



MAINTENANCE

KEY TERMS

Analysis sheet, p. 215	Management control, p. 212
Emergency services maintenance, p. 221	Preventive maintenance, p. 221
Facilities management, p. 211	Requested or corrective maintenance, p. 221
Inspection checklist, p. 222	Responsibility chart, p. 218
Inspection report, p. 222	Routine maintenance, p. 221
Inventory, p. 214	Scheduled replacement, p. 221
Maintenance calendar or schedule, p. 222	Work order/response form, p. 223
Maintenance contact sheet, p. 218	
Maintenance record, p. 222	

For a community association, **facilities management** is the process of operating, maintaining, repairing, and replacing common property—that is, the common elements or areas.

Maintenance has three goals in a community association:

- To meet the needs of the individual residents
- To preserve and enhance the common property
- To limit injury to residents, guests, and employees

An effective maintenance system depends on a manager's ability to get all the relevant participants involved as appropriate—residents, employees, consultants, contractors, and the developer. The management of physical assets or resources requires the management of human resources (see Chapter 11 on *Human Resources Management*).

The purpose of this chapter is to help you to organize and manage the maintenance that your community association requires. Whenever the term "maintenance" is used in this chapter, it refers to "maintenance, repairs, and replacement" of physical assets or resources.

This chapter introduces the five steps in establishing a maintenance system for a community association:

1. Develop maintenance management controls. You will need them at each step in establishing a maintenance system.

2. Identify the physical assets to maintain.
3. Analyze your assets' maintenance needs.
4. Establish five basic maintenance programs.
5. Evaluate your maintenance system and efforts.

Notice the similarity between the steps in establishing a maintenance system and the risk management process described in Chapter 8. Both cases involve protecting the community's assets or resources.

What You Will Learn

After reading and reviewing this chapter, you should be able to explain and understand:

- Five steps in establishing a maintenance system (above)
- Maintenance management controls
- How to categorize physical assets
- Sources of information on a community's physical assets and their maintenance needs
- Necessary information on maintenance needs
- Five basic maintenance programs
- Methods for evaluating the effectiveness of a maintenance system and its implementation
- Characteristics of an effective maintenance system
- Characteristics of an ineffective maintenance system

DEVELOP MAINTENANCE MANAGEMENT CONTROLS

The first step in establishing a maintenance system is to develop effective management controls for developing, implementing, and evaluating your community's system.

Maintenance Management Controls

A **management control** is any means used to track, record, remind, or command attention. Usually these means are forms or documents. Examples of maintenance management controls include:

- Checklists
- Charts of information
- Calendars or schedules
- Records of actions taken
- Inventories
- Work orders
- Request forms
- Response forms

Effective maintenance cannot occur without management controls. If a manager relies too heavily on memory and verbal communication, it becomes impossible to accurately and completely track, record, prompt, or draw attention to maintenance needs and their resolution.

This chapter provides sample forms that other managers have developed and found useful. It is up to you to create or modify forms to meet the maintenance needs of *your* community. Remember, any forms, checklists, or other samples included in this course are done so by way of example and are not intended to be utilized as a substitute for legal, accounting, or other professional advice where appropriate. If you use any form, checklist, or other sample, it may be necessary to tailor it to your particular community association's needs and requirements.

IDENTIFY THE PHYSICAL ASSETS TO MAINTAIN

In order to identify the community's physical assets or resources that need to be maintained, you will have to:

- Establish a set of comprehensive categories for your community's physical assets
- Research available sources of information

Establish a Set of Physical Asset Categories

The purpose of establishing a set of comprehensive categories for your community's physical assets is to ensure that maintenance tracking, recording, and reminders do not overlook any item.

Here is a suggested set of categories for your community's physical assets:

1. Common real property

- Recreation facilities (for example—pool and spa, tennis courts, and clubhouse)
- Community service facilities—Facilities for services provided by the community association to individual residents in order to maintain the community's physical assets (for example—trash storage, recycling facilities and equipment)
- Landscaped areas (for example—common areas, front yards, and entrance beds)
- Building exteriors (for example—roofing, gutters, and brick walls)
- Building interiors (for example—entrance access system, plumbing system, and elevators)
- Site improvements (for example—streets and drives, exterior parking lot, street light fixtures, common sidewalks, retaining walls, and drainage facilities)

2. Common personal property

- General (for example—community-owned vehicles, mowers, and furniture)
- Office (for examples—office furniture and equipment)

Research Available Sources of Information

Research legal documents to identify the physical assets your community association is responsible for maintaining:

- Governing documents—frequently the declaration or master deed will include a maintenance schedule for particular assets (See the typical language describing maintenance responsibilities in the excerpts from a condominium association’s declaration and bylaws on pages 216-217. We included the excerpts to give you an idea of the kind of maintenance-related information you are likely to find in your governing documents.)
- State statutes
- Board resolutions

After you have identified the physical assets for which your community association has maintenance responsibilities, identify the assets’ maintenance needs by means of:

- Physical inspection of the property to be maintained
- Examination of available building plans and specifications
- Review of any reserve studies
- Examination of any maintenance records
- Interviews (for example—current board members, authors of any reserve studies, any association maintenance employees, and any contractors providing maintenance services)
- Review of product or equipment information from manufacturers

The typical management control used to identify physical assets and their maintenance needs is an **inventory**. This is a record of all real and personal physical property owned and maintained by the community association. (See page 184 for a definition of real and personal property.)

Inventories usually record the following information for every item listed:

- Date of purchase
- Warranty
- Quantity
- Description

- Original installer/builder or service contractor
- Extended warranty and provider
- Cost
- Special maintenance needs
- Estimated replacement data
- Other

Some community associations assume maintenance responsibilities for physical assets which they do *not* own—for example, assets that belong to owners, such as exterior trim on townhouses in a planned community. However, the governing documents and applicable state statutes must provide for a community association assuming maintenance responsibility for specific owners' assets. An association must be very careful not to expend funds on maintenance items not clearly defined as the association's responsibility in the governing documents, resolutions, or government mandates.

ANALYZE YOUR ASSETS' MAINTENANCE NEEDS

To analyze your community's maintenance needs, you will have to analyze each physical asset in order to:

- Identify what maintenance must be done
- Identify responsible parties for doing the maintenance

Identify What Maintenance Must Be Done

To identify what maintenance must be done, you will have to record the following information for *every physical asset*:

1. Description of the asset from a maintenance point of view.
2. What maintenance needs to be done?
3. How often?
4. How long it will take?
5. Criteria for satisfactory maintenance.
6. Preventive and emergency plans needed.

You will be able to obtain much of this information when you conduct an inventory of your community's physical assets. Another source of this information is in the appropriate section of your community association's service contracts, which specifies the scope of work to be done for each physical asset (see page 248).

An appropriate management control for this task is the use of a facilities/equipment **analysis sheet** to record the information listed. See the sample on the following pages.

Typical Language on Physical Assets and Their Maintenance From Governing Documents For a Condominium Association

From the declaration—

Definition of units

Each unit consists of the space measured horizontally between the unit side or inside of the unfinished surface of the exterior walls enclosing such unit, and where walk and partitions separate such unit from other units, to the unfinished surface of the unit side of such walls and partitions, and measured vertically from the unfinished surface of the unit side of the floor to the underside of the unfinished surface of the ceiling of such unit. Included as part of a unit are a) the sliding glass door to the patio or balcony of a unit, b) the front entrance door and any other entrance door of a unit, c) all windows of a unit, and d) all carpeting of a unit.

Common elements

The common elements consist of a) the land described in Schedule A, b) all foundations, columns, girders, beams, and supports of all buildings, c) all exterior walls and exterior surfaces of the buildings; all doors other than unit doors; all floors and ceilings enclosing a unit; all walls and partitions separating units from hallways, corridors and stairways, and the terrace floor, d) roof, roof drainage pipes, gutters, headers, halls, corridors, stairs, stairways, crawl spaces, entrances, and exits of all buildings, and e) all yards, gardens, play and grass areas, all parking and driveway areas, and streets.

