



The Condo Association & HOA's

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# Legal Guide to Hiring Contractors

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# Introduction

Condo association or HOAs often seek the expertise of contractors to provide many different services. The community may need exterior painting, pressure washing for outside walls, EIFS or stucco repairs as well as sealant replacement around windows or doors. The appearance and well being of the community depends on the provision of such services in a timely, professional and cost-effective manner.

Condo association or HOA managers need to take the hiring of contractors very seriously. Choosing a contractor to provide a service to a condo association or HOA is a more complicated process than it appears. It may seem convenient to simply seek out services for the association from friends and family, but such action can lead to a host of legal repercussions and financial liability. Not only do you stand the chance of compromising on quality, but flaws in the contract can also lead to many complications down the road.

It is therefore important to understand the legal framework that goes into hiring a contractor for your condo association or HOA. This will enable you to make the right choices and to make sure the scope of services provided is adequately covered in the contract.

**This eBook will provide you with a comprehensive legal guide for hiring contractors for your condo association or HOA.**

# Factors to Consider When Looking for a Contractor

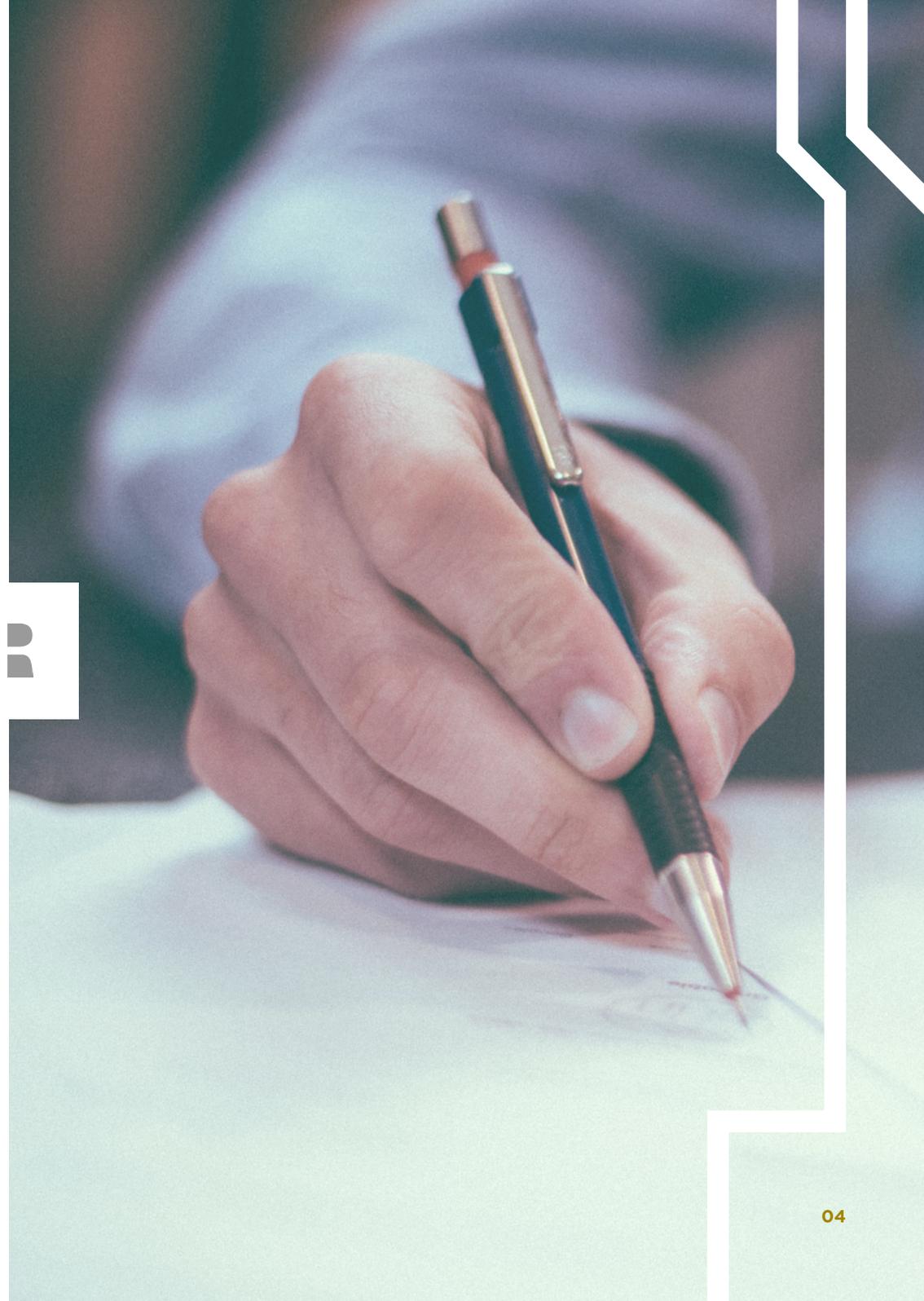
There are no shortcuts to choosing the right contractor. You have to take the time to shop around, seek referrals and research their previous work experience. During the process of choosing a contractor, there are several important factors you should consider, such as licensing, insurance, the scope of services provided, and employment status. Let's look at these aspects one by one.

