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Common Issues in Management Contracts

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A property manager can provide significant benefits to a community association. Management companies have the expertise, staff, and resources to take care of both major projects and the community's day-to-day needs which the volunteer board may be less equipped to handle. A manager's professional, independent advice can also help the board members avoid costly or time-consuming mistakes when faced with complex or sensitive situations involving their homes and neighbors. Of course, management services are often among the most expensive items in a community's annual budget, and a poor working relationship or disagreement over who is responsible for what can spell disaster. This is why choosing the right management company and understanding the terms of its contract with the community are so critical.

There are many to choose from. According to the state's Department of Consumer Protection, 331 community association managers are currently licensed in Connecticut. They range from local "mom and pops" which boast personalized attention to large-scale operations with sophisticated capabilities. The extent and nature of the services they provide can vary dramatically. In fact, state law allows broad flexibility as to the terms of association management contracts. The agreement need only be in writing and provide that the manager: (1) is licensed and bonded, (2) will not issue a check for or transfer the association's funds over a specified dollar amount without written approval of one of the association's officers, and (3) will not enter a contract binding the association over a specified dollar amount without written approval of one of the association's officers except in an emergency. The dollar amount is up to the association to decide, depending on how much discretion the board wants to give to the manager.

For most management contracts, many of the terms are fairly standard. They will typically authorize the manager to handle property maintenance, recordkeeping, collections and disbursements, budget preparation, resale certificates, governmental filings, meeting notices, and financial and insurance paperwork. They may also provide for varying levels of assistance with litigation, rules enforcement, participating in meetings of the board and unit owners, lender financing, accounting and audits, employee supervision, and capital projects. Any or all of these services might be included in a flat monthly fee, while other contracts will specifically exclude responsibility for them. Many contracts will itemize separate additional charges for specified extra services or a fixed hourly rate for any work beyond the services laid out in the contract. Several disputes which arise between associations and their managers can be traced to vagueness in their contract as to whether a particular service is included in the manager's flat monthly fee, so clarity is key – both when an association is comparing prices between different managers vying for their business and also to keep expectations well-defined during the agreement's term.

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Nearly all managers have relationships with carpenters, roofers, painters, landscapers, attorneys, banks, and other vendors who can be of value to an association. When a problem comes up, the manager can quickly refer the board a trusted professional with whom a good working relationship already exists. Occasionally, however, a board will come to feel that a vendor is a bit too close to the manager. Several management companies operate affiliated businesses which provide construction, maintenance, or remediation services, and associations may believe – rightly or wrongly – that the manager is not shopping around for a better price or is effectively double-charging for supervising itself as a vendor. Most managers will plainly disclose their relationships with their affiliates to avoid any appearance of impropriety, but some associations may wish to require advance approval, competitive bidding, or other safeguards as part of their contracts with management companies which offer these services.

Another point of contention when management contracts are being negotiated is indemnification. Contracts will often state that the association and manager will each reimburse the other for any financial losses and court awards caused by the other's negligence or breach of the contract. They may also require the one at fault to pay the other's attorney's fees and litigation defense costs. These clauses are usually reasonable as long as they are mutual, that is, each side is agreeing to the same thing to the extent they apply to most circumstances. Moreover, state law specifically forbids managers from claiming indemnity for or immunity against losses caused by their own negligence or willful misconduct. The trickier issue is when neither side is at fault. Usually the association will agree to add the manager to its liability policy so that insurance will cover both of them against a lawsuit brought by a third party (like a vendor or unit owner), but what if the claim is excluded in the policy or denied by the carrier? The manager and association may wish to negotiate how to apportion the cost of successfully defending such a claim.

A final issue which comes up frequently is how the contract will come to an end. Most management agreements say they renew automatically on an annual or some other basis unless the association cancels in writing. Doing so may require the association to follow fairly strict procedures by a fixed deadline, perhaps during a narrow window of time which is open only once each year, or pay penalties for terminating earlier. Managers are certainly entitled to rely on a continuing client relationship and to recoup their lost investment in that relationship, but associations must also be able to release themselves from a manager who underperforms or does not get along with the board. A contract which allows either side to terminate with a reasonable amount of advance notice, perhaps 30 to 90 days at any point with or without cause, is generally fair.

Just like any contract, the more carefully the parties consider the potential situations which can come up during the relationship, the better that relationship will be. Associations should work closely with their attorneys to make sure their management contracts include the terms they need to help best serve their residents over the long term.

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