

apm NEWS

NEWS, ISSUES & INFORMATION FOR COMMUNITY ASSOCIATIONS - SPRING 2000

BIDDING ON SERVICES FOR COMMUNITY ASSOCIATIONS

By John R. Math, LCAM

Bidding on products and services for Community Associations is one of the most important aspects of a Board Members official duties. In some instances, there are state laws governing this practice (Chapters 718 and 719, Condominiums and Cooperatives) that should be adhered to. There are even some documents, which spell out bidding and contract procedures that need to be followed by the Board of Directors.

In most instances there are sound business practices and common sense to follow while bidding on services. These practices will be reviewed in this article.

First, the Board needs to define and determine the work that needs to be done. This should be in the form of a written document, which would act as a set of specifications for future bidders. If a Board does not have the technical background to write a set of specifications,

then the Board may want to consider hiring a consultant to define the project and to help write the specifications. This would make sense for reconstruction projects, roofing and jobs that would require an engineer or technical expert.

A contractor trained in the performance of various materials will have the knowledge help the Board of Directors select materials best suited for the job. Make sure you receive written specifications on materials to be used on your job. If a technical expert is to be used, they should help you with this.

Consider having a pre-bid conference with your contractors in order to lessen any misunderstandings on the scope of work. At that time, the contractors will meet with the Board or the person in charge to review the job and answer any questions. This helps to make the bidding process more accurate.

Always inquire as to the type and kind of equipment that the contractor is going to use. A

contractor with the right type of equipment and a trained and efficient crew can provide you with a superior job. Always make sure that the contractor is using his own employees and not sub-contracting the job out.

Get a minimum of three competitive written bids from similar sized companies. Prior to asking a company to bid, we suggest prequalifying all companies prior to bidding. This will help to determine whether a company has the expertise and resources to properly complete your job.

Always ask to see their local and state contractors licenses, make sure that they are still in force and that all local and regional building codes will be followed. Permits should be drawn, as building inspectors will be following the job and ensuring that building codes are being met.

The same holds true for their insurance. Make sure that they have current certificates of both liability and workmen's compen-

sation insurance in effect, with the Association being designated as an additional named insured.

Always ask for current and past references and check them. Go see the work as well, to see if the quality is up to the Association's standards.

Always have a written contract. If there is something that you do not understand have an expert help you. If it is of a legal nature, have an attorney review it. Always spell out the schedule of payment and at what stage of completion they will follow. Be wary of contractors who need money in advance!

Find out when the job should be started and when it should be completed. Make those items a part of the contract in order to ensure timely completion.

Never advance any payments to a contractor prior to work being done for the Association.

Use these steps in order to ensure competitive bids and professional results in all of your future service and product contracts

Associated Property Management of the Palm Beaches, Inc. is a twelve year old full service association management firm. APM serves more than 90 associations in Palm Beach County. If you have any questions or comments you may contact us at 400 South Dixie Highway, Suite 10, Lake Worth, Florida 33460 or you may call us at 5 6 1 - 5 8 8 - 7 2 1 0 assocpropmgt@bellsouth.net

Ask The Attorney

By Natalie C. Chin-Lenn, Esq.

Q. Our Board increased our budget to include an expected increase in insurance premiums. The rates did not go up as anticipated and now the Board wants to place this extra money into our roof reserve. Can they do this?

A. Yes, the Board may place surplus funds from the operating account into the roof reserve provided that the Association documents do not prohibit the transfer. The Board has another option of crediting the surplus towards the next years budget for the benefit of the unit owners in the same percentage ownership of common elements.

Q. The townhouse community where I live, will not give me permission to install hurricane shutters. Can they do this? Aren't there some guidelines for the Board to follow?

A. Under Condominium Statute, the Board is required to adopt specifications to govern the installation of hurricane shutters by an owner. The specifications may include color, style and other relevant factors and the specifications must comply with the building codes. The Board may not refuse to permit installation of hurricane shutters conforming to their specifications.

Q. Recently, our Board hired a landscaper to trim trees, we now find out that the contractor does not have workers compensation. Is this a problem? What should we do?

A. The fact that your landscaper does not have workers compensation insurance could pose a problem to the Association should the individual become injured on the Association premises. The Association risks potential liability. I recommend that the Association require all parties providing service to the Association to maintain workers com-

pensation insurance. This should be a standard contract requirement for Associations who permit contractors to work in the Association.

Q. Several people in our condominium want to start a Welcoming Committee and they have asked the Board for \$500.00 to start this. Is that a common expense?

A. The Answer is dependent upon your Association documents which will define a common expense. It is important to review your documents carefully as most documents will not specify that the welcoming committee is a common expense. However, if the Welcoming committee would fit within the definition of a common expense as provided in your Association documents and if the Association has the power to form committees in your association under the documents, it may be classified as a common expense.

Natalie C. Chin-Lenn, Esquire, practices exclusively in the area of Community Association Law. She has been practicing in this area for over 10 years and currently represents over 90 Associations in Palm Beach County. For further information please call 561-640-3377

REMINDERS !

1. Be sure to update your files to include a new Question & Answer Sheet as of January 1, 2000.
2. Fees to the Division are coming due and are late if not paid by March 1, 2000. The amount is \$4.00 per unit, for all condominiums and cooperatives.
3. Corporate Annual Reports will soon be mailed and must be filled out and received by the Secretary of State by May 1, 2000. The Fee is \$61.25 for Not-For-Profit Corporations.

