MAHC

MAHC Messenger

Best Practices Of A Management Agent

Kathy Sinicropi, CPM®

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RANDALL PENTIUK, ESQ.
EDITOR-IN-CHIEF

During the recent MAHC Annual Conference, it was surprising to hear attendees share alarming stories of the poor experiences they encounter with their Management Agent. Having been in the property management business for over 37 years, I have developed a set of "Best Practices" that serve useful as a tool to professionally deliver and fulfill our fiduciary responsibilities to our clients. The concepts that follow are merely suggestions and qualities you should look for when selecting a professional property management company.

First and foremost, an initial meeting between the Agent and the Board should occur to identify and confirm in writing the Board's goals and objectives. This clearly outlines the Board's priorities so the Agent knows what is expected. Then it is important to keep the lines of communication open and provide updates on progress and discuss any additions required so everyone stays on the same page moving forward.

Customer Service & Communication

Communication is the key to a successful partnership. It's vital to the communities' success that the Agent is communicating with the Board on many different levels and in a variety of ways. It is important for the Agent to determine what form of communication works best since it varies by person and board. The Agent's attendance at Board meetings is vital and they should provide written communications detailing all aspects of the property's operations during the last month. There should be written follow up after the meeting to ensure Board directives are recorded to so they can be properly responded to and accomplished.

Our recommendation would be to include the following written documentation to the Board

- Updates on client's goals and objectives.
- Member receivables – report any legal action taken per your collection policy.
- Financial management - provide explanations for items on the monthly financial report that cause concern such as aged payables over 30 days old or for budget variances.
- Capital improvements – bids and recommendations on any upcoming projects or status updates on projects that are in process.
- Service contractor oversight – status updates on any ongoing contracts.
- Insurance incidents or claims.
- Staffing updates or performance concerns.
- Regulatory agency or mortgage company compliance.
- Enforcement of rules.

In addition to regular written communications from the management agent, as a leader, I find it

(Continued on page 10)

"It's hard to beat a person who never gives up."

Babe Ruth

THE SUCCESS OF TEAMWORK

"Teamwork divides the tasks and multiplies the success"

Unknown

ALL OF MY CONTRACTORS ARE INSURED. ISN'T THAT ENOUGH?

This Special Report was written by Kenneth R. Hale, J.D., CPCU, AAI, LIC of Marsh & McLennan Agency LLC.

.We hear this from clients all the time, and the answer is that it is not enough!

The reasons are as follows:

- The contractor's insurance may not protect you – even if the policy lists you as additional insured. There is a real possibility that an incorrect additional insured endorsement will be used and that the contractor's insurance limits will be insufficient. Furthermore, the issuance of a certificate of insurance does not amend the actual coverage which is controlled solely by the policy – not the certificate.
- The contractor's insurance company can actually sue you to recover what it pays if they can prove that the injury was caused entirely, or in part, because of your own negligence.
- Although it would be nice that your contractors have insurance and even give you a certificate of insurance, you cannot rely on someone else's insurance to protect your assets. The certificate of insurance is basically only worth the information that is provided. The missing ingredient is an indemnification agreement whereby the contractor agrees to indemnify you, that is to assume any claims made against you arising out of its operations, and provide that its insurance will be primary and not contributory to your insurance.
- Absent having this, if any contractor's employee is injured on your property, the employee can sue you. If the contractor causes injuries to other people, they can also sue you. You will have to incur the legal defense costs to defend these cases and pay any judgments that may arise out of that litigation to the extent that you are not insured.
- Even if the contractor has insurance it may not be up to the standards that you require; and therefore, you need an agreement setting forth the specifics of the insurance the contractor is to provide for you. In summary, you need to have a well-drafted insurance requirements and indemnification agreement. But even with this, never rely on this insurance and indemnification to protect your assets. Be sure that your insurance program has adequate limits and coverage.

For more information about this topic please see page 8 of this issue.

Mr. Ken Hale can be contacted at 734-525-2412 or khale@mma-mi.com. More Special Reports are available at www.mma-mi.com.

DID YOU KNOW?

Cooperative housing communities are the best and most economical forms of homeownership! There are currently approximately 6400 housing cooperatives with 1,200,000 dwellings divided into 425,400 limited or zero equity dwellings and 775,000 market rate dwellings. Housing Cooperatives account for about 6% of common interest ownership housing and about 1% of all housing. The first housing cooperatives were organized in New York City in the late 1800's...

