

Managing Contractors

Introduction

Many community associations hire outside contractors for services like pool maintenance, landscaping, snow removal and lifeguard services. Whenever an association contracts for these services, there is a potential exposure to third-party litigation resulting from work performed by the contractor.

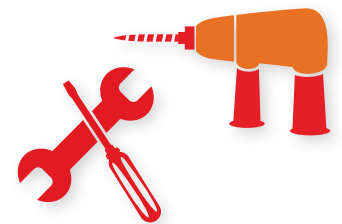
If a contractor's acts or omissions cause an injury or other harm to a third party, including home owners, and their tenants or guests, the person may not only file suit against the contractor, but also the association, for damages. The legal basis for many suits may include allegations of faulty workmanship, failure to provide required services, injury or damage resulting from an error or omission of the contractor or its employee, and a variety of other legal theories.

Whenever a community association hires a contractor it runs the risk that a claim will be made against it when someone is injured or damage occurs from or in the course of the work.

Fear of potential liability is not a reason to avoid entering into a contract. There are various risk transfer techniques that will help a community association recognize and control potential liability exposures.

What CAU Recommends

- > Use only qualified contractors.
- > Retain legal counsel to develop a standard service contract for your association.
- > Do not sign a contract provided by a contractor without a review by the association's legal counsel.
- > Do not assume that a contractor has adequate insurance. Specify minimum limits and coverage requirements in your service contract.
- > Require a certificate of insurance with a minimum limit of \$1,000,000 from each contractor, including your property manager.



Need More Information?

Consult with your legal counsel to review business contracts, assess exposures and for advice as to the type and level of insurance protection required.

Associations may request additional information on this topic by contacting CAU's Loss Control Department.

Risk Transfer Techniques

Unfortunately, many association boards blindly accept the contract terms presented by their contractors. When hiring a contractor, associations must take proactive steps to limit their potential liability exposures. Implementing various risk transfer techniques, with the assistance of legal counsel, is perhaps the best method for an association to limit liability exposure and protect association assets.

Legal counsel can help the association develop, negotiate, and administer standardized contracts with their contractors that contain language favoring the association. A contract provided by the contractor will often seek to benefit the contractor and may not provide adequate protection to the association.

There are several important provisions that counsel should include in a standard contract for an association. From a risk transfer perspective, Indemnification, Hold Harmless and Insurance Clauses are three important requirements.

Indemnification Clause

An indemnification clause is a contractual provision where one party agrees to bear the financial responsibility for losses that the other party may incur. State laws vary greatly on the enforceability and interpretation of these clauses. Your legal counsel should be experienced in writing indemnification clauses and the legal interpretations specific to your state.

The indemnification clause should specifically require contractors to indemnify the association with respect to the contractor's negligence, including that of their own employees, subcontractors and vendors. Additionally, it should call for the contractor to defend the association in any third party litigation related to the contract. Such defense may include the costs and related expenses of independent legal counsel.

Hold Harmless Clause

A hold harmless clause is a contractual provision whereby one party assumes the liability of another inherent in a situation, thereby relieving the other party of responsibility. In reality, indemnification and hold harmless clauses are often one and the same.

Any standard contract developed for use by an association should require the contractor to hold the association harmless using language that is most advantageous to the association. The validity of contract indemnification language is subject to individual state laws. An association

should not undertake this complex legal issue without the assistance of legal counsel.

Insurance Clause

An insurance clause is a contractual provision requiring contractors to procure adequate insurance and provide proof of coverage. The limits required should equal or exceed the limits carried by the association.

The insurance clause should require that the contractor provide a valid certificate of insurance. CAU Publication *GL-1 Verifying Contractor Insurance Coverage with Certificates of Insurance* addresses this topic in more detail.

Often times, the insurance clause will also require the contractor to name the association and its manager as an additional insured. While this is a common requirement, it may in fact limit the amount of coverage available to the association or force the association's policy to act as the primary policy following a loss. CAU Publication *GL-2 Additional Insured* addresses the topic of additional insured status in more detail.

If legal counsel develops a standard service contract with an additional insured requirement then the contract language should specify that the contractor's insurance will act as primary insurance with respect to any other insurance available to the association or the property manager. Do not sign any contract provided to you by a contractor until the association's legal counsel reviews it.

Additionally, the contract should specifically provide that the contractor's GL policy includes contractually assumed liability coverage. This will place the contractor's GL policy solidly behind the indemnity and hold harmless provisions. Further, the contract should provide that evidence of such coverage be provided.

When an association contracts with a landscaping company for snow and ice removal it is important to verify that the contractor is covered for bodily injury and property damage arising out of snow plowing operations. Most liability policies written for a contractor specifically exclude this coverage and the contractor must pay an additional premium to obtain the coverage. The association can verify this by reviewing the contractor's liability policy and declarations.

Conclusion

This article covers three important risk transfer techniques. After reviewing potential exposures for your association with legal counsel, you may find that additional risk transfer or risk control techniques are required.