



## **Homeowner Association Management Agreements: The Top Ten Issues**

As legal counsel to a large number of homeowner associations, we are often asked to review management agreements proposed by association management companies. This article examines the top legal issues that we regularly see in management agreements with homeowner associations. Your board of directors should always consult with experienced legal counsel prior to entering into any contracts on behalf of your homeowner association.

### **Issue #10: Does the association have adequate legal authority to enter into the proposed management agreement?**

Prior to entering into any legal agreements, the board of directors should examine the governing documents to make sure that there are no limitations on their right to bind the association to a contract. Often, the governing documents have specific limitations on association contract rights. It is common for the governing documents to limit the duration of contracts to a maximum of two (2) years and/or have a cancellation notice limitation. Some governing documents require that contracts be terminable upon sixty (60) days' notice. The board and association legal counsel should make sure that contracts comply with these limitations, if any.

### **Issue #9: Does the management agreement have an automatic renewal clause?**

Management companies like to have long term relationships with their homeowner association clients. As a result, management companies use agreements that contain automatic renewal clauses. These clauses can be a trap for the unwary and may extend the agreements for a longer period than the board expects. A typical automatic renewal provision states that the contract automatically renews for a successive term, unless the association notifies the management company of its intention not to renew by a certain date. The board and association legal counsel should make sure that they are comfortable with automatic renewal clauses.

### **Issue #8: Management Services: what is covered and what is not?**



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The board should make sure that it knows what services are covered under the management agreement and which services are not covered. The normal management agreement covers accounting support, attendance at meetings, notices, mailings, coordination with vendors, violation notices, dues/assessment collection. The agreement should spell out what is covered and what is not.

**Issue #7: How are on-site employees handled and whose employees are they?**

If the association has on-site employees, caretakers or other staff, these personnel are usually employed by the management company rather than the association. The association should know that if their personnel are employees of the management company, then the management company, not the association, has the right to hire, fire and discipline the employees. The association should consider revising the management agreement to give the board the right to have some input on employment decision making.

**Issue #6: Who is responsible for insurance policies, claims, and insurance renewals?**

If the management company will be coordinating the association's insurance policies and keeping those policies up to date, the management agreement should include a requirement that the management company provide the board with reasonable advance notice of the termination date of any policies, as well as any notices of termination or non-renewal that it receives. This will allow the board to make sure that existing or new policies provide adequate coverage to the association.

**Issue #5: What accounting functions are performed by the management company and do they coordinate with a certified public accounting firm?**

Generally, the management company will prepare annual budgets and collect assessments/dues from the individual owners. The association should make sure that accounting reports contain sufficient detail as to association revenues and expenses. The management agreement should provide that the management company coordinate with the association's certified public accountant to complete any required annual reviews or audits of association finances.

**Issue #4: Does the management agreement authorize emergency repairs and contain appropriate limitations on spending?**

It is important that the management agreement appropriately provide authority for the manager to handle small and/or emergency repair requests without having to get bids and/or approval from the board while also limiting their authority to



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spend the association's money without approval. We recommend a spending cap for nonemergency items. The board should review the authority and spending limits to make sure that they are appropriate.

**Issue #3: How are assessments/dues collected and what actions can the management company use in the process?**

Since assessments/dues are the life blood of the association, the board should understand the collection process and what the management company is authorized to do. Does the contract give the manager the right to make decisions without consulting the board? Can the management company use a collection agency or collection lawyer, and what authority does the manager have to hire such parties?

**Issue #2: Does the management agreement contain a limitation of liability, indemnification or other waiver language limiting management company liability? If so, how broad is the language?**

Management contracts typically include provisions that limit the management company's liability and require the association to indemnify it against claims that may be brought as a result of the management company acting as the agent for the association. Legal counsel should review these provisions to ensure that the limitations on liability are appropriate (i.e., Will the management company be liable for criminal or intentional acts? What about gross negligence or ordinary negligence?). These provisions should be reviewed carefully by an attorney and possibly negotiated to something that is fair to both parties.

**Issue #1: If the relationship is not going as planned, what are the parties' termination rights and ongoing liability, if any?**

The management agreement should have a well drafted termination provision that clearly defines each sides termination rights. Often, it is helpful to have an early termination for cause provision that can be utilized if the management company is not performing in accordance with the requirements of the agreement.

*David G. Hellmuth, Esq. and Hellmuth & Johnson, PLLC represent a large number of homeowner associations, including condominiums, cooperatives and townhouse associations in a variety of legal matters. More information about Mr. Hellmuth and the law firm can be found at [www.hjlawfirm.com](http://www.hjlawfirm.com).*