

## UNDERSTANDING SERVICE CONTRACTS TO CREATE POSITIVE VENDOR RELATIONSHIPS

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If the relationship between an association and its service vendor is built upon a strong legal footing, the resulting partnerships can add to the stability of the community. The terms of a contract are like a type of communication between two individuals. When the language used is too short, or vague, it can cause misinterpretations and misunderstandings. This lack of clarity can end up in questions and disputes that are difficult to resolve. In the worst case scenario, the parties' disagreement could mean costly and time consuming litigation. This may have been avoided by utilizing better communication (contract provisions) at the start.

***Legal Review Prior to Signing.*** The most common error on the part of a Board is neglecting to have a proposed contract reviewed by counsel prior to signing. Boards can be reluctant to delay the execution of the contract, or simply don't feel it needs to be reviewed by counsel. Nothing could be further from the truth. It is usually in the best interests of the association for all service agreements to be reviewed by counsel, prior to signing by the Board. Luckily, this primary mistake is the simplest to correct, but if for some reason it is not examined by an attorney, following are some important provisions to consider either including or excluding.

***Thirty Day Termination Notice Without Cause.*** Many potential pitfalls can be avoided by including a provision allowing either party to terminate the agreement without cause, by providing thirty days written notice. There are numerous reasons why a Board might want to conclude a contract, and it should be as easy as possible to end the relationship on good terms. When such a termination takes place prior to the renewal or expiration of an agreement, it is not unreasonable to include an "early termination fee". A typical amount would be the equivalent of an extra month or two of payments to the vendor.

***One Free Bite of the Apple Provision.*** Some service agreements include a 'one free breach provision' for the vendor. This type of clause requires the association to give notice of a breach, and the vendor can attempt to rectify the issue without compensating the association for damages. In addition, the duration of the agreement is not affected in any way. There are too many legal and practical problems with this type of provision to address at this time, but none of them would exist if the parties had agreed to a thirty day termination notice without cause.

***Service Contracts Longer than Twelve Months.*** Board members should not feel obligated to enter into a service agreement for an initial duration longer than twelve months. Although many such contracts include an automatic renewal clause, make sure the association has the ability to give notice of non-renewal...or even better, include the thirty day early termination notice.

Problem can arise when the initial term for the agreement is longer than twelve months, and there is no early termination provision, or even worse, there is a clause with an early termination fee, but the amount to be paid to the vendor is all the remaining months in the contract. For example, if a three year service contract is terminated after only six months, and the vendor is paid \$1,000.00 a month, the association would still be obligated to pay \$30,000.00 for the remaining months left on the agreement. Even though this amount is probably an invalid contract penalty under Georgia law, there is no reason to have to deal with it in the first place.

Summary. It is important for a Board of Directors to have service contracts reviewed by counsel prior to execution. Further, even if the document is not reviewed, it should at least contain a provision allowing the association to terminate the agreement without cause, by giving thirty days written notice, which also includes a reasonable early termination fee.