



HindmanSanchez

How Good Are Your Contracts?

HindmanSanchez P.C. *Attorneys at Law • Denver & Fort Collins*
5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 **Tel** 303.432.9999 **Free** 800.809.5242 **Fax** 303.432.0999 **www.hindmansanchez.com**



HindmanSanchez

How Good Are Your Contracts

The importance of ensuring that a contract the Association is about to enter into is legally satisfactory cannot be overstated. Too often, boards enter into contracts without fully understanding the scope of work contained in the contract or without realizing that the contract does not adequately protect the Association. As a result, when a dispute arises, the Association may find that it does not make economic sense to pursue any breach of contract claims. However, with some proactive measures, the Association may enhance its chances of prevailing in the event of a dispute.

First, the Board should understand the scope of work and the specifications to ensure that the contract includes the work it needs to in sufficient detail. Depending on the type of project, the scope may include the type or brand of material to be used, the exact units or location on which the work shall be performed, and details concerning the construction or performance methods (i.e. the size of the gutters, the length and frequency of nails used to secure the roof tiles, the number and types of plants to be installed, the number of times the lawn will be mowed, etc.). If the Board does not understand the scope, or the scope does not expressly include all the information the Board believes it should, these problems should be addressed prior to executing the contract. This will avoid differences in interpretation at a later date and will help ensure that the Association is obtaining what it expected.

Second, do not assume that the Association's manager has the expertise necessary to review a contract to ensure it protects the Association. Although the manager can be a useful resource in finding good contractors and in providing basic knowledge about work to be done, the manager is not an expert in all fields and may not be qualified to write or review the scope of work or the legal provisions in the contract. Therefore, in reviewing contracts, the Board should take advantage of all of the experts available to it, including attorneys and engineers.

Third, do not be intimidated by the cost of reviewing a contract. Most vendor contracts are short and only require one to two hours to review and revise to provide protection for the Association. Although the majority of contracts are completed without incident or breach, those that are breached may be costly. If the Association has not had the contract reviewed to protect the Association's interests in advance, it may be too late by the time a breach occurs. If the contract does not adequately protect the Association, the cost to enforce the contract may be greater than the actual damages. As a result, from an economic standpoint, the Association may find that it has to forego enforcing the contract and just pay another contractor to complete the work, often at a greater cost. This situation can be addressed in a revision to the contract prior to its execution.

Proactive drafting of a contract can prevent costly disputes between the Association and the contractor. Not only does this protect the Association economically, but it helps to preserve a business relationship between the two. When the contract is clear about the exact work to be performed and the rights and obligations of the Association and the contractor, both parties know what to expect and can avoid disputes.

HindmanSanchez P.C. *Attorneys at Law • Denver & Fort Collins*

5610 Ward Road., Suite 300, Arvada, Colorado 80002-1310 **Tel** 303.432.9999 **Free** 800.809.5242 **Fax** 303.432.0999 **www**.hindmansanchez.com