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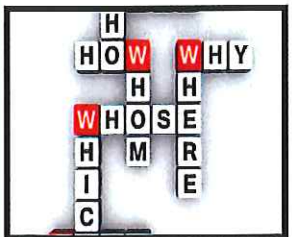
Did You Know?



Conduct your board meetings in a mutually agreeable, orderly way in order to get business done with the minimum amount of frustration and wasted time. Well-run board meetings should have discussion that takes the following pattern: analyze the problem, review its history & current status, share information with each other, then come up with a solution or combination of solutions, then devise a course of action.

Dear Co-op Counselor; HELP!

Dear Counselor;

We are a Senior Living Community, a Cooperative, and a 55+ community or so we say in various advertisings. We have been told that we have a Fair Housing 55+ exemption which I am told means we are able to discriminate based upon age for prospective members. When the question came up about a person wanting to buy in to the cooperative who was 55 but had a 52 year old spouse, one person said we could not stop them and another person said we could lose our 55+ exemption if we allowed the 52 year old in. Without the 55+ exemption we would have to allow anyone to buy in who wanted to and our community and atmosphere would be forever changed. Which person is right or are they both right or wrong?

Signed,
Confused

Dear Confused;

The Fair Housing Act specifically exempts some senior housing facilities and communities from liability for familial status discrimination. Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children. In order to qualify for the "housing for older persons" exemption, a facility or community must prove that its housing is:

- Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
- Intended for, and solely occupied by persons 62 years of age or older; or
- Intended and operated for occupancy by persons 55 years of age or older.

Per HUD guidelines and the Housing for Older Persons Act (HOPA), in order to qualify for the "55 or older" housing exemption, a facility or community must satisfy each of the following requirements:

- At least 80 percent of the units must have at least one occupant who is 55 years of age or older; and
- The facility or community must publish and adhere to policies and procedures that demonstrate the intent to operate as "55 or older" housing; and
- The facility or community must comply with HUD's regulatory requirements for age verification of residents.

Therefore, the 55 year old may be approved for occupancy with his 52 year old spouse so long as he continues to occupy the dwelling then the senior housing exemption will not be lost.

Signed: Co-op Counselor (CC)

Disclaimer: While we hope this information is helpful in answering some of your questions, please be advised that the answers provided here are for "general" informational purposes only. This information should not be construed as "legal advice" either to the individual or the Cooperative that they represent, the use of this forum does not create an attorney-client relationship between the user/reader and Mr. Pentiuk or his law firm, Pentiuk, Couvreur and Kobiljak, P.C.

For specific legal advice and personalized assistance with regard to your particular issue or problem you should contact a professional cooperative attorney.

If you are interested in submitting a question (regarding legal policy and procedure) to the Co-op Counselor, please submit your question via email to MAHCeditor@gmail.com, insert the words "Co-op Counselor" in the subject line. If you would like to mail your question please send it to Pentiiuk, Couvreur & Kobiljak, P.C., 2915 Biddle Suite 200, Wyandotte, MI 48192 Attention: "Co-op Counselor". While we will do our best to respond to your question please understand that submission of your question to this forum is no guarantee that you will get a published response.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Cost of class is 175.00

DEADLINE for registration is: August 31, 2015
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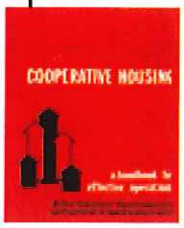

Education is power.

MAHC offers valuable resources such as:

- Cooperative Housing Handbook
    - Serving on The Board
    - Membership Orientation
- Cooperative Communication
- Parliamentary Procedure Cards

Visit our Website at http://www.mahc.coop/index.html to order these titles and find out about the other valuable materials and resources that we offer.

MAHC

Our Mission Statement

To Support and champion the cause of quality housing through education, legislative actions, partnership, and advocacy for housing cooperatives

MANAGING THE RISK OF INDEPENDENT CONTRACTORS WORKING IN YOUR BUILDING

This Special Report was written by Daniel P. Hale, J.D., CPCU, ARM, CRM, LIC, AIC, AIS, API of Marsh & McLennan Agency LLC.

A frequent and major source of claims against business owners is that of employees of independent contractors who become injured while working at the business owner's building. This could involve employees of painting, carpentry, sprinkler, roofing contractors, or other trades people working at the business premises during construction or renovation activities. It could also include employees of independent contractors who are involved in repairing machines, as well as mechanical and electrical contractors performing repair or maintenance or janitorial work. Other exposures to property owners from the use of such independent contractors involve property damage caused by the contractor, defective work of the contractor, or liens resulting from the contractor's failure to pay subcontractors or material suppliers. Marsh and McLennan attorneys have represented clients in such cases and the purpose of this Special Report is to outline some risk management techniques that can be used to limit your exposures to such risks.