From the bylaws—

Owner's maintenance responsibility

Each owner shall have the obligation to maintain and keep in good repair all portions of the unit and those other portions of the condominium hereinafter specified, including any interior walls; interior ceiling and floors; kitchen and bathroom fixtures and equipment, including refrigerator and range, dishwasher, clothes washer, clothes dryer, and disposal; lighting, heating, and air conditioning unit; those parts of the plumbing, mechanical, utility, and electrical systems which serve only his or her unit, whether located within or without the boundaries of his or her unit; and all carpeting, patio doors, screens, windows, drywall, doors, doorways, frames, and hardware that is a part of the entry system and window system of the unit.

Typical Language on Physical Assets and Their Maintenance From Governing Documents For a Condominium Association, *continued*

Each owner shall keep the interior of his or her unit and its equipment in good order, condition, and repair and in a clean and sanitary condition, and shall do all repair, maintenance, redecorating, painting, and varnishing which may at any time be necessary to maintain the good appearance and condition of his or her unit.

In addition, each owner shall be responsible for all damages to any and all other units or to the common elements resulting from his or her failure to make any of the repairs required to be made by him or her by this Section, including, but not limited to, damages caused by water leaking from the plumbing fixtures of one unit into another unit.

Condominium association's maintenance responsibility

The condominium association shall maintain and keep in good repair as a common expense all of the condominium property not required to be maintained and kept in good order by an owner. Except to the extent that insurance required to be maintained or maintained by the board covers any damage or loss, the board shall not be responsible for any maintenance or repair to the interior of any unit nor for lack of waterproofing to any part of the unit or common elements.

The board shall be responsible for all exterior surfaces, specifically including the painting of the exterior surface of the front door of each unit, whether or not included within the boundaries of a unit.

Identify Responsible Parties for Doing the Maintenance

So far we have been talking about planning and organizing your community association's maintenance system. Management also involves leading or directing the human resources involved in your association's efforts.

One management control you can use to keep track of who is responsible for the maintenance of various property elements or areas is the **responsibility chart**. It commonly is used as a handout for owners and tenants. Typical responsible parties include the owner, the association, the developer, a committee, or a manufacturer. (See the sample responsibility chart for a planned community on the next page.)

If you prepare a responsibility chart for your community association, it must be based on your association's legal documents and board policies. Some legal documents specify that the community association must perform a particular maintenance, repair replacement, or upgrade, but the individual owner must pay any financial costs involved.

SAMPLE CARPET ANALYSIS

1. Description of the asset

- 2,000 square yards total carpeted area in common halls with no padding
- Commercial grade, 32 oz., Class A, flame spread, manufactured by Dupont Company
- 100% continuous loop nylon filament, polypropylene backing, static proof, and treated for stain protection
- Direct glue down on concrete floor

2-4. Maintenance needed, how often, how long it will take

- Carpet requires daily vacuuming due to traffic and abuse (estimated time to vacuum is 4 hours)

5. Criteria for satisfactory maintenance

- No resident complaints
- Carpet clean upon inspection
- Carpet cleanliness meets standards set by board

6. Preventive and emergency plans needed

- Carpet requires annual professional cleaning by outside contractor (estimated cost is \$1200)

To identify who should perform the maintenance for a particular physical asset, you will have to decide whether association employees can do the work—or whether it will be necessary to use a contractor. (See the discussion in the *Contracting* chapter on pages 236–239 to help you with this decision.)

Here, a useful management control is the **maintenance contact sheet**. This is a form that records the contacts for various maintenance services and any pertinent information needed during an emergency. (See the sample maintenance contact sheet on page 220.)

Every community manager should have an up-to-date maintenance contact sheet and carry it with him or her at all times. Emergencies do not keep normal business hours!

SAMPLE—Responsibility Chart for Residents in a Planned Community

Whom to contact			
ITEM	Owner	Association	Other
1. Owners' equipment/appliances	X		Equip. Mfg.
2. Interior unit construction	X		Developer*
3. Interior alterations to unit	X		Developer*
4. Exterior alterations to unit—approval			Architectural Committee
5. Trash collection	X		
6. Exterior pest control		X	
7. Interior pest control	X		
8. Plumbing	X		Developer*
9. Air conditioners	X		Developer*
10. Window glass replacement	X		
11. Exterior painting	X		
12. Roof repairs	X		
13. Insurance—fire or damage to structure	X		
14. Insurance—owners' contents	X		
15. Common area landscape problems		X	
16. Pool/spa maintenance		X	
17. Recreation facility maintenance		X	

**If a warranty matter*

SAMPLE: Community Association Maintenance Contact Sheet

Date _____ Manager _____
 Assn Name _____ City _____ # of Units _____
 Cross Streets and Address _____
 Management Company _____

CONTACT

Accountant: _____ Phone: _____
 Air Conditioning: _____ Phone: _____
 Architect/Engineer: _____ Phone: _____
 Attorney: _____ Phone: _____
 Cleaning Contractor: _____ Phone: _____
 Electrician: _____ Phone: _____
 Exterminator: _____ Phone: _____
 Schedule: _____
 Fire: _____ Phone: _____
 Handyman: _____ Phone: _____
 Heating System: _____ Phone: _____
 Insurance: _____ Phone: _____
 Landscaper: _____ Phone: _____
 Emergency/After hours: _____
 Mail Boxes: _____
 Patrol Service: _____ Phone: _____
 Plumber: _____ Phone: _____
 Police: _____ Phone: _____
 Pool/Spa: _____ Phone: _____
 Pool Keys: _____
 Pool Location: _____
 Roofer: _____ Phone: _____
 Warranty Info: _____
 Snow Plowing: _____ Phone: _____
 Street Sweeper: _____ Phone: _____
 Schedule: _____
 Towing: _____ Phone: _____
 Towing Procedure: _____
 Trash Contractor: _____ Phone: _____
 Schedule: _____
 TV Cable/Master Antenna: _____ Phone: _____
 Utility Emergencies: _____ Phone: _____
 Phone: _____
 Developer: _____ Phone: _____

ESTABLISH FIVE BASIC MAINTENANCE PROGRAMS

To get the maintenance work done, a manager must:

- Organize the maintenance work
- Create controls for ensuring that the work is actually done

Organize the Maintenance Work

Use your analysis of the association's maintenance needs and the board's related policies to establish five basic maintenance programs for your community:

1. **Routine maintenance:** This is the regular, recurring upkeep that must be done (for example—cleaning, cutting grass). Typically, the job description for a maintenance employee or a service contract is used to define the routine maintenance that is expected.
2. **Preventive maintenance:** This is periodic maintenance to avoid disruptive breakdowns and to prolong the useful life of the physical asset in question. (Examples include rebuilding pool pumps with a life expectancy of eight years every five years, and cleaning problem sewer lines every month to avoid backups.) Literature from the manufacturer is one of the best sources of information on preventive maintenance for equipment.
3. **Emergency services maintenance:** This is the ability to respond to unpredictable problems (for example—sewer backups, slope failures, roof leaks, frozen pipes, etc.).

The key to a successful response to an emergency is to anticipate the different possibilities—and to develop a plan for responding to each one. Especially important is the development of a disaster plan to address possible natural and terrorist catastrophes. For information on preparing for emergencies, see *GAP Report #14: Disaster Management for Community Associations*, published by Community Associations Institute.

4. **Requested or corrective maintenance:** This is maintenance requested by an owner, a tenant, or the board—or identified during routine inspection of the property. See the discussion of work order response forms on page 223.
5. **Scheduled replacement:** This consists of replacing physical assets as they wear out or break. Scheduled replacement is considered a part of maintenance because it addresses the useful life of a physical asset.

