COMMUNITY MATTERS

Lueder, Larkin & Hunter

News and Trends in Community Association Law

Articles:

- Contract Pitfalls to Avoid
- Recovering Capital from Corporations

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Contract Pitfalls to Avoid

by | **Elina V. Brim, Esq.**

Community associations fulfill most of their obligations by hiring third party vendors to perform work. Landscaping, repairs to common areas, and pool service contracts are generally done by third-party vendors. Finding suitable vendors for various community projects is one of the most time-consuming but important functions of the Board of Directors. Yet diligent and hard-working Boards may still fall victim to common contract pitfalls. Below are a few frequently occurring issues we see when reviewing contracts for our association clients.

We frequently see contracts that lack basic minimum terms. The contract should have the parties' proper legal names. Failure to use a proper legal name by any party may result in personal liability for the individual signing a contract on behalf of that party. The contract should also have a clear start date and completion date. The completion date can be delayed for certain specified events, like weather delays or permitting delays, but the contract should require prompt resumption of work once the cause of the delay is resolved.

A poorly defined scope of work can lead to disputes, delays, or outright abandonment of the project by the contractor. Boards should insist on a well-defined scope of work that lists all materials to be used for the project, all tasks to be performed (permitting, demolition, building/rebuilding, clean-up), and warranties made for labor and materials. Most vendor contracts contain an integration or merger clause which provides that any representations or promises made in negotiations are superseded by the contract. Practically speaking, this means that if there is a dispute about what was part of the contract, the courts will rely only on the scope of work outlined in the signed contract between the parties and will not allow any evidence of prior discussions or terms that vary the terms in the written agreement. Unfortunately, some clients rely on sale materials with representations and commitments not written into the final contract. Boards should know that unless expressly incorporated into the signed agreement, sales pitch materials are generally not part of the contract.

Limitations of liability or limitation of damages provisions are used regularly by vendors to shield vendors from claims. But that does not mean that these clauses cannot be negotiated. We have seen provisions which limit the time to bring claims, limit the types of damages that can be recovered, or limit recovery to a specific dollar amount. These limitations greatly diminish recovery options by an association in cases of breach; however, they can and should be negotiated.

Protective indemnification provisions are drafted with the intention of protecting vendors. They can be too one-sided and unfair, requiring your community to pay for any claims arising from to the contractor's presence in your community. They expose your community to substantial liability. Associations should always ask the contractor to indemnify for damages or claims resulting from the contractor's negligence or willful misconduct while performing services under the agreement and while the vendor is in your community.

Finally, when the project is not being fulfilled in compliance with contract terms, a good termination clause should be included. That termination provision should specify what constitutes breach (such as untimely performance or defective performance), what your association can do to terminate the contract without liability, and how the notice of termination is communicated to the breaching vendor.

These are just a few most commonly occurring issues with vendor contracts. When dealing with contracts for a substantial sum of money, it is always advisable to have them reviewed by your association's attorney.

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WE'RE MOVING!

Lueder, Larkin & Hunter's main office location in Alpharetta is on the move! Our main office will be relocating about a mile down the street to new office space, effective on Monday, June 30, 2025. Our office will close early on Friday, June 27, 2025 as we begin our move. Our telephone numbers will remain the same, and you can reach us by email. Please update our physical and mailing address in your records as follows, and please begin to use this address starting on Monday, June 30, 2025:

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Recovering Capital from Corporations

by | **Darrelyn S. Hughes, Esq.**

Collecting assessments from members of the community association is one of the most essential functions the Board of Directors performs. Without reliably recovering these funds, community associations struggle to perform regular maintenance to the common areas, pay insurance premiums, and provide amenities. Naturally then, most governing documents outline significant consequences for members who are behind on their assessments. These consequences can include suspending the owner's right to vote, terminating the owner's amenity access, recording liens, and filing lawsuits. When filing a lawsuit, the goal is to either reach a reasonable repayment agreement with the owner or obtain a Judgment against the owner. After the association obtains a judgment against an owner, we move forward with garnishing the owner's assets or using other judgment recovery methods in order to collect that judgment. The association's collection strategy may change depending on whether the owner of a unit or lot is a corporation or an individual.

There are primarily three types of garnishment actions that are typically used to collect judgments: bank garnishments, wage garnishments, or rental garnishments. When dealing with an individual owner, we can often obtain their banking or employment information through standard skip-tracing by using the owner's Social Security Number; however, when the owner is a corporation, there is no individual whose wages can be garnished. Likewise, many of these corporate owners exist solely to shield the corporate officers from individual liability and do not have a formal business they manage, so finding a bank account in the name of the corporate owner is challenging if not impossible. Corporations are assigned an employer identification number ("EIN") that is not usually publicly available or discoverable through skip-tracing. Unfortunately, governing documents do not typically contain insight on how the type of owner can impact a community association's collections strategy.

How does an association determine if a property owner is a corporation?

The identity of the owner is a matter of public record and shared at the closing table. However, individual owners will often purchase the property and then convey it to a corporation that exists for the sole purpose of managing the property. In those cases, it cab be discovered that the owner is a corporation by searching land and tax records. If the property is owned by a corporation, there should be a deed filed with the Clerk of Superior Court providing the name of the corporation. Tax records and the information the owner may have provided to the property management company such as the mailing address or email address may also give a clue as to corporate ownership of the property. In Georgia, corporations are also required to register with the Secretary of State, so we use that database to find the names of the officers and individuals who can accept legal documents on behalf of the corporation

How can assessments or a judgment be collected from a corporate property owner?

If the community association is subject to the Georgia Property Owners Association Act or Georgia Condominium Act, the easiest and most effective way is for the association consider foreclosure. Alternatively, if the property is being leased, a rental garnishment can be filed directing the owner's tenant to pay all rent to the association until the garnishment is satisfied. Occasionally, if the corporation is legitimate, a corporate bank account may be found and garnished. If the owner is a corporation and the association has not submitted to either Act, the Board should strongly consider including an equitable foreclosure count in the collection lawsuit. While this relief is not guaranteed, it is best to have a community's collections assess the likelihood of recoverability before proceeding with a standard collection lawsuit without an equitable foreclosure component. After all, what good is obtaining a judgment against a corporate owner if that judgment will ultimately be uncollectable using traditional, non-foreclosure means?

When escalating a delinquent account to a firm that offers collections services, consider how the collections strategy may change based on the type of owner. If a community is not subject to either the Georgia Property Owners Association Act or Georgia Condominium Act, ask your collections attorney to determine if equitable foreclosure is a feasible option.

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