved Reduction in Service**

When you have a service contract, like trash removal or pool operations, there needs to be language in the contract addressing a failure to provide the services. If the pool cannot open because there are not enough lifeguards provided one day, there should be consequences. Unapproved reductions in services have become a significant problem recently with businesses struggling to staff positions. Unapproved reductions in services can have a huge impact on your community, and lead to frustrated association members. As many contracts are silent on reduction of services, we recommend adding language addressing remuneration to the Association for missed services and termination in the event of repeat or long-term reductions.

Taking a close look at your contract with these tips in mind can help the Association avoid a headache or legal battle later. Should you need assistance reviewing any potential contract or existing contract, please contact one of our community association attorneys for assistance.