The basis for your scheduled replacement is the reserve study and replacement fund budget (see pages 103 and 108). However, the maintenance needs of a replacement item may require adjustments in both your reserve study and replacement fund budget to allow you to replace the item sooner than originally planned.

Create Controls For Ensuring the Work is Actually Done

In addition to planning, organizing, and leading, management also involves controlling the community's use of its resources. The following are some common management controls for ensuring that maintenance work actually gets done in a timely manner:

- **Maintenance calendar:** This is a calendar or schedule that identifies what needs to be done during the year—and how frequently. See the sample maintenance calendar on page 224 for a pool and spa.
- **Maintenance record:** While the calendar tells you when maintenance ought to be done, the record tells you when it actually was done. Sometimes you can enter the date work was done right on the maintenance calendar—as we suggest for our pool and spa sample.

A separate maintenance record is useful when you contract work out. Use the records to verify that work was done *before* you pay any invoices. See the sample on page 225 for grounds maintenance. Note that by including the budget and contract columns in the maintenance record, the manager has added a financial control that will allow him or her to take quick action when necessary.

- **Inspection checklist:** An inspection checklist—
 - Documents your current maintenance standards
 - Helps you to identify potential problems

See the sample checklist on page 226 for building inspections. You can use it to inspect one or more buildings.

- **Inspection report:** An inspection report—commonly called a “punch list”—is a compilation of all the maintenance needs identified during an inspection. Use it to:
 - Assign maintenance tasks to your staff or contractors
 - Budget for maintenance needs
 - Identify any preventive maintenance that needs to be done
 - Determine when on-site staff or independent contractors are not properly performing work on time

For example, when you look at the sample inspection report on page 227, you will notice that several rear doors are not closing properly. The manager should arrange for someone to make any necessary adjustments on all the rear doors as soon as possible.

- **Work order/response form:** A work order is a form for assigning work to be done in any one of the five maintenance programs described earlier. With some planning, it can be used—
 - To document owner and tenant requests
 - To assign maintenance tasks to both maintenance staff and contractors
 - As a response form to be returned to an owner or tenant, indicating that work was completed or confirming that it was assigned
 - As a basis for allocating charges, when appropriate

A work order/response form has several benefits. It—

- Identifies whether the need is an emergency or not
- Requires attention
- Allows follow-up to evaluate satisfaction
- Provides a means of monitoring costs
- Provides a history of the repairs that have been made
- Documents any problems with contractors reported by owners or tenants
- Indicates if the work is a recurring problem necessitating further evaluation

On page 228 you will find a sample work order/response form.

SAMPLE: Pool and Spa Maintenance Calendar

ACTIVITY	FREQUENCY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Acid Wash	As needed					X							
Chemicals: Maintain Balance	Daily				X	X	X	X	X	X	X		
Chlorinators: Monitor/Inspect	Weekly				X	X	X	X	X	X	X		
Coping: Clean	Weekly				X	X	X	X	X	X	X		
Filters: Backwash	As needed				X	X	X	X	X	X	X		
Filters: Clean	Weekly				X	X	X	X	X	X	X		
Pool/Spa Tile: Clean	Weekly				X	X	X	X	X	X	X		
Pumps: Empty Lint Baskets	Weekly				X	X	X	X	X	X	X		
Pumps: Maintenance	Weekly				X	X	X	X	X	X	X		
Railings: Clean	Weekly				X	X	X	X	X	X	X		
Railings/Fence: Inspect/Tighten	Weekly	X	X	X	X	X	X	X	X	X	X	X	X
Safety Equipment: Maintain	Weekly				X	X	X	X	X	X	X		
Signage: Maintain	Ongoing	X	X	X	X	X	X	X	X	X	X	X	X
Skimmers: Inspect/Clean	Weekly				X	X	X	X	X	X	X		
Underwater Lights: Check/Replace	Ongoing				X	X	X	X	X	X	X		

Note: When a task is performed, fill in the date on the chart. Keep a copy of the chart in a pending file in the manager's office and an other copy on a clipboard at the pool.

SAMPLE: Grounds Maintenance Record 20XX

Item	No.	Budget	Contract	Mar	April	May	June	July	Aug	Sept	Oct	Nov
				WEEK 1 2 3 4	WEEK 1 2 3 4	WEEK 1 2 3 4	WEEK 1 2 3 4	WEEK 1 2 3 4	WEEK 1 2 3 4	WEEK 1 2 3 4	WEEK 1 2 3 4	WEEK 1 2 3 4
Cuttings	19	\$525	\$525		6 16 28	7 18 27	4 16 29	16 31	10 20 27	10 21	5 19	20
Edgings	4	\$293	\$293		6		4	31		21		
Pruning Per Season	1	\$1574	\$1574				3 half payment			27 half payment		
Spraying	10 hrs.	\$63/hr.	\$63/hr.	17 .5 hr 24 .5 hr	27 .5 hr			30 4.5 hrs	14 .5 hr	23 2.5 hrs	27 1.0 hr	
Broadleaf	1	\$752	\$752				2					
Crabgrass	1	\$746	\$746		3							
Fertili- zation	1	\$539	\$539								22	
Liming	1	\$908	\$908	15								
Weedbed Control		Include w/ mulching	Include w/ mulching									
Soil Test												
Mulching	1	\$3071	\$3071 2/20 half	3 half payment								
TOTALS		\$	\$									

Note: This is a record for a nine-month contract.

SAMPLE: Checklist

Rate 1 – 5:
 1=Poor
 2=Fair
 3=Satisfactory
 4=Good
 5=Excellent

Inspected by: _____ Date: _____

Address	Trash Room	Hall Floors	Stair Treads	Glass	Cleaning	Common Parking Area
10200						
10202						
10204						
10206						
10208						
10210						
10212						
10214						
10216						
10218						
10220						
10222						
10224						
10226						
10228						
10230						
10232						
10234						
10236						
10238						
10240						
10242						
10244						
10246						
10248						
10250						

SAMPLE: Inspection Report or "Punch List"

Prepared: 1/11/XX

By: _____

10206

Adjust the rear door closer
Replace the split stair treads; several split stair treads
Repair the fresh air vent leak at top hallway rear
Top floor, replace the door closet bolts with the proper type
Cut off the hallway door; it drags on the carpet
Install fire alarm glass at front fire pool
Adjust the terrace room fire door so it doesn't hit the frame

10220

Replace the weather strip at the rear entry door
Lubricate the rear entry door
Install the proper bolts at the terrace level door closet
Replace several split stair treads
Re-secure the fire alarm at the front entrance
Lock the attic access

10228

Adjust the rear door so it closes properly
Replace the fire alarm glass at the rear entrance
Adjust the terrace level door closet
Replace the logo and the front entry glass
Replace the fire alarm glass at front entry

10240

Adjust the rear door so it closes properly	1/16/XX
Exit face missing at the rear entry	1/16/XX
Adjust or replace the terrace level door	1/16/XX
Reposition the emergency light at front entrance	1/16/XX
Replace split stair tread as needed	

SAMPLE: Work Order/Response Form

Work Order No. _____

Association: _____ Date: _____ Time: _____

Homeowner Name: _____

Address: _____

Home Phone: _____ Work Phone: _____

Email Address: _____

Service Requested: _____

Comments: _____

Request Taken By: _____ Keys Needed? _____

Assigned to: _____ Date: _____

Date Job Completed: _____

Completed By: _____

Comments: _____

Signed: _____ Date: _____

Owner's or
Tenant's Signature: _____ Date: _____

EVALUATE YOUR MAINTENANCE SYSTEM AND EFFORTS

In order to evaluate your community's maintenance system and implementation efforts, you will have to:

- Develop appropriate evaluation methods for your community association
- Recognize the characteristics of an effective maintenance system
- Recognize the characteristics of an ineffective maintenance system

Develop Appropriate Evaluation Methods

Here are some common methods community association managers use to evaluate their maintenance systems and implementation efforts:

- Have your board of directors fill out a "report card" that addresses your basic maintenance programs in specific terms.
- Survey residents—either periodically or at the time their maintenance request has been handled.
- Review budget costs for the previous year to determine—
 - How monies have been allocated
 - What the results were
- Review all maintenance work orders in terms of—
 - Nature
 - Time spent
 - Money disbursed
 - Any other key factors
- Physically inspect the property.
- Drive through and/or visit other similar community associations to obtain a first-hand comparison or self-check.

