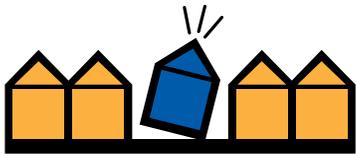


WHAT'S NEW?

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NEW CONCEPTS

ASSOCIATION MANAGEMENT

COMMERCIAL/RESIDENTIAL
REAL ESTATE SERVICES

BUSINESS OPPORTUNITIES

GENERAL CONTRACTING

RENTAL MANAGEMENT

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CONSULTING

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

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

In September I wrote about the wisdom of using legal counsel for extra protection prior to entering into large contracts. This month I wish to offer what I consider the top ten provisions that should be addressed in those agreements.

1. **Work.** The work that is contracted for should be as specific as possible in the contract. Are there certain specifications, drawings or plans? Is the work “first class” work and of the “highest quality” available? If the language does not specify quality, then you are accepting a normal standard in the industry. Does the contract state the quality? Is the actual contractor you hired going to be on site to do the work or will there be subcontractors involved? If there is a subcontractor, who will be supervising? What about the qualifications of the subcontractor? Do the subs work year round in Minnesota and understand building requirements here?

2. **Timing.** Make sure the start date and the completion date are clear in the contract. Also include whether there will be continuous work or whether the work will be done in phases. Add on a large buffer of time for completion but still require a penalty if the job is not completed by the end of the buffer period. You need something to ensure your job has priority.

3. **Payments.** How much are you going to pay upfront, before the work begins? There is no “standard in the industry” despite what you may be told. The less you pay up front, the less you risk to fraud or poor work. Before payment is made and contract is executed, determine whether an architect certification is required to do the job if the job is large. Schedule payments to be made by the percentage of work completed, instead of by the date. Lien waivers are a must. No money should change hands without lien waivers from all material providers and subcontractors. You may want to require retainage, which allows holding back money earned by the contractor until the end of the project, as a means of assurance for completing quality work.

4. **Insurance.** The owner or association must carry insurance on the property and on all risk associated with that property. Ensure that the contractor carries builder’s risk insurance and that the insurance covers subcontractors or that the subcontractors have their own policies.

5. **Change Orders.** A change order is work that is added or eliminated from the original scope of work of a contract, which alters the original contract amount or completion date. It is essential that a change order is in writing to make the changes enforceable. This should be clearly stated in the contract and once a contract is signed, follow this provision.

6. **Guaranty.** Our statute automatically ensures a one year warranty on labor and materials. As a result, most contractors use that as a basis for their own warranties. I encourage you to negotiate to obtain a longer warranty, which must be included in the written contract. Most contractors will extend the warranty when they are trying to get the job. This provision should also include a provision stating that if the contractor subsequently fails to correct the work within ten days after notice, the association can have another vendor do the work and deduct the sums spent from the amount due to the original contractor.

7. **Supervision.** Again, make sure that there is supervision of any subcontractors. Compile a list of the subcontractors used, including their names, addresses and licenses. Do they have their own insurance or are they covered under the contractor’s policy? Clarify that the contractor is obligated to complete the job, whether or not the subcontractor does. Make sure that the contract provides that once the project begins, the contractor is responsible for the safety and the means and methods of the project. There are plenty of horror stories out there where a dishonest contractor allows something to go wrong (water infiltration during a storm) and blames the owner for not protecting the incomplete wall of a home during a construction project.



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

8. **Indemnification.** Make sure there is a provision in the contract providing that the contractor will indemnify you for losses or damages that occur to any persons or property both during the project and afterwards, if stemming from the project. This means that if you are sued because a subcontractor was injured, or part of the construction falls down and damages everything else, the contractor is required to cover your loss, damage or liability for any claims. Hey, this stuff does happen.

9. **Assignment.** Do not allow a provision in the contract permitting the contractor to assign the contract to another contractor without your written permission.

10. **Litigation and Attorneys’ Fees.** If you do not have a provision in the contract that allows you to collect attorneys’ fees should any be incurred as a result of the contractor’s actions, then there is no chance that you will be able to collect them or be reimbursed. Most preprinted contracts do not allow for attorney’s fees; our mechanics’ lien laws allow a contractor to recover attorney’s fees from you...but this is a one way street. In order to recover the attorney’s fees that you spend as a result of a breach of contract by your contractor, you must have such a provision in the written contract.

With a little foresight, specifics can be outlined that will help manage expectations and insure positive results. ■

What’s in the News?

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When Do I Get Plowed Out? (And other commonly asked questions about snow removal)

By Chris Clark, Property Manager with New Concepts Management

It can be very frustrating waiting for the plow to come by. Most angst is experienced by homeowners who aren't aware of the parameters of the snow removal contract with their association. Knowing what to expect and when, can go a long way in staying calm as that white stuff piles up outside. Allow me to help by answering the most common and frequently asked questions.

Question:

Why do you plow part of the street even though the snowfall has not ceased?

Answer:

Your contract requires that for major snowfalls the major streets and drives are to be plowed even before the snowfall stops.

Question:

When it gets slippery is the contractor required to sand?

Answer:

Generally, slippery walkways, garage aprons and steps are the homeowner's responsibility. In all cases, sanding of the drives has been established by the Board of Directors to be done under only very specific conditions. Many times sand barrels are placed around the property at various locations. This is for you the homeowner. Feel free to take a coffee can and fill up for use around your home on walks, steps, and driveways, in between times.

Question:

Why do I have to shovel my steps, walks, and the snow in front of the garage door?

Answer:

Many times these areas are contracted to be shoveled so many hours after the completion of all driveways and private roads. In some cases homeowners shovel these areas before the crew gets there. In other cases, the snowfall has not been sufficient to meet the contract minimum depth. This is called a "Trigger Depth". Call your manager and ask what this depth must be before plowing and shoveling will occur.

Question:

Are the time frames allowed for work completion ever extended?

Answer:

Yes, but only for extreme weather conditions. Your contract contains provisions for these large snowfalls and under these situations we provide the services as quickly and efficiently as possible.

Question:

My car was left out during plowing operations and now I moved it. Will you come back and re-plow?

Answer:

The contractor cannot be responsible to return after every car is moved. They will, generally, clean up all areas during the next snow plowing trip. The best solution is to move the car before they start plowing that driveway area.

Question:

My area was not plowed because my neighbor's car was parked outside. Why didn't you plow my area?

Answer:

There may not have been enough room to get the plow truck and blade in without causing damage to either your neighbor's car or other property. This is an issue to take up with your neighbor. ■



Chris Clark, Property Manager with New Concepts Management

"Life in Minnesota"



Free On Line Seminars – Look what's coming up in December & January!

Classes run between 30-60 minutes. You can register anytime right up to the start of any seminar by going to 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:

NEW* "Association Politics – Dealing with Difficult People" – Wed. December 15, 2010 from 7-8 p.m. I.D. # 446536450.** Is there really an effective way to deal with obnoxious overbearing people? Helpful tips and strategies that allow those who are calm and reasonable still maintain control instead of having the association overrun by a few bullies. – Instructor Gene Sullivan, President of New Concepts Management.

NEW* "The Roles and Responsibilities of the Board" – Tues. Jan. 11th, 2011 from 7-8 p.m. I.D. # 204937618.** An orientation class perfect for those new to serving their HOA Board and wanting to know their duty as Board President, Vice President, Secretary, Treasurer, or Member at Large. – Instructor Paul Roth, Executive Vice President of New Concepts Management. ■

Home Savings Store

– Resources 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. ■