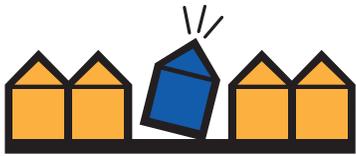


# WHAT'S NEW?

a PUBLICATION to INFORM & ENTERTAIN | September 2010



## NEW CONCEPTS

### ASSOCIATION MANAGEMENT

### COMMERCIAL/RESIDENTIAL REAL ESTATE SERVICES

### BUSINESS OPPORTUNITIES

### GENERAL CONTRACTING

### RENTAL MANAGEMENT

### MORTGAGE SERVICES

### CONSULTING

## FEATURED ARTICLE – part 1 of a 2 part series “Protecting Your Association In Contracted Work”

By Attorney, Dan Greenstein - Bernick, Lifson, Greenstein, Greene & Liszt, P.A.

I cannot tell you how many times the following scenario has played out over the years. My phone rings and a frantic board member starts to tell me a story that starts out “We were referred to a company that (pick one): my brother-in-law swears by; or another association used; or my irrigation guy, who I have used for ten years, recommended; or that advertised in our local paper; had a special one-time discount; or that happened to be working in our neighborhood and therefore could do the project for less.”

The person on the phone then pleads (pick one): “Can you get us out of this contract; or can you recover any of the money we paid the contractor; or can you contact the attorney general; or can you get us on a television show about fraudulent companies.”

Do you see where this is going?

The time to ensure the customer is protected is before the contract is signed; however, when that concerned board member calls, I always ask to see a copy of the contract. Most of the time, what I then review is a one or two page list of work to be done with a payment schedule... and of course the Minnesota required mechanics’ lien notice. Sometimes the paperwork has a short statement about a warranty; other times, there is little else. **One thing is constant—none of these contracts have any protections for the customer.** Even when the company selected to do the work is highly reputable, it is critical to ensure the contract terms offer the association some protections, because as we all know, things can go wrong.

When a board considers approving a contract for improvements or repair work, it is the duty of the board to operate with the same degree of care that a for-profit corporation is required to use: *“A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.”*

Even in a relatively small association, the amount of money that it takes to re-roof, re-side or do other improvements can be significant. What would an ordinarily prudent person do when faced with signing a contract to be paid for with other owners’ money, for (pick one): \$50,000; \$250,000; \$1,000,000?

It makes little sense for a board of directors to agree to sign any contract requiring payment of a significant amount of money without sending it to the board’s legal counsel for review. It is very inexpensive insurance. Think of it this way: any attorney that works in the area of contracts/construction/associations could review and offer suggestions to protect the association with just a couple of hours of work. If you are entering

into a remodeling or improvement contract for a large sum of money, does it not make sense to spend \$400-\$600 to have your attorney add the type of protections outlined below? We know that your first thought may be that (pick one): money is tight; we are already spending more on this project than we can afford; we trust this



Attorney, Dan Greenstein  
- Bernick, Lifson, Greenstein, Greene & Liszt, P.A.

company because the salesman said they will take care of us; we did not have any problems the last time; who needs an attorney to screw up the deal.

Relative to a construction improvement project, attorneys’ fees for protecting an association are relatively inexpensive. If you have your attorney spend a couple of hours inserting protective language into a contract, you are acting in a prudent fashion and protecting your association. Most attorneys would much rather help protect you on the front end of an improvement project than to try to find a way to assist you if a project goes wrong. Litigation is the least favored outcome. Think of it this way (pick one): spending a few hundred dollars for legal fees is good insurance on a large project; or who wants to be the board member that has to report to the owners that no attorney was engaged to review a contract and the contractor is screwing up but the association has no good legal recourse; or what if the contractor has been paid but unpaid subcontractors are filing liens on the association’s units; or if something goes wrong, grab the phone and make a frantic call to the attorney. ■



**Rules Enforcement Committee:**  
“Before we begin working together, I want to confess that I’m a control freak, a hopeless procrastinator and possibly delusional.”

What’s in the News?

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## “Where You Live”

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# Past Performance Is No Guarantee Of Future Results

By Gene Sullivan, President of New Concepts Management

"Past performance is no guarantee of future results" is a familiar phrase and disclaimer we have all heard when it comes to investing money. For most Americans, the largest investment they have continues to be their home. With the real estate market still down; and foreclosures still up and holding steady, the successful performance of any homeowner association is as important as it ever has been in the past.

However, unlike investing your money in a mutual fund that you have no influence or control over, your home is an investment you can take steps to increase the value of.

Tips for enhancing your investment (your home) and your association.

1.) **Communicate!** For the board of directors this means proactive communication. Homeowners cannot give you feedback if they aren't aware of the issues you are facing. Many times we hear a well intentioned board member offer, "Money is tight, let's save it by not sending out the association financials or minutes from the last meeting, most homeowners just toss them away anyway!" There is an old proverb that says "In an abundance of counselors there is victory!" Are you struggling with one or several big issues with your HOA? Bring it to the membership. I can't think of how many times I've seen this done, only to find someone in the association with experience or expertise to truly help. The other big benefit here is the tougher the issue, the more imperative it is

to bring it before your members. The reason is because the more you have taken the time to build a consensus from your members on a direction to take, the less chance you have of it coming back later with everyone up in arms, or with having to deal with litigation. Let everyone take ownership, it is after all their home too.

