

## **A FIELD GUIDE FOR BOARD MEMBERS**

### ***Using Residents as Vendors***

***Michael Rome, Esq.  
Rome & Goldin, PC***

*This marks the first installment of a series for board members about commonly faced questions and issues. Many of these challenges require a combination of legal, political and practical solutions. Hopefully these articles will be useful for board members in determining what is in the best interest of the association.*

I am often asked by board members whether or not the association should hire a resident to provide services for the Association. I usually reply that "I've never seen it turn out well." Perhaps there are some situations where it might be beneficial for the association in the long run, but typically it's not a good idea.

It is understandably tempting to hire a resident when you consider the typical savings compared to commercial vendors. Also, the Board can have easy access to a service provider who lives right there in the subdivision. Ironically, these same advantages contain the seeds of future problems.

Part of the discount on price often consists of the resident's lower overhead, such as costs of travel, office expenses, etc... Unfortunately, the lower overhead sometimes includes lack of insurance and proper licensing. Of particular concern is the absence of liability coverage, which can be disastrous in the event of an injury to a third party. The association's insurance policy probably doesn't cover independent contractors, which means the board is in greater danger of being sued for negligence because they hired an uninsured vendor.

Another reason it can cost less to hire a resident is their lack of expertise. In short, you may be hiring an amateur instead of a professional. Landscaping is a popular example. Anyone who cuts their own lawn believes they can handle the landscaping for the common areas. Even if this is true, the absence of expertise can result in much greater costs down the road when there is an error of judgment.

This brings up another important point. Will the resident vendor have the cash flow and assets to afford correcting a mistake? Is the association going to be reimbursed for expensive plants that quickly died? If a homeowner is injured through negligence will they be compensated by the resident vendor? Does the board really want to risk putting either of the residents in this situation?

For one reason or another, the relationship between the resident vendor and the Association will eventually break down...and it is usually sooner than later. This kind of 'breakup' can involve strong feelings on both sides, and to make it even worse, there is no buffer for the board when the angered vendor lives in the subdivision. It can be the beginning of a long and painful neighborhood feud. It is better to avoid the dilemma in the first place by not hiring a resident.

There is only one scenario that is worse than using a resident vendor; and that is using a resident vendor who is also a board member. Not only does the business relationship contain all the downsides mentioned above, but now there is an issue of financial conflict.

Some bylaws prohibit financial conflicts on the part of the board. Even if the bylaws do not prohibit financial conflicts, some homeowners are naturally suspicious of board members and wonder where "all their money is going". These fears can only be compounded when a board member is making money from employment by the association.

What if a board does not heed the warnings and still insists on hiring a resident vendor? The association's insurance carrier should be contacted to see if it is possible to add the resident to the policy. Also, a full written contract should be executed between the association and the resident. There are many important provisions that should be in the agreement, including an 'indemnification clause' whereby the resident agrees to reimburse the association for any damages caused by the resident. The contract itself should be drafted and/or reviewed by the association's attorney.

Given all of the possible pitfalls, along with the added expense of added insurance and attorney fees, it is rarely going to be in the best interest of the association to hire a resident vendor. The board may even want to adopt a written policy of not hiring residents, so there is something tangible to point to when they are approached by a resident who offers their services.