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Law in Hand

RECONSTRUCTION SAVVY: SELECTING THE CONTRACTOR

This is part one of a three-part series providing an overview of the steps necessary for a successful reconstruction project. The first segment focuses on selection of a contractor. One of your homeowners associations has recently collected a substantial settlement in a construction defect lawsuit, and the board is now ready to have major reconstruction work done. Or perhaps one of your older associations is ready to spend some of its reserves to perform some long-needed renovations.

As a community manager, you must guide the board through the various steps of planning and implementing the reconstruction to assure its smooth progress and to protect the association's interests. Without proper guidance, you will surely be flooded with phone calls from angry homeowners complaining about the reconstruction and its effect on their daily lives.

If the reconstruction involves a substantial sum of money, it may be advisable to seek the assistance of an attorney who practices in the area of general homeowners association law. An attorney will be able to assist the board in drafting requests for proposal ("RFP"), guide the board in reviewing contractual terms once a contractor is selected, and handle any uncooperative homeowners.

Choose The Right Contractor

The first thing the board should do is determine what needs to be repaired. The board should have a special meeting for this purpose and prepare a list or description of the work to be done. Depending on the scope of this work, the board may need to have repair plans prepared by a licensed architect or other professional engineer. If the reconstruction follows a construction defect lawsuit, you may be able to utilize repair plans prepared by experts retained for the litigation.

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Next, the board should get the names of at least three licensed general contractors who have experience in the type of reconstruction work it seeks to have performed. The contractors should have experience in doing reconstruction work for homeowners associations. A contractor experienced in these types of reconstruction projects will be aware of the special problems associations face when performing work for a large group of homeowners. You can get the names of experienced contractors from other homeowners associations, property managers, or attorneys experienced in construction defect litigation.

The board should obtain a copy of each contractor's license, and ensure the name on the license is the same as the name of the contractor or the contractor's business. The board should then call the Contractors State License Board to determine if the license is valid, as well as whether the contractor has a record of discipline, accusations, and/or judgments.

The board should also request that the contractors provide several local references and call those references to see if they are satisfied with the contractor's work. The board may also be able to investigate the contractor's background by calling the local building department or the Better Business Bureau.

The contractor should further carry workers compensation and liability insurance and supply copies of the certificates of insurance for each policy. A board representative should thereafter call the insurance companies to verify the policies are valid. If the contractor does not carry workers compensation insurance, the association may be held liable for any injuries that occur during the reconstruction.

When submitting the request for bids, ensure each contractor is bidding on an identical scope of work. If the bids vary between contractors, ask each why the differences exist. Cheaper is not necessarily better. Differences in price may be attributable to lower grade products. Be wary of any bid that is substantially lower than the others. This may indicate that the contractor has made an error in the bid or has altered the scope of work to be performed.

Ensure Quality Construction

When beginning a reconstruction project, your board of directors should consider methods by which it can administer funds and protect the project quality. One method is to place the association's reconstruction funds into the hands of a joint control company. A joint control company is an escrow company that has experience in handling the funds for construction projects. They will make either scheduled or progress payments to the contractor and in some cases can make on-site inspections of the work performed to assure the work your association is paying for has been performed.

The project quality can further be assured through bonds. Your board should consider obtaining performance, payment or contract bonds. Performance bonds work as the name implies. That is, they assure the completion in accordance with the project's plans and specifications. Payment bonds will protect the property from liens filed by subcontractors or material suppliers who complain they have not been paid. Contract bonds encompass aspects of both the performance and payment bonds. That is, a contract bond will assure job completion and payment to the subcontractors or material suppliers.

Consider The Homeowners

As you prepare to enter into your reconstruction project, one of the primary ways of ensuring a smooth and orderly process is to consider the needs of your homeowners. If you are at the beginning stages of a reconstruction project, start now in making sure the homeowners are provided written notice of what the reconstruction will entail and delineate who bears repair responsibilities. This should be a continuous process and should commence at least one month prior to the start of construction.

Informing the homeowners at the earliest possible stage will help prevent any misunderstandings as to what will or will not be part of the reconstruction project. Such misunderstandings can easily lead to heated general board meetings and, potentially, litigation. Once a contractor is selected, your association may wish to conduct a series of special meetings, held at various times to further inform the homeowners and answer any questions they have.

Depending on the nature and extent of your reconstruction project, you may need to consider relocating homeowners, their pets and belongings. Even the smallest of repair projects can raise excessive dust, noise, odors, etc. Unless the association's CC&Rs provide otherwise, the association typically has no obligation to provide for relocation expenses during common area repairs. However, doing so can go a long way to garnering homeowner support and cooperation.

Effective relocation methods may include: providing a per diem rate for each individual and pet being relocated, renting a block of apartments at a nearby complex, and entering into a contract with a moving and storage company. Some contractors will administer the relocation process for your association and the cost can be included in their bids. If relocation is necessary, it should be included as a separate item in the request for bids.

While your association does have a right of entry to perform repairs to common area property (unless altered by the CC&Rs), inevitably you will encounter a few homeowners who will refuse access to their homes. This may to some extent be preempted by reaching a separate written agreement with the homeowners in advance to permit entry. Doing so will help alleviate any feelings that the homeowners are being treated unfairly or being forced from their homes by the association.

In sum, a lot of planning must go into any reconstruction project. However, the more advanced planning you and your association perform, the fewer complications you will encounter down the road.

If you think you have potential construction defects, contact Burdman & Ward for a free, no obligation inspection with a licensed contractor.

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