EXPOSURES PRESENTED BY INDEPENDENT CONTRACTORS

A. Injuries to employees of contractors can subject you to a lawsuit. When an individual working for any of these contractors is injured, they will undoubtedly make a workers' compensation claim against their employer and will then sue the property owner or business owner for damages in excess of the workers' compensation benefits that are available to them. In addition to this, the workers' compensation insurance company can sue, or subrogate, to recover amounts that it pays by way of those claims. Claims by the independent contractor's employees are generally covered by the business owners' commercial liability insurance policy but because these claims are likely to be sizeable, your premium will be impacted and, of course, the damages could be in excess of the policy limits, exposing your assets to risk.

B. Property damage from acts of contractors. Another exposure presented is property damage caused by a contractor that creates liability for the property owner that contracted for the work. While the general rule is that you are not liable for acts of independent contractors, there are exceptions to this general rule and suits can result for negligent hiring of a contractor or utilizing a contractor that is involved in an inherently dangerous activity.

C. Liens filed on your property. Yet another exposure comes from liens filed by subcontractors or material suppliers who have not been paid. These liens are routinely filed but may be difficult to have removed where the contractor you retained goes out of business or becomes insolvent. The Michigan Construction Lien Act provides that an owner can be liable for satisfaction of a lien where the owner contracted for the improvement or required and benefited from the improvement. This Act also provides for foreclosure of your property as a possible remedy in the event a lien goes unsatisfied. Moreover, such liens affect the marketability of your property.

D. Exposure for shoddy workmanship of contractors. Independent contractors that do not provide the best service or product are often the same ones that are difficult to recover from after-the-fact due to the absence of insurance coverage or assets. Commercial general liability insurance coverage of a contractor will exclude coverage for shoddy workmanship. Even where collection efforts are not at issue, litigation or arbitration can be costly and time consuming.

Independent Contractor: Managing the Risk of Independent Contractors.doc (07-17-13) /np (Rev. 04-04-14) 2

RISK MANAGEMENT TECHNIQUES TO MINIMIZE EXPOSURES PRESENTED BY CONTRACTORS

Many of the above mentioned exposures can be avoided or limited by managing the risk of independent contractors. This is accomplished by:

1. Using experienced, well-managed, and well-supervised independent contractors. You should take steps to investigate the background and years of experience of the contractor and its financial size to assure that your job will go smoothly.

2. Establishing lock-out tag-out procedures. Use such procedures in the manufacturing facility, whereby machines cannot operate while independent contractors are in the area or while they are working directly on the machines.

3. Requiring proof of insurance. Certificates of insurance should indicate that the property owner or business owner are additional insureds under the independent contractor's commercial general liability insurance and should confirm the existence of contractual liability coverage.

4. Obtaining performance / payment bonds. These forms of insurance can protect you financially in the event the work is not completed or the contractor does not pay subcontractors or material suppliers. Part of the construction contract should include a requirement for such bonds based on the circumstances of each job.

5. Requiring an indemnity agreement where-by the independent contractor will assume the responsibility for injury or property damage. This is almost always permitted by their insurance carrier and will not result in an additional premium to them. With this agreement, if a business owner is sued by one of its employees, the independent contractor will have to assume the responsibility for that lawsuit and hold Independent Contractor: Managing the Risk of Independent Contractors.doc (07-17-13) /np (Rev. 04-04-14) 3 the business owner harmless from any damages or legal fees. Included in this Special Report is a sample indemnification and insurance requirements provision.

6. Being certain that insurance required of the contractor is clearly spelled out. Insurance provisions found in construction agreements are often unclear and lacking specificity. This is a complicated area that involves more than requiring a certificate of insurance. Included in this Special Report is sample language to consider.

7. Paying close attention to Notices of Furnishings / Commencement Forms. For commercial construction liens to be valid, notice has to be given to the owner that work is being commenced and furnished. Further, if a lien is filed, you should immediately require that the general contractor who has not paid for the work purchase a bond to replace the lien.

8. Obtaining certificates of insurance confirming the existence of commercial general liability and workers' compensation coverage. If you do not do this, your insurance carrier could pick-up the payroll of the independent contractor at the time of an audit and charge you additional premiums.

9. The following language is an example of language that can be used with independent contractors as part of a contract covering all aspects of the agreement between the parties, or this can be used as a stand alone agreement. This is general in nature and may not be appropriate in all situations.