Lack of complaints does not necessarily mean that you have a good maintenance system that is well-implemented. Take steps to obtain feedback.

Recognize the Characteristics of Both Effective and Ineffective Maintenance Systems

The chart on the next page compares and contrasts the characteristics of effective and ineffective maintenance systems for community associations. Use it to evaluate your

CHARACTERISTICS OF A MAINTENANCE SYSTEM

EFFECTIVE

Cost-effective

Smooth daily operation of the community

Efficient use and replacement of equipment

Buildings and grounds in good condition

Health and aesthetic standards of the community are being met

Positive outlook and atmosphere among community members

INEFFECTIVE

Budget overruns

Crisis-oriented maintenance

Absence of established routines for performing maintenance

Slow response time

Poor record-keeping

Increased frequency of maintenance-related insurance claims

Frequent equipment break-downs

Buildings and grounds are “run-down”

Local health or building department citations for corrective action

A board that gets involved in day-to-day maintenance issues

Residents or a board that show lack of respect toward management, employees, and all parties involved with maintenance

Defensive employees

community's maintenance system and implementation efforts.

FOCUS QUESTIONS

Use the following questions to help you identify and review the core concepts in this chapter. (*Hint:* Once you look up the answer to a question, you may want to jot down the page number next to the question for future reference.)

1. What are the maintenance goals for a community association?
2. What are five steps in establishing a maintenance system for a community association?
3. What are some sources that can provide information on a community association's physical assets and their maintenance needs?
- 4a. What kind of management control does an inventory provide?
b. What kind of information does it typically record?
- 5a. What kind of management control does an analysis sheet provide?
b. What kind of information does it typically record?
- 6a. What kind of management control does a responsibility chart provide?
b. Name some typical parties responsible for maintenance in a community association.
7. What kind of management control does a maintenance contact sheet provide?
8. Name five basic maintenance programs for a community association and give an example of each type of maintenance.
- 9a. Compare and contrast a maintenance calendar or schedule and a maintenance record.
b. Why do you need a form or forms for both?
- 10a. What is the purpose of an inspection checklist?
b. What can an inspection report be used for?
- 11a. What can a work order form be used for?
b. What are some benefits of using a work order/response form?
12. What are some common methods for evaluating maintenance efforts in a community association?
- 13a. What are some characteristics of an effective maintenance system?
b. What are some characteristics of an ineffective maintenance system?

THOUGHT/DISCUSSION QUESTIONS

Use the following questions to help you apply the information in this chapter to your own situation:

1. Which of the five steps in establishing a maintenance system has your community association carried out?
- 2a. What physical asset categories does your community's maintenance system use?
 - b. Are there any ways you can improve on the categories you use?
 - c. If your community doesn't have a set of categories, how would you modify the set suggested in the chapter for your community's use?
- 3a. Which sources of information have you used to identify your association's physical assets and their maintenance needs?
 - b. Try the information sources listed in the chapter that you haven't used yet and familiarize yourself with them.
- 4a. Which of the five types of maintenance programs described in the chapter does your community association have?
 - b. Are there any you think your community association should add? Why?
- 5a. What maintenance management controls does your community association have?
 - b. After reading this chapter, what maintenance management controls do you think your community association needs?
 - c. After reading this chapter, what improvements do you need to make in your maintenance management controls?
- 6a. What methods has your community association used to evaluate its maintenance efforts?
 - b. Why have they been effective or not?
 - c. After reading this chapter, what evaluation methods do you think your community association could add?
- 7a. Which characteristics of a good maintenance system apply to your community's system?
 - b. Which characteristics of a poor maintenance system apply to your community's system?
 - c. What steps can you take to eliminate any characteristics you identified in "b"?

RESOURCES

For further information on community association maintenance, we suggest the following:

Disaster Management for Community Associations (Guide for Association Practitioners Series, Report #14).

Describes the 16 major perils and their probability of occurrence and the seven essential steps for successful disaster planning. This is an absolute must for your resource library. Some associations even order this report in quantity to distribute to all key people. Appendices contain a sample plan for emergency preparedness and a six-page outline to help you construct your own disaster plan. (Community Associations Institute, 1999.)

Elevator Maintenance Guide. A thorough manual covering every aspect of elevator maintenance—the manager's role, management and maintenance routines, safety codes and compliance, out-of-service and emergency procedures, and selecting consultants and contractors. Includes a prototype maintenance agreement and many useful forms. (Property Managers Association, 1995.)

Enhancing Outdoor Spaces for Community Associations (Guide for Association Practitioners Series, Report #17), by Douglas M. Kleine, PCAM. Presents ideas on how to improve outdoor common areas for both new and mature communities. Contains several easy-to-implement landscaping and recreation ideas. (Community Associations Institute, 1998.)

Grounds Maintenance for the Community Association (Guide for Association Practitioners Series, Report #11), Second Edition, by Bette Weseman, PCAM. Contains the pros and cons of in-house vs. outside contracting and helpful advice on establishing landscape maintenance projects, including common lawn care problems and how to hire the right tree care professional. (Community Associations Institute, 1998.)

Playgrounds for Young Children, Sue Wortham and Joe Frost, Editors. Discusses community playground safety, design, play environments, infant and toddler playgrounds, and advances in playground equipment. Contains important information on playground safety and practical guidance for maintenance training, checklists, and documentation. Includes a useful checklist for assessing equipment safety. (Community Associations Press, 1999.)

The Road Repair Handbook: The Complete Guide to Fixing Roads and Driveways, by Roderick D. Johnson. Written for anyone who wants an understanding of how to plan and manage the time, money, and labor needed for community road repair and improvement. (Trans Mountain Publishing, 2002.)

Trash Collection and Recycling. How to set up a recycling plan that covers each type of material to be recycled. Covers government regulations and provides advice on how to contract for waste removal and recycling services. (Property Management Associations, 1993.)

The Urban Forest Management Handbook. Definitive work on all aspects of managing urban forests—discusses planning, maintenance, planting, and how to conduct forest inventories. Contains technical information clarified for the novice audience—addresses urban water quality, species diversity, and wildlife habitat issues. Contains over 100 pages of worksheets, charts, and checklists, as well as 12 appendices covering practical areas like funding a forestry program, sources of assistance, pruning standards, forest buffers, inva-

Note taking



CHAPTER 10

CONTRACTING

KEY TERMS

Assignability provision, p. 253	Performance bond, p. 252
Bid request, p. 239	Progress payments, p. 249
Bid specifications, p. 239	Prospective bidder's questionnaire, p. 243
Certificate of insurance, p. 251	Qualifications sheet, p. 243
Contract, p. 235	Request for proposal, p. 239
Default, p. 251	Severability provision, p. 253
Entire obligation provision, p. 253	Waiver of lien, p. 252
Governing law provision, p. 253	Waiver provision, p. 253
Modification provision, p. 253	Warranty, p. 243
Payment bond, p. 252	

Management of a community association's resources frequently involves the use of contracts to obtain the products and services required. As we said in Chapter 8, a **contract** is—

- An agreement between two or more parties
- Enforceable by law
- By which each party promises to do, or not to do, something

Whenever a community association enters into a contract, it is binding itself both legally and financially. Therefore, as a community association manager, you must assist your community to enter contracts as carefully as possible—seeking legal or technical advice whenever necessary.

The purpose of this chapter is to introduce you to the basic bidding and contracting process from a community association perspective.