2.) **Participate!** If you are a homeowner, don't sit back blaming others for the situation you are in. Be active in regularly giving constructive feedback with graciousness and understanding, not in an angry rant or threat. Be involved in serving on committees and the board. Even if you aren't currently on the board make sure you stay in the know with what is going on, don't wait for them to send things to you periodically, ask for information. Remember, the decisions that your volunteer board needs to make at times can be tough and sometimes presents a no-win situation (because they can't make everyone happy). Help them out. It is easier for them to change the specifications in a contract, change a service provider when necessary, when they know they are rep-

resenting the wishes of the majority.

3.) **Know when to use your professionals!** The professional relationships that an association has with a management company, a CPA, an attorney, an engineer, etc. is also a very vital component and resource in helping the community reach and achieve maximum value and stability of the property. This is not to say that an Association is obligated to always agree to follow the recommendations of these folks, however, it is good to remember that these professionals are also charged with a fiduciary responsibility to always think and act in your best interest. These professionals are here to provide you with expertise and experience. You may be dealing with an issue the first time that they have dealt with dozens of not hundreds of times before.



Gene Sullivan,  
President of New Concepts Management

While the past performance is no guarantee of future results, your current performance or habits as a community can help to establish and preserve your property for a long time to come. ■

## Free On Line Seminars – Look what's coming up in October & November!

Classes run between 30-60 minutes. You can register anytime right up to the start of any seminar by going to [www.webinar.com](http://www.webinar.com) and click on the "join webinar" button. You will be guided through the registration process. To register you will need to supply your e-mail address and identify the seminar you wish to join by typing in the 9 digit I.D. # assigned to each class below. Here are our upcoming offerings:

**"How Important is FHA Financing for Your Association?" – Wed. Oct. 13, 2010 from 7-8 p.m. I.D. # 664595690.**

Major changes in mortgage underwriting over the last few years have put home buying out of reach for many. Now more than ever, lenders are looking at the policies and operations of an association prior to giving lending approval. Learn what every association should know to demonstrate good economic health and to promote sales in their community. – Instructor Gene Sullivan, President of New Concepts Management.

**NEW\*\*\* "Pet Policies – Good Owner, Good Owner!" – Thurs. Oct. 28, 2010 from 7-8 p.m. I.D. # 877463715.** Sometimes there can be a sharp divide between those who own pets and those who don't. Learn what can be done to allow both sides to live together in harmony. – Instructor Toni Crockett, Vice President of Rental Management Services New Concepts Management.

**NEW\*\*\* "Understanding Generational Differences in Your HOA" – Mon. Nov. 8, 2010 from 7-8 p.m. I.D. # 973660971.** Every generation has a set of shared cultural experiences that filter how they relate and communicate to others. Learn how values and expectations have changed from those growing up during the Great Depression, the Baby Boomers, the Gen X'ers and the Millennial's and how that can affect how everyone gets along. – Instructor Gene Sullivan, President of New Concepts Management.

**NEW\*\*\* "Ethical Challenges Facing the Board Today" – Thurs. Nov 18, 2010 from 7-8 p.m. I.D. # 918346315.** Serving on any homeowner board carries with it a large responsibility. Learn how to avoid the "little" compromises that can end up being the big issues later. What are the best policies that every HOA board should be practicing? – Instructor Paul Roth, Vice President of New Concepts Management. ■

### Home Savings Store

– Resources, products and services available at special pricing for our homeowners and subscribers. To take part in any of these specific offerings, please contact our Home Savings Store Coordinator **Courtney Sletten at 952-224-2663** and ask her for full details.

### Home Maintenance

Don't know where to turn to when you need a new water heater? Who can handle all those handyman tasks that you have been meaning to get to around your home? You can be assured that when Start To Finish is on the job, it will be done right by experienced, licensed, and insured professionals who care about your home as much as you do.

### Mortgage Network

Whether you're refinancing to reduce a high rate adjustable mortgage, preparing to pay the cost of a special assessment, or getting back on your feet from near foreclosure, experience the Klein Bank difference. Mortgage Banker Greg Johnson doesn't simply put you into something in order to make a sale. He spends the time to counsel you to see what makes the best sense.

### Preferred Realtor Network

Because we are involved with the resale disclosures on every sale at your association, we know who does the best in getting the job done quickly and at top dollar. If you do not have a relationship with an experienced agent, we can help. Discounts are also available on the cost of a re-sale disclosure by going through this program.

### Rental Management Services

Your preference was to sell, but your home isn't moving. That new job is calling, and you don't want to walk away from your equity. What do you do? Call New Concepts. We can give you peace of mind knowing your property is being watched closely, and the renters aren't getting you in hot water with the Board or your neighbors. ■