

# CLIENT ADVISORY

AN INFORMATIONAL ADVERTISEMENT

EPSTEN GRINNELL & HOWELL APC

ATTORNEYS SERVING COMMUNITY ASSOCIATIONS<sup>SM</sup>

- San Diego County • Greater Inland Empire • Imperial Valley
- Coachella Valley • Southern Orange County
- Other California Communities

**800.300.1704**

**In every contracting situation, from the smallest everyday project to the largest construction project, consider the following issues:**

## CONTRACTING CHECKLIST

- Does the contractor have a valid contractor's license?
- Does the contractor have minimally acceptable levels of general liability insurance, automobile insurance and worker's compensation insurance?
- Has the Association been named as an additional insured on all of the contractor's insurance policies?
- Have all the subcontractors submitted proof of their contractor's licenses and insurance policies?
- Has the contractor complied with all of the Association's bidding requirements?
- Has the contractor supplied references and have the references been checked?
- Is there a written contract?
- Has the scope of the work to be performed been clearly defined?
- Does the Association have to pay start-up costs to the contractor? Is the amount of start-up costs reasonable (less than 10% of the total contract price)?
- Are progress payments required at reasonable intervals? Have payment obligations such as "upon delivery" been deleted?
- Have the payment provisions been written so that the Association only pays for work that has been satisfactorily completed?
- Is the contractor required to submit mechanics' lien releases before each payment?
- Should the Association write joint checks to the contractor and subcontractors if unconditional lien releases are not provided?
- Can the Association hold a retention from each progress payment until the end of the contract?
- Is final payment required only after all mechanics' lien rights have been expired?
- Are the starting and completion dates clearly specified?
- Is there a liquidated damages (predetermined monetary payment) provision in the contract?
- Are there benefits to the Association if the contractor finishes earlier than expected? Would a performance bonus provision provide incentive to the contractor to finish earlier than required?
- Can the Association terminate the contract "without cause?" If "cause" is required, is it clear under what conditions the contract can be terminated?
- Has the contractor clearly indicated the warranties being given? Are there any materials manufacturers' warranties?
- What exclusions are there in the warranties? Are these exclusions reasonable?
- Will the contractor be required to supply a performance bond or labor & materials bond?
- Is the contractor required to post a bond to protect the Association from a mechanics' lien recorded by a subcontractor?
- Have all required bonds been given to the Association before the contractor begins work?
- Is the contractor required to indemnify the Association for its negligent acts and omissions?
- Have all obligations of the Association to indemnify the other party been deleted from the contract?
- Have limitation of liability clauses been deleted?
- Does the contract require some form of Alternative Dispute Resolution (mediation or arbitration) prior to or in lieu of litigation?
- Is there an attorneys' fee provision in the contract?
- Has the contract been reviewed by legal counsel?