It will introduce you to:

- Deciding whether to contract work out
- Preparing a bid request or request for proposal
- Evaluating bids
- Key contract provisions
- Negotiating contracts

What You Will Learn

After reading and reviewing this chapter, you should be able to explain and understand:

- Criteria for deciding whether to contract work out or use association staff
- Preliminary steps in preparing a bid request or request for proposal
- Ways to locate potential contractors
- Importance of thorough and accurate bid specifications
- Contents of bid requests or requests for proposal
- Steps in evaluating bids
- Key contract provisions for community associations
- Basic steps in negotiating contracts
- Tips on successfully completing a contract

DECIDING WHETHER TO CONTRACT WORK OUT

Deciding whether to have a task performed by association staff members or by a contractor requires an analysis of several work requirements—

- Personnel
- Time
- Cost
- Tools, equipment, and supplies
- Insurance coverage
- Licenses and permits
- Storage facilities

See the decision chart on the next page for a summary of the following considerations:

Personnel

When deciding whether to have staff members or a contractor perform a task, consider the required:

- Number of people
- Expertise
- Supervision
- Availability

When you look at the number of people a task requires, is it more than the community has available? Can the staff members available perform the task *in addition to* their routine assignments? If you try to stretch your people too thin, there is the danger of demoralizing the staff and delaying completion of all tasks. In comparison, contractors can add workers as necessary, even though they have established crew sizes.

When you look at the expertise a task requires, do the available staff members have the training and skills needed? Will it be possible to make up a work crew of one or two experienced people who will be assisted by less-experienced ones? Will it be possible to bring your people up to speed with a short training period? Always consider the possible "costs" of using inadequately trained people to do a job.

In comparison, if the skill involved is a specialized one, an experienced contractor will know where to find trained workers.

When you look at the supervision a task requires, do you have someone available and qualified to supervise staff members if they do the work?

Chances are that someone is *the manager*. Be realistic about the amount of supervision that will be necessary and whether you or anyone else on site can provide it.

In comparison, a contractor can and should be contractually bound to provide adequate supervision for a work crew. Your contract must specify what will happen if a contractor's work crew does not perform the task at all, performs it inadequately, or otherwise behaves inappropriately on the job. (See the discussion of contract provisions on page 246.)

DECISION CHART FOR CHOOSING BETWEEN ASSOCIATION STAFF & CONTRACTING OUT		
<ul style="list-style-type: none"> ■ Place a check in a column if the party meets the work requirement. ■ If the work requirement is not necessary, put an N/A for "Not Applicable" in a column. ■ After you have reviewed all the work requirements, select the party that best meets the set of requirements as a whole. 		
WORK REQUIREMENTS	ASSOCIATION	CONTRACTOR
An adequate number of people are available to do the job	_____	_____
The people available have the necessary skills	_____	_____
Adequate supervision is available	_____	_____
Available to do the work immediately	_____	_____
Available for a job of this length	_____	_____
Will not be pulled off assignment to do other work	_____	_____
Least expensive option	_____	_____
Has access to the necessary tools, equipment, and supplies	_____	_____
Has adequate insurance coverage for this job (liability, workers' compensation, vehicle)	_____	_____
Has the necessary license(s) and permit(s)	_____	_____
Storage facilities are available for any tools, equipment, parts, or materials	_____	_____

Time

When deciding whether to have staff members or a contractor perform a task consider:

- The urgency of the work
- How long it will take to complete the task

If a task must be done immediately, staff members are already on site—all other factors being equal. If a task has low urgency, staff members might be able to work on it as their regular duties allow. When you estimate how long it will take to complete a task, include both start-up and clean-up time in your estimate.

Cost

When deciding whether to have staff members or a contractor perform a task, look at both the cash outlay required and the real labor costs involved. The only cash outlay required if you use employees would probably be for materials and equipment—and possibly for permits and licenses.

On the other hand, employees are a real cost element in a special work project, even though they are already budgeted for in terms of training time, compensation, taxes, and benefits. This cost element should not be overlooked. Depending on the project, it actually could cost more to use employees instead of contracting out.

Tools, Equipment, and Supplies

When deciding whether to have staff members or a contractor perform a task, consider whether specialized tools, equipment, or supplies will be needed for timely, complete, and accurate work.

Does your association already own what is needed—or a reasonable substitute? Is anything needed worth purchasing for continuing use? Can anything needed be rented or leased for a reasonable price? Are the employees properly trained on how to use the tools or equipment? Are there any Occupational Safety & Health Administration (OSHA) requirements that the employees need to be aware of?

When analyzing work requirements, don't forget to consider the possibility of borrowing or trading tools or equipment with other community associations. In comparison, a qualified contractor will provide any tools, equipment, and supplies a task requires.

Insurance Coverage

When deciding whether to have staff members or a contractor perform a task, consider which party or parties have—or can obtain—the necessary insurance coverage(s).

Check with your association's insurance agent to verify that its policy or policies cover the work to be done by staff members. If a task requires a specialized skill, your association's liability insurance may not cover it.

In comparison, all qualified contractors will carry the necessary coverage, including—

- Commercial general liability
- Use of owned or non-owned vehicles
- Workers' compensation

See Chapter 8 for an explanation of each type of insurance.

Licenses and Permits

When deciding whether to have staff members or a contractor perform a task, consider whether any special licenses or permits are needed. Are the site employees properly licensed? Do you have the time and expertise to obtain required permits?

Check with the proper authorities to confirm what licenses or permits are needed for a job. Then, don't just take the contractor's word that he or she has them. Ask to see them. An experienced contractor should be required to have the necessary licenses and can obtain the required permits on behalf of the association.

Storage Facilities

When deciding whether to have staff members or a contractor perform a task, consider where tools, equipment, and supplies will be stored—and the liability involved. Make sure that all supplies are stored and labeled in accordance with OSHA standards. Both security and safety are the issues here. You want to avoid theft and accidents.

Depending on the tools, equipment, and supplies involved in a task, your association may not be able to securely and safely store them for the duration of the project.

PREPARING A BID REQUEST OR REQUEST FOR PROPOSAL

A **bid request** or **request for proposal (RFP)** is an announcement that an organization is interested in receiving proposals for a particular project.

The bid request or RFP includes—

- The **bid specifications** or detailed instructions about the products or services requested. All contract terms should be included in the bid request. This will help the association avoid a situation where the successful contract bidder receives a written contract whose terms may not be acceptable to the contractor.

- Information about the association that the contractor will need in order to prepare a bid.
- Information about work conditions, such as hours, uniforms, parking, storage areas, license requirements, daily clean-up requirements, and time requirements.
- A request for information about the contractor that will help the association evaluate the contractor's ability to perform the work and meet the specifications.

Preparing a bid request or RFP involves:

- Gathering preliminary information
- Identifying potential contractors
- Preparing thorough and accurate bid specifications
- Preparing a complete bid request or RFP
- Conducting a pre-bid walk through
- Possible consultation with a professional engineer or architect

Because of the amount of effort the bidding process requires of both the community association and the bidders, it should be used primarily for larger jobs or purchases or for on-going services, such as lawn maintenance. If the bidding process will be needed, confer with your board to determine the minimum size of a contract that requires competitive bidding.

Gathering Preliminary Information

When you are going to contract for services, there are a number of steps to take *before* you begin to develop your bid request or RFP:

1. Survey the area(s) where the work is to be done.
2. Outline the work to be done in *detail*. This may include consulting with a professional engineer or architect.
3. Specify the materials to be used, and where the materials will be stored.
4. Set a realistic deadline for completion of the work. Your deadline should take into account enough time for—
 - You to develop your bid request
 - Adequate notice of pre-bid walk through
 - Contractors to prepare thorough bids in response
 - You to evaluate the bids received and make recommendations to your board

- The board to review the bids and your recommendations and select the contractor
- You to negotiate final details so the board can execute the contract
- The selected contractor to do the work

Be realistic! In many cases this can be a minimum of 60 days.

