

## USING A STANDARD CONTRACT ADDENDUM TO PROTECT YOUR ASSOCIATION

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Condominium and homeowners associations should never hire a vendor without a written contract establishing complete terms and conditions for the job. Surprisingly, many contractors and other vendors who provide routine services to homeowners and condominium associations don't use a comprehensive written contract. Even if they do, the contract terms are rarely adequate to protect the association. Although using the contractor's contract minimizes paperwork, it can expose an association to unnecessary risks.

While a contractor may prefer to use its own pre-printed contract form, all contracts are negotiable. A simple and effective way to negotiate and ensure that the association's interests are protected is to insist upon a contract addendum establishing important terms. I like to add a short, easy to understand Standard Addendum to the contract. It fills in the gaps if standard terms aren't addressed in the contractor's form, and modifies terms so that they better protect the association. It is attached to the contractor's form, and its terms control over any inconsistent terms. In the same way that the contractor's standard form might seem like it's not negotiable because it's "standard", the association should insist that its Standard Addendum is standard and must be included.

Presumably, the contractor's form will at least cover the basic contract terms, such as the parties to the contract, scope of work, price, payment schedule and time line. If those terms aren't spelled out clearly or completely, then you will probably need to re-draft the contract in addition to attaching the Standard Addendum.

Here are some of the contract terms that may be in the Standard Addendum:

**Parties to the contract.** The Standard Addendum should clearly state the full and correct name and contact information of both parties and the license and bond numbers of the contractor. As with all association contracts, the association, and not the manager, an officer, board member or owner, should be the contracting party.

**Property Manager.** If the association has a property manager, the Standard Addendum should identify the property manager's role in performance of the contract, such as whether the contractor may take direction from the property manager and whether the property manager may sign change orders.

**Change orders.** Changes to the scope of work (commonly called change orders) may be necessary due to unanticipated conditions discovered after the job has started or changes deemed necessary by the association. Change orders are a frequent area of dispute. The Standard Addendum should say that all change orders must be in writing, describe the work to be performed and be signed by the association.

**Warranty.** The contractor should warrant its work for a reasonable time, at a minimum, long enough to discover that the work isn't performing as it should. The Standard Addendum should create such a warranty.

**Insurance.** Contractors are required to have insurance in order to maintain their state license, but the Standard Addendum can require either higher levels of coverage or a broader scope of coverage. Also, it could require the contractor to name the association as an additional insured on the contractor's policy. Such additional insurance requirements are not appropriate for all projects because the additional costs may end up being passed through to the association.

**Indemnification.** Indemnification is the obligation of one party to reimburse the other party for costs incurred as a result of an act or failure of the first party. The Standard Addendum should require the contractor to indemnify the association for liabilities resulting from or related to services performed under the contract. It is especially important that the Standard Addendum contain a provision unique to Washington law related to worker's compensation. Without the provision, the association might be liable to an employee of the contractor for an injury that would otherwise be limited to worker's compensation.

**Termination.** Contractor's contracts rarely spell out when the association can terminate the contract for failures in the contractor's performance, so the Standard Addendum should do so. It should say that the association can terminate the contract without penalty if the contractor fails to adequately staff the job or pay its subcontractors or suppliers, or violates the law or applicable regulations. In addition, the Standard Addendum should allow the association to terminate the contract for its convenience if it fairly compensates the contractor for the work it performed prior to termination.

**Dispute resolution.** The Standard Addendum should encourage the parties to resolve disputes by negotiation or mediation before filing a lawsuit. It could also require arbitration and/or award attorney's fees to the prevailing party.

The Standard Addendum can include additional general terms, such as hazardous materials, liens or termination, and specific terms that are unique to a particular association, such as requirements in the governing documents, hours of work, contact information or parking of contractor's vehicles. The Standard Addendum doesn't need to be prepared by an attorney each time it's used, but drafting the initial form is a job for the association's lawyer. The information contained in this general article is not intended to be legal advice, and is not a substitute for the assistance of your legal counsel.

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