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THE IMPORTANCE OF DOCUMENT & RULES ENFORCEMENT

By: Natalie Chin-Lenn

The enforcement of Association documents is of vital importance to the longevity and prosperity of the Association. The duty to enforce the Association documents should not be taken lightly and must be evaluated as to its effects on the community. The Association documents and state and federal statutes are the guidelines for the management of the community. The documents will provide the rights and obligations of the Owner and the Association. An owner purchases subject to these restrictions which are disclosed with a sale.

The Board Directors has a fiduciary responsibility to the Association and it's members to enforce the Association documents. This fiduciary responsibility requires the Board of Directors to act in the best interest of the owners, in good faith and within their scope of authority. The Association documents and statutes will determine the parameters of the Board's scope of authority. The scope of authority will generally include preserving the character of the community which is important for purchasers in an Association.

Many Associations are faced with the dilemma of owners who fail to comply with the Association documents and are unsure as to their rights and obligations. Once the Association receives a complaint about a violation, the Association should immediately document the violation, confirm that the violation actually exists and notify the owner and tenant in writing. Timing is of great importance because disclosed violations greater than a year with no action by a Board of Directors may be unenforceable.

The notification should be given to the owner and the tenant should one be involved. The owner is ultimately responsible for their violations and their tenants. The notice should include the following: the violation, the document provision being violated, a deadline for compliance, threaten legal action and liability for attorneys fees and cost should compliance not be received. The Associations should consult their documents for additional specific requirements. Notice should be given to the owner at the address on the Associations records and to a tenant if one is involved.

I recommend sending the violation letter by both certified and regular mail if costs are not prohibitive for many reasons. The Association will have proof of mailing and in most cases, the regular mail will not be returned unless a forwarding order has expired. In those cases the mail will be returned with a notation of a forwarding address if one exists. This will enable the Association to locate the owner and notify them of the violation. Should the regular mail not be returned, it will be considered delivered. As stated previously, An Association who fails to act may be jeopardizing their position.

The Board of Directors must be cautious to enforce the documents uniformly. To permit one owner to maintain a violation and a prohibit another is not acceptable unless the factual circumstances are distinguishable. An example of such a situation is when a community prohibits dogs and the Association permits Owner A to have a seeing eye dog because the owner is blind, and when owner B requests permission to have a dog, the Association may prohibit Owner B from having a dog because owner B does not suffer from an impairment which is covered by Federal or State Statute. The Association has not waived their right to enforcement because Owner A's circumstances are different from Owner B's. In cases where circumstances are the same, and permission is granted to one owner and not the other, the Association will be subject to the defense of selective enforcement. In those cases the Association may lose in an enforcement action.

The failure of a board of directors to enforce their Association documents can result in Board of Directors liability. An owner may sue the Board of Directors for failure to enforce the association documents pursuant to their duty. Most Association documents will provide the owner with their own remedy to enforce the Association documents as well. In those cases, owners have the right to sue other owners directly to obtain enforcement. Where owners do not have the right to sue other owners for enforcement, the Association duty to enforce may increase as the owner has no remedy. Board's who fail to enforce their documents may be estopped from doing so in the future. This can result in detrimental effects upon the community which may include changes in character and value. An example of this may be found in an Association where commercial vehicles are prohibited in the Association documents and the Board has permitted commercial vehicles for many years. This will result in many owners parking commercial vehicles in the community, the inability for the Association to enforce such a provision in the future and a change in character and value of the community. The Association may have waived their rights to enforce the commercial vehicle provision by failure to enforce. Enforcement in cases where boards have failed to enforce will be futile unless changes are made.

The Association may remedy this problem upon a Board of Directors vote for future enforcement and the following procedures. The Association should notify all owners and tenants in the community via letter or newsletter that certain provisions (they should be specific) have not been enforced in the past, however the Association will be enforcing these provisions against all future violators after a specific date as they have a fiduciary duty to do so. The letter should provide that all owners currently in violation of these provisions of the documents will be "grandfathered in" and permitted to remain provided that the owner and tenant submit an

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MAILING LABEL

C/O ASSOCIATED PROPERTY MANAGEMENT
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LAKE WORTH, FLORIDA 33460

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Association survey form which discloses the type of violation and any other information the Association requires. This places an affirmative duty upon the Owner and tenant to notify the Association of the prohibited item and provides the Association with a proper record of who will be grandfathered in. The Association should also state in their notice that the grandfathering does not apply to replacements or additional violations. This is crucial for vehicle and animals violations as this means that an owner cannot replace a pet after it has died, purchase a new non-conforming vehicle or bring in additional pets and vehicles. After the survey deadline, any non registered violation may be pursued for enforcement action without the problem of waiver. This procedure will stop the change in character of the community as long as the Association is committed to enforcement. It will also enable the Association to enforce their documents in the future.

Natalie C. Chin-Lenn, Esquire practices exclusively in the area of Community Association Law. She has been practicing in this area over 11 years and currently represents over 90 Associations in Palm Beach County. She is a member of the local chapter of the Community Associations Institute and a past Board Member. For Further information please call 561-640-3377 or email LawNCL@Aol.com.

LANDSCAPING & WEATHER NOTES

As the daytime temperatures reach into the 80's, you need to watch the watering needs of your turf and shrubs over the next few months. With high temperatures and low humidity, lawns will brown quickly. Run through the irrigation system now, before the droughts of May and June. Make sure that watering is done before sunrise in order to avoid fungus problems. If one of your applications is a weed and feed, be careful with the temperatures in the 80's, as you can do some damage to the turf if you apply this too late in the quarter.

With higher temperatures and rapid growth, you will begin to see aphids, mealy bugs, scale and beetles in shrubs. Consider using "natural" controls to combat these pests. This is also a very good time to beat the rush and have your Hurricane Season tree trimming completed.