5. Make recommendations to the board and receive authorization to solicit bids from contractors.

Identifying Potential Contractors

You can begin identifying potential contractors while you are developing your bid request or RFP. It usually takes five or six requests for proposals to obtain at least three bids. Some contractors will choose not to bid for one reason or another.

You can obtain the names of potential contractors for a specific job from:

- Past work done for your community association or management company
- Referrals from other community associations in the area
- Referrals from supply firms doing business with your community association
- Referrals from the manufacturer or distributor of any equipment involved
- Referrals from any architects or engineers who have worked with your community association
- Referrals from other members of your nearest chapter of Community Associations Institute
- Referrals from local trade associations that represent the type of contractor for whom you are looking

Before you send a contractor a bid request, call first to see if the company is interested in bidding. You want to avoid sending out bid requests and waiting for a response—only to find out that none of the receivers were interested or available.

Preparing Thorough and Accurate Bid Specifications

It is crucial that your bid specifications be as thorough and accurate as possible *before* you send out your bid request or RFP. There are a number of reasons for this:

- You want to ensure that all your bidders are bidding on the same job. If your specifications (called specs) are incomplete, bidders may ask different questions or make different assumptions—and end up offering you bids based on different interpretations of the specifications. This makes it difficult to evaluate the bids in comparison to one another.
- If your specifications are incomplete or inaccurate, the work may end up costing far more or taking much longer than you planned.
- If your specifications are incomplete or inaccurate, the chances of job disputes with the contractor are much greater.

Preparing a Complete Bid Request or RFP

If the task involved is a small one, your bid request or RFP may simply be a letter. If the request is more complicated or larger, you may want to use a short cover letter that tells the contractor that a bid request is enclosed.

A complete bid request or RFP includes:

- The full name, address, and telephone number of the community association that is the contracting party.
- A detailed description of the work to be done (or the product to be purchased). These are your bid specifications; be as specific as possible in describing the scope of work or the product desired and the results expected. For example—For an asphalt resurfacing job, do you want one-and-a-half or two inches of asphalt overlay, or the entire area dug out, compacted and four inches of new asphalt installed? What specific areas require remedial work? Mark the areas to be repaired/replaced and provide the total square footage.

Prepare specifications only for those services or products you adequately understand. To prepare some service specs, you may need to draw on the technical skills and knowledge of such parties as an engineer, architect, or supplier.

- Key dates—
 - Deadline for submitting a bid
 - Date of a pre-bid walk through to review the specific areas where the work is to be performed
 - Date work expected to begin
 - Date work expected to be completed or products expected to be delivered
- Whom to call for information or inspection of site?
- Where to submit bid?
- Request for three to five references from previous jobs of similar size and scope.
- Warranties required: A **warranty** is a promise or guarantee that parts, materials, or labor will last for a designated period of time.

The bid request should state—

- What parts, materials, or labor it wants guaranteed?
- For how long?
- What it expects the contractor to do if any parts, materials, or labor are defective?

For very large and complicated jobs, you will also want to enclose a **prospective bidder's questionnaire** or **qualifications sheet**. This is a document that asks for certain types of information to determine if the bidder is technically and financially qualified to handle a job of this scope.

For large or complicated jobs, hold a pre-bid meeting with all the contractors at a designated time. This will allow the contractors to all see the work at the same time, and will provide you, or the consulting engineer or architect, the opportunity to answer questions. This will save you and the contractors a significant amount of time, and allows all of the contractors to get the same answer to each question.

Notice how the sample RFP for lawn maintenance services on the next page is set up to allow the bidder to fill in his or her prices right on the RFP. This approach works best with bid specifications that can be described as a list of separate tasks.

The manager who prepared this RFP purposefully broke out the job into separate tasks. By asking for a price per service, instead of a fixed price for the complete list, this community association will be able to pay for, track, and adjust its costs separately. This means it can cut back on specific services when necessary without much difficulty or confusion.

We included the sample RFP for asphalt work on page 245 to illustrate the amount of detail needed in bid specifications for certain types of services.

SAMPLE: Request for Proposal—Lawn Maintenance

Job:

Location:

For property information contact:

Proposal due by:

LAWN SERVICES	PRICE PER SERVICE
18 Lawn cuttings—trim every time around all signs, guard rails, and light poles.	\$ 1,312.00
2 Fall fertilizings—October and late November.	\$ 1,426.00
2 Broadleaf weed controls as needed—April & June.	\$ 1,925.00
1 Pre-emergent crabgrass—April.	\$ 1,670.00
1 Liming—1/2 ton/acre—December.	\$ 2,519.00
1 Prepare beds and mulch five entry beds at brick entrance walls. Edge with spade and mulch in March/April to a depth of 3". Fluff mulch two times during season. Weed all beds monthly.	\$ 2,888.00
1 Season of pruning of all trees and shrubs at or around all five entry walls.	\$ 1,008.00
Plantings of flowers at five entrance signs and seasonal maintenance of these beds. Flowers to be rotated during the season. Watering of flowers to be included as needed. Spring, summer, and fall flowers to be planted.	\$ 1,200.00 (per seasonal planting)
Sprayings of common trees and shrubs located at five entrance areas.	\$ 512.00 (estimate 8 hours)

SAMPLE: Request for Proposal—Asphalt Work

_____ is soliciting unit price proposals for asphalt work to be done between June 15th and August 15th, 20XX with at least two weeks advance notice. The board of directors of the association will select a contractor for the project.

The yardages given are estimates. The job will have to be field measured before submitting your proposal. Unit prices must include all material, labor, tools, equipment, insurance, supervision, barricades, traffic safety devices, etc., to perform the seal coating and topping to do a complete job. Moving cars will be the association's responsibility.

All work and materials must be in accordance with contract specifications and guaranteed for one year after completion and acceptance. When the paving and/or seal coat is completed, the parking lots must be restriped using white traffic paint for lines and caution signs painted on road. All handicapped markings, fire lanes, and no parking lane curbs and "reserved" stencils or similar markings must be repainted as currently shown. The contractor must note the appropriate locations.

Please submit your bid to:

To inspect the property, obtain directions from _____ at _____.

Remember, submit unit prices and your material specifications. If you can only bid on seal coating, please so state. Include striping as outlined. All bids need to be received by February 15, 20XX.

ATTACHMENT

Location	Sq. Yds.	Work Item to be Bid	
Allen Court	3,400	1-1/2" topping	Bldgs. 7,8,9
Black Court	9,000	1-1/2" topping	Bldgs. 10, 11, 12, 13
Shore Drive	16,000	Seal coat <i>only</i>	

EVALUATING BIDS

In order to evaluate the bids you receive, take the following steps:

1. Review each bid to verify that it conforms to your specifications. Contact the bidder for clarification if you have any question about a term, a price, or a promised service. Don't assume anything!
2. Check each bidder's references.
3. Check each bidder with your local Better Business Bureau and the local Office of Consumer Affairs to see what type of complaints it has received—if any.
4. Verify insurance requirements.
5. Verify licenses (if required).
6. Eliminate any bids that are unacceptable based on steps #1-5.
7. Compare the remaining bids in terms of price. (See the sample bid comparison spread sheet on the next page for a comparison of the bids based on our earlier sample bid request for lawn maintenance services.) Be wary of extremely low or high-priced bids. A price that is noticeably lower than the rest may mean that the low bidder doesn't understand what the job involves or is willing to cut corners. A price that is noticeably higher than the rest may mean that the high bidder doesn't understand what the job involves or wants a high profit margin.
8. Recommend a contractor to the board based on the following criteria—
 - Demonstrated understanding of what needs to be done
 - Possesses the necessary qualifications to do the job
 - Reasonable price

KEY CONTRACT PROVISIONS

Your community association should have a standard contract prepared or reviewed by its attorney. Provisions should be added or deleted based on the particular agreement involved.

