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Subject: Homeowners Association Tip of the Week - Terminating Contracts

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This tip of the week continues our series on contracts with vendors and contractors. Before we move on to the next issue, let's return to contracts that have an association indemnifying a vendor or contractor. As we previously stated, an association should be cautious of such provisions, particularly if they would have the association indemnify the vendor or contractor for their negligent or criminal conduct. However, where a vendor is acting as an association's agent and at the direction of its board, it is usually appropriate for an association to indemnify its agent with respect to actions properly taken within that agency role.

Now we turn to the issue of termination. Although an association hopes to have a strong working relationship with every vendor or contractor, it is important to provide clear provisions on how and when each party can terminate the contract.

For most service contracts, we usually suggest a provision that permits the association to terminate the contract at any time upon providing 30 days written notice. In addition, any contract should give an association the power to terminate if the vendor or contractor neglects its work or the work has deficiencies and the vendor or contractor does not begin remedying the situation within a set period after receiving written notice from the association. Both types of provisions give an association flexibility in responding to vendor or contractor problems, and they prevent an association from being trapped in a contract with a non-performing vendor or contractor.

An association also should avoid any contract that imposes a penalty or damages if the association seeks to terminate the contractual relationship. We have seen security contracts and other agreements that set out a monthly fee for a multi-year contract term, but if the association defaults or wishes to end the contract, then all the fees for the entire contract term immediately become due as a lump sum—effectively penalizing the association and making termination very expensive.

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