***Mr. Dan Hale can be contacted at 734-525-2429 or dhale@mma-mi.com. More Special Reports are available at www.mma-mi.com.*

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(Continued from page 1)

very helpful to personally reach out to my clients, on a periodic basis, to determine if we are meeting the outlined goals and objectives. This keeps both parties aware of any concerns early so they can be resolved before becoming irreconcilable.

Property Operations Oversight

It is important that the Agent representative visit the property on a regular basis. During this time they might inspect files, tour the property, inspect vacant units, inspect maintenance and contracted work and ensure the staff and outside contractors are performing their jobs as agreed. The old saying "It's not what you expect but what you inspect" certainly holds true in
Inspecting the property on all levels is not done because the Agent does not trust the staff or the contractors, it is done because it is their JOB to oversee the entire operation and they have an obligation to the board to carry out this duty. Your management agent would develop a plan to handle routine, preventative and after hours emergency maintenance consistent with the clients directives.

Financial Controls and Oversight

Operating within the Best Practices, the management company will have an established set of internal controls for the handling of your funds. One way of doing this is preparing annual operating budgets and monitoring the ongoing performance of the property budget. Your property funds must be maintained in separate bank accounts and never commingled with the funds from other properties. It is imperative that the Agent and Board conduct business activities with knowledge of Fair Housing Law and in compliance with all applicable laws and regulations.

Company Emergency Preparedness

Your Agent's detailed emergency preparedness plan and response guide guarantees your property is prepared to deal with the unexpected. This helps to protect lives and will ensure the stability of the property's assets and operations.

As a Certified Property Manager, CPM®, I have been trained ** and have agreed to uphold the Code of Professional Ethics as outlined by the Institute of Real Estate Management.

Management company written policies and procedures define ethical relationships between the employees of the agent, clients, members and vendors. I highly recommend doing business with a company that holds these, or similar, credentials. Professionals that are actively involved in industry associations stay current on industry data, have access to ongoing continuing education and are exposed to many networking opportunities to strengthen their knowledge and better manage your property. Finally, your management company should never act beyond the scope of their authority and that should be clearly defined in the written management agreement.

Resources and Business Partners

Your Management Agent is a professional but is not an expert in all areas of our business. Agents must be willing to recommend bringing in additional professionals when the need arises. Boards should not expect their Agent to be an expert in all areas and be willing to pay for those additional resources when recommended. Sometimes bringing in your legal, or other professional, before a problem arises can save thousands of dollars in preventing a problem before it expands into something bigger.

I hope you found this information informative. As you can imagine, there is more that could be shared on each subject outlined above, and in much more detail, but this should provide a starting guide to ensure your agent is following "Best Practices" for managing your property.

ROBERT RULES!

He rules! Even if we don't have a clue who he is?...

Is it possible to withdraw a resignation after it has been submitted.

A resignation is a *Request to Be Excused from a Duty*. It may be withdrawn in the same manner as any motion may be withdrawn -- that is to say, before the proposed resignation has been placed before the assembly by the chair stating the question on its acceptance, it may be withdrawn without the consent of the assembly, but it may not be withdrawn without permission of the assembly once it has been placed before the assembly for its approval. [RONR (11th ed.), pp. 289-92; 295-97.]

http://robertsrules.com/faq.html#18

MAHC is Going **GREEN!**
(at least we're going to try)

But we need **YOUR** help to do this.

If you currently receive the

MAHC Messenger and

you have an e-mail address,

please email

Cyntheia Pentiuk @MAHCeditor@gmail.com

First & Last Name
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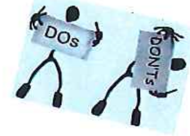
Thank you for your help in our endeavor to make the

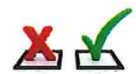
world a little **greener!**

Cooperative Dos & Don'ts



Do– Encourage effective team play by allowing each person to make his/her unique contribution.

Don't –Become so comfortable as a board that you reject pioneering attitudes and creative solutions that allow positive changes within your cooperative.



MAHC Messenger-

We welcome your article contributions of 500 words or less submitted in MS Word format. Please feel free to forward them to the editor at the address listed below. If you are a Management Company and would like to contribute to the "Cooperative Dos and Don'ts" section of the MAHC Messenger please submit your suggestions to MAHCeditor@gmail.com.

If you are interested in placing an ad in the MAHC Messenger, please contact the editor at MAHCeditor@gmail.com

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2016 Conference is in Disney World on May 22-25.

Details Inside...