The following are key provisions that ought to be in *every* contract. As a manager with a professional duty to your community association, you must take steps to protect its interests when it enters into a relationship with a contractor—even if it seems unlikely that any problems will arise during the relationship. The discussion of key contract provisions goes into a level of detail appropriate for new managers. Each provision can include more detail.

SAMPLE Bid Comparison Spread Sheet—Lawn Bids: 20xx Season

Item					COMPANY A		COMPANY B		COMPANY C		COMPANY D	
	Budget Qty	Budget Unit (in \$)	Budget Total (in \$)	Bid Qty	Unit (in \$)	Total	Unit (in \$)	Total	Unit (in \$)	Total	Unit (in \$)	Total
Cuttings	18	1,075	19,350	18	1,168	21,024	1,200	21,600	1,100	19,800	1,028	18,504
Fertilizing	2	1,200	2,400	2	825	1,650	2,600	5,200	1,500	3,000	900	1,800
Broadleaf	1	1,250	1,250	2	950	1,900	2,600	5,200	1,620	3,240	800	1,600
Pre-Emergent	1	1,300	1,300	1	950	950	1,700	1,700	1,620	1,620	800	800
Liming	1	1,500	1,500	1	1,000	1,000	1,500	1,500	1,620	1,620	840	840
Prepare & Mulch Entrances	1	1,000	1,000	1	2,064	2,064	1,500	1,500	1,850	1,850		INCL.
Pruning Entrances	1	200	200	1	255	255		N/B		INCL.	150	150
Plant Entrances	1	7,000	7,000	1	1,980	1,980	2,500	2,500	4,530	4,530	3,695	3,695
Tree/Shrub Spray	3	150	450	3	130	390	100	300	175	525	150	450
TOTAL			\$34,450			\$31,213		\$39,500		\$36,185		\$27,839

Parties to the Contract

A contract should state the complete names, addresses, and telephone numbers of the two parties to the contract. The community association should clearly be identified as one of the contracting parties.

Scope of Work

A contract must spell out *specifically* what work is to be done by the contractor. The larger the dollar amount and size of the project, the more detail should be included. Both parties (and possibly a court) must understand precisely what the contractor is responsible to do. Instead of referring to prior correspondence that describes the work, provide a completed, detailed description in the contract or provide the specifications as an attachment.

The scope of work should also include:

- Requirement that contractor conform to applicable codes, industry standards, or manufacturer's specifications
- Requirement that contractor provide sufficient employees necessary to perform the scope of work as described in the contract
- Requirement that contractor clean up after the work is performed and restore the common elements or areas to their prior condition
- Exact location where work is to be performed
- Working hours
- Provisions for tools and equipment—include security, storage, insurance, rental, and repair terms
- Materials
 - Quality, type, quantity, color
 - Who provides them
 - Delivery and storage
 - Who provides insurance coverage
 - Disposal of leftover materials
- Storage
 - Where
 - Who is responsible for security and for any missing equipment
- Job site safety requirements

Compensation

A contract should state:

- Total agreed-upon amount that will be paid for the product or service
- When payment(s) will be made
- In what manner payment(s) will be made
- On what terms payment(s) will be made
- Amount of retainage amount, if any

For example, a contract may allow for **progress payments**. These are partial payments based on some demonstrable progress in completing the work involved. It is reasonable for a contractor to negotiate progress payments. Just be sure to tie them to observable progress.

Your final payment should be based on the work being completed to the community association's satisfaction (see discussion of standard of performance below). This means the final payment should be large enough to provide an incentive to the contractor to complete the work satisfactorily. As an alternative, some contracts call for the association to retain a certain percentage of the contract price until the terms of the contract are fulfilled.

Time Period

A contract should state when the work is to begin and when it must be completed. It should also provide for liquidated damages payments by the contractor, or reduction in cost if the contractor is responsible for the deadline not being met.

Standard of Performance

A contract should provide a standard against which a contractor's work can be judged. For example, the contract may require the contractor to create a specific result, such as an appearance "identical to that existing immediately prior to the commencement of the work" or a structure "substantially similar in design and appearance to existing structures of the same type in the community association."

Even without such a provision, contractors will generally be held to the standards established by prevailing custom and practice in their particular industries. But as with other terms of an agreement, it is always best to expressly state the expected standard of performance. Whenever possible, try to use an objective standard of performance, such as manufacturer specifications, American Standard Test Methods (ASTM), or American Institute of Architects (AIA) standards.

Warranty

A contract should state the agreed upon warranties clearly and in detail.

As we said earlier in the chapter, a warranty should state:

- What is covered
- For how long
- What the contractor will do if the work or product proves defective

Restoration

A contract should contain a clause stating that if the contractor's employees, agents, or subcontractors damage any common or individual property in the community while performing contracted work, the contractor agrees to fully restore the property to its original condition. This clause may also provide for the community association to retain part of the contract price until restoration has been completed. Or it may provide for deducting from the contract price any costs that the community association is forced to spend to do the restoration itself—if the contractor does not do it within a specified period after completion of the work.

Even without this clause, a contractor will be liable to repair any damage caused by its negligence. But such a clause in a contract provides better protection for the community association.

Indemnification

A contract should expressly state that the contractor will indemnify and hold harmless or reimburse the community association for any amount the association is required to pay because a claim was made against the association as a result of the contractor's work—as well as for any legal costs associated with defending the association against any claims.

For example, if an owner sues the community association because the owner tripped and injured himself or herself on the stairs that a contractor was in the process of resurfacing, this provision would require the contractor to pay any amount for which the community association is found liable, as well as the legal costs involved. The provision should be broad—covering any claims of any type by any party arising from the contractor's work.

Insurance

A contract should expressly require the contractor to have all necessary insurance for the project—including liability, workers' compensation, and vehicle insurance. The contract should also require the contractor to provide the community association with **certificates of insurance**, which prove that it has coverage, *before* work begins. Have the community association insurance agent review the contractor's insurance policies to assure that coverage is adequate.

Depending on your section of the country and your insurance carrier, it may be possible to get a contractor to name the association (and its management company, if any) as additional insured parties on the contractor's policies.

Licenses and Permits

A contract should require the contractor to demonstrate to the community association that it has the necessary licenses and permits for the work *before work begins*. A contract should also specify that the contractor is required to comply with all federal, state, and local laws, regulations, or codes that are applicable.

Notices

A contract should clearly state the names and addresses of the individuals representing both parties for the purposes of that contract. These will be the official addresses to which correspondence related to the contract must be sent.

Termination

A community association should always have a way to get out of a contract if it so desires. This is particularly true for long-term service contracts. A service contract should contain a provision that gives the community association the right to terminate the contract with or without cause after a specified period of prior notice to the contractor.

Default

A contract should specify:

- What constitutes a **default** or failure of either party to fulfill the terms of the contract
- What each party's rights are if the other defaults

Financial Protection

A contract should provide for the community association's financial protection if the contractor should default. This is important at all times, but especially during a weak economy, or for larger projects.

Depending on the type of project, a contract may require:

- **Performance bond:** This is a guarantee by a surety (a third party) to protect the community association if the contractor fails to perform or finish the work. Because there is a cost to the community association involved, a performance bond typically is used with certain large projects.
- **Payment bond:** This bond comes in a package with the performance bond. The surety guarantees that the contractor's suppliers and any subcontractors will be paid if the contractor does not pay them.
- **Waiver of lien:** This is a document which gives up the right to make a claim against the community association for payments not received.

When a contractor does the work and receives payment, the contractor's representative provides a waiver of lien signed by the contractor—as well as waivers signed by the contractor's suppliers and any subcontractors. If the project involved is a large one with multiple payouts, it is possible to receive waivers of lien more than once during the project as each payment is made.

Use a waiver of lien when a project involves the heavy use of materials or subcontractors—e.g., some type of construction project—and your community association wants to avoid the risk of having to pay for materials or subcontractors if the contractor fails to do so.

Be sure to obtain any waivers of lien before making final payment on a project—even a small one. If you do not, your community association could end up paying for supplies or subcontractor services twice!

