

Self-Renewing, Termination, and Indemnification Provisions... Oh My!



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Recalling the memorable dialogue from the Wizard of Oz “lions and tigers and bears ... oh my” reminds me of the three problematic provisions found in most contracts: self-renewing provisions, termination language and indemnification provisions.

We have seen an increase in the number of boards and management companies executing vendor purchase orders or boiler-plate contracts without thoroughly reviewing the terms contained in the documents. Oftentimes there are certain terms and conditions overlooked and never negotiated between the parties prior to execution. This can create problems for the association when it turns out the provisions favor the vendor.

Specifically, boards and management companies should be wary of the following provisions:

1. Self-Renewing Provisions: Many contracts contain an automatic renewal clause which allows an agreement to continue for a defined period of time if the existing agreement is not terminated in accordance with specific terms and conditions.
2. Liquidated Damage Provisions: A specific amount which a party to an agreement has agreed to pay to another can be enforced in the event that party fails to fulfill its obligations under the agreement or contract.
3. Indemnification Provisions: A provision under which one party will commit or agree to compensate the other for any loss or damages caused as a result of the association or in some instances, a vendor.

These types of provisions are found in a host of different contracts from maintenance agreements to laundry, rubbish removal, landscaping and snow removal contracts.

We recommend at a minimum that boards prepare a standard vendor agreement and have certain provisions that can be incorporated into an agreement depending on its needs.

In the event of a major capital expenditure (i.e. roof and/or siding replacement), the board should consider having the contract reviewed in advance of going out to bid. Having this document prepared and reviewed in advance is the best way to ensure that it includes specific terms and provisions favorable to the board or association.

In addition to the foregoing, we are also concerned about these additional provisions.

1. Insurance requirements;

2. Termination provisions with or without cause; and
3. Penalty or liquidated damage clauses.

Well defined default provisions should also be included in any agreements and boards should include alternate dispute resolution remedies such as mediation and/or arbitration.

We also suggest that boards pay particular attention to the language regarding warranty on labor and materials.

In closing, boards should make sure the association avoids the lions, tigers and bears found in contracts so it will easily travel down that yellow brick road.