

LEGAL



Contracts and Condos

BY MARK FRIEDMAN, FLORIDA BAR CERTIFIED AS A SPECIALIST IN CONDOMINIUM AND PLANNED DEVELOPMENT LAW

Contracts are part of daily life for all condominium association boards. Board members, who are cost conscious may say, “if the contract is for a few thousand dollars, why would we want to pay an attorney to review it?” Obviously if the contract is fulfilled without issue, then all is well that ends well. However, it is when problems occur during contract fulfillment that this shortsighted approach becomes a major issue.

Example: Contractor brought in to dredge a boat slip owned by the Association. The cost was only \$5,000. The dredging equipment caused a boat slip collapse. There was no language in the contract about insurance, liability, prevailing party attorney’s fees, etc. Fortunately, the matter was resolved, but had the Association used the court system, they would likely have prevailed, but would not have been able to recover their attorney’s fees and costs, so they would have spent more than they would have sought to recover.

Example: Sandblasting contract. The only words on the contract were: “Sandblasting \$2,500”.

Sandblasting company damages condominium property. The contract offered nothing to help in

the situation, so it cost the Association more in attorneys fees to try and settle the dispute than it would have cost to put together a contract before the work was performed.

In each of these examples, the legal fees, had counsel been approached prior to the work occurring, would have been less than the amount of the initial contract. However, because the Board did not seek legal advice until problems arose during contract fulfillment, the legal fees ended up being much greater than the amount of the vendor’s contract.

There are some must haves in contract. This is not a complete list:

1. Florida law is being used and Palm Beach County Courts are the venue for all disputes. I represent an HOA that signed a contract without thinking about this. Now they have an issue and if they want to litigate it, venue will be in Tennessee.
2. Prevailing party fees and costs. The law in the United States is that unless there is a contractual or statutory provision, each party pays its own attorney’s fees and costs. When you take a unit owner to arbitration or court, the statute allows for such recovery. When you sue a vendor,

there is generally no statute, so the recovery has to be written into the contract document. Without such a provision, depending on the amount being sought, you might end up with a pyrrhic victory if you are the prevailing party, as you will likely have spent more on litigation than you recovered in your judgement.

3. Workers Compensation insurance for a vendor’s employee injured while working on your property.

4. Requiring liability coverage and making the association an additional insured on such policies.

This is just a small sample of what should be in a contract. Do not try to be an armchair lawyer when it comes to Association contracts. There is too much potential liability when things go wrong.

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