Although we discussed progress payments and retention of a portion of the contract price under the compensation provision, notice how they are also forms of financial protection for your community association.

Provisions That Address the Legal Binding of a Contract

A contract should contain the following provisions which address the legal binding of the contract:

- **Assignability:** This provision states that neither party may assign its obligations under the contract to any other person without the express written consent of the other party. The contract should specifically state that the contractor cannot use subcontractors without the express written consent of the association.
- **Modification:** This provision states that the contract may not be modified in any way unless such modification is written and signed by both parties.
- **Waiver:** This provision states that a waiver (permission) by one party of any breach of contract (failure to fulfill a provision) by the other party shall not act as a general waiver of future breaches. In other words, each party says to the other, "If we let you slide on any contract requirement at any time, it doesn't mean we're letting you slide on any other requirements, or even on that one a second time—*unless* we decide to let you do it again."
- **Governing law:** This provision states that the law of a particular state will be applied if there are any disputes about the contract after it is signed. This is particularly useful when the community association and the contractor are based in different states.
- **Severability:** This provision states that if a court finds that any clause of the contract is illegal or unenforceable, that clause shall be severed (separated) from the rest of the contract, so that the whole contract need not be invalidated.
- **Entire obligation:** This provision states that the written, signed contract constitutes the entire agreement between the parties. Except for any documents that are expressly referred to in the contract, neither party can claim that any other correspondence, communication, or documents contain obligations, promises, or requirements that are part of the binding contract between the parties.

Make sure that if you or the board have any questions or concerns that legal counsel is consulted. Also, for larger contracts, the association's attorney should perform a thorough review of the contract.

NEGOTIATING CONTRACTS

In this last section of the chapter, we would like to discuss:

- The basic negotiating process
- Tips on successfully completing a contract

The Basic Negotiating Process

Here are the basic steps in negotiating a contract:

1. Have the association's attorney review the proposed contract before it goes to the contractor.
2. Present your association's contract to the contractor whom the board selected.
3. The contractor's representative will either sign it "as is" or propose changes.
4. Negotiate any changes the contractor proposes, have the attorney review them, and have those changes initialed by the contractor.
5. Present the initialed version of the contract signed by the contractor's representative to the authorized community association representative for his or her initials on any changes and signature on the contract.

The president and/or secretary of the community association should sign contracts on its behalf. As a manager, you should not sign a contract as you are not the party entering into the agreement—the community association is.

6. Give the contractor and the board copies of the contract signed by both parties.

One word of caution: Don't try to operate outside the basic bidding and contracting process. You will only harm your community association and yourself. A typical example is the situation where a manager asks a contractor to come in at a lower price if he or she really wants the job.

Tips on Successfully Completing a Contract

Although this chapter is just an introduction to bidding and contracting, we would like to end with a few important tips on successfully completing a contract:

- **Monitor the job site while work is in progress.** You need to verify that work is proceeding as contracted. Take your contract with you when you visit the site. You also need to verify that your contractor is taking adequate steps to ensure job safety. Is the contractor protecting your residents and your employees—as well as its own employees and any subcontractors?
- **Inspect the completed job before final payment.** Prepare a punch list (see example on page 227) when the work is completed. Take the contract with you and walk the job with the contractor when the work is done. Point out the items in writing that need attention before final payment is made. You cannot see a completed job from behind your desk!
- **Prepare a payment schedule if you are going to make progress payments.** Develop some kind of form you can use to keep track of progress payments for a project. Experienced managers warn that there's a real possibility of overpayments without one.

FOCUS QUESTIONS

Use the following questions to help you identify and review the core concepts in this chapter. (*Hint:* Once you look up the answer to a question, you may want to jot down the page number next to the question for future reference.)

1. Why is it important to assist your community association with entering into contracts and to do so as carefully as possible?
- 2a. What are some work requirements to consider when deciding whether to have a task performed by staff members or by a contractor?
 - b. For each work requirement you name, explain the considerations involved.
3. What does a bid request or request for proposal include?
4. What are the five steps to take *before* developing a bid request or RFP?
5. Name some sources that can be used to obtain the names of potential contractors for a specific job.
6. Why is it important that bid specifications be as thorough and accurate as possible *before* the bid request or RFP is sent out?
7. List the basic items of information a complete bid request or RFP should include.
8. What are the eight steps to take in order to evaluate a set of bids for a project?
- 9a. Why is it important to have a standard contract with certain key provisions in it?
 - b. Name some of the key provisions that should be included in every contract.
 - c. Explain each provision you named in "b".
10. What are the six basic steps in negotiating a contract?
11. What are some tips for successfully completing a contract?

THOUGHT/DISCUSSION QUESTIONS

Use the following questions to help you apply the information in this chapter to your own situation:

1. Identify a project or routine service your community association is considering or has decided to undertake. Use the decision chart on page 237 to decide whether staff members or a contractor would best meet the work requirements involved.
2. Identify a project or routine service for your community association whose bidding and contracting process you have either participated in or observed. (If you are relatively new to your community association, interview another employee or a board member about a recent process.) Based on what you have read in this chapter—
 - a. Review the steps taken to gather preliminary information for the bid request. How could they have been improved?
 - b. Review the process used to identify potential contractors for the project. How could it have been improved?
 - c. Review the bid specifications. How could they have been improved?
 - d. Review the complete bid request or RFP. How could it have been improved?
 - e. Review the steps taken to evaluate the bids received. How could they have been improved?
 - f. Review the steps in negotiating the contract for the project. How could they have been improved?
 - g. Are there any ways execution of the contract could have been improved?
- 3a. If your community association has a standard contract it uses, identify the clauses which represent the key contract provisions mentioned in this chapter. If there are key provisions not represented in your community association's standard contract, ask your immediate supervisor or community's attorney about them. If your standard contract has clauses which represent provisions this chapter hasn't mentioned, ask about those, too.
- b. If your community association does not use a standard contract, what are some reasons you could use to convince your board that it needs one?

RESOURCES

For further information on bidding and contracting for community associations, we suggest the following—

Bid Specifications and Contract Negotiations (Guide for Association Practitioners Series, Report #9), Third Edition, by Stephen R. Bupp, CMCA, AMS, PCAM. Provides readers with the information needed to write simple, effective specifications and contracts, ensuring that repairs or maintenance of your common areas will go smoothly. Contains a 27-point specifications chart, a checklist that will prevent you from overlooking any aspect of the project, and adaptable samples of specs for a repainting project plus a bid for a preventive maintenance contract. (Community Associations Institute, 1997.)

Choosing a Management Company (Guide for Association Practitioners Series, Report #8), Fifth Edition, by Michael E. Packard, PCAM. This report examines what to look for in a manager, including an eight-step selection process with supporting information and sample forms, and guidance on how to work with the manager. (Community Associations Press, 2002.)

Community Association Legal Counsel: How to Select & Use Association Legal Counsel, (Guide for Association Practitioners Series, Report #13), Second Edition, by Thomas J. Hindman, ESQ. and Loura K. Sanchez, ESQ. Contains information on how to get the best out of your association attorney as well as what to consider when searching for a new one. Offers guidance for working out various fee structures and includes a five-part appendix consisting of a sample request for proposal, interview questions, evaluation criteria, billing statement, and more. (Community Associations Press, 2002.)

Selecting an On-Site Manager, (Guide for Association Practitioners Series, Report #19), Second Edition, by Thomas Burgess, PCAM. Reviews how to recruit a new on site manager and how to work successfully with the manager. Also guides the reader through the transition period. (Community Associations Institute, 1996.)

Selecting the Landscape Maintenance Contractor (Guide for Association Practitioners Series, Report #12), by James B. Cranford, AMS, PCAM. Discusses the criteria for searching for, selecting, and hiring the landscape maintenance contractor. Outlines how to design the contract. (Community Associations Institute, 1996.)



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