## Licensing

Understanding if and when a contractor needs to hold a license for services provided can be a tricky affair. As a condo association manager, you should take the time to understand how contractor licensing works in your particular area. Having a license provided by the state or local municipality often means that the contractor has passed various benchmarks in order for them to run their business in a more responsible way.

In many jurisdictions, contractors are only issued with licenses after they have proven that they hold the necessary insurance and bonding requirements (explained in more detail in the following section). Therefore, even if a license is not required for a contractor to provide services, those who have a license are often a safer option to pick. Look into whether a contractor is required to be licensed in order to provide services in your jurisdiction.

Depending on the size of your project, a licensed contractor may be absolutely necessary. For example, some projects require a building permit provided by the contractor in order for them to begin the job. Unlicensed contractors may be unable to obtain such a permit until they acquire the necessary certification. This could lead to a delay in your project if a building inspector comes to your property.





## Licensing Cont.

Licensed contractors often meet the minimum requirements of insurance and project accountability. Therefore, if complications arise during or after the project, the condo association or HOA can seek recourse for the services provided. If a contractor paints exterior walls and they begin to discolor a few weeks later, a licensed contractor can be held liable for providing the services inappropriately and they can be compelled to redo the painting job.

The same applies if caulking and sealants applied to window or door perimeters only to find out a few days later that they're already letting water penetrate the surface.

By ensuring that you hire a licensed contractor, you can enjoy the peace of mind of having high quality services delivered, and you can seek recourse for any problems that may arise afterward.

## Trade-Specific Licenses

As opposed to general contractor licenses, if you are seeking services such as plumbing, electrical work, and HVAC maintenance, you need to take a deeper look into the contractor-licensing field. In most states, such services require a special license that applies to the particular service that is to be provided. For example, a plumber would need to have a minimum number of hours of work completed, pass various written tests and complete continuing education programs. Make sure you request trade-specific licenses if you need to have drainage systems unclogged, HVAC units repaired in

common buildings or outside lights replaced within the condo property.

## Bonding

In line with seeking recourse for services provided, bonding is a form of insurance that contractors are required to have in order to protect the customer (you) if the contractor doesn't complete the job properly or fails to meet financial obligations (such as paying for the required permits or paying subcontractors). How it works is the contractor purchases a surety bond that can be claimed by aggrieved parties in the event that the contractor fails to meet his/her obligations. For a condo association or HOA, hiring a bonded contractor provides a layer of protection against negligent services. You wouldn't want to find yourself being held responsible for paying unpaid workers and utility bills that were supposed to be handled by the contractor. In addition, a bond also covers damage to your property due to the actions of a contractor, including lost or stolen property.

A bond is issued through a surety company, which collects premiums from the contractor. The bond works much the same way as insurance, where premiums paid are determined by the amount the bond is liable to cover as well as the contractor's history.

## Making a Claim on a Bond

In the event that a contractor provides unsatisfactory services, you can initiate a claim for compensation from the surety company. You would need to provide proof that the job was

poorly done or demonstrate that the contractor did not meet obligations of paying subcontractors or materials that they were liable for.

To understand how important it is for you to hire a contractor with a bond, realize that most suppliers will not provide items to a contractor who is not bonded. Suppliers want to ensure that they will be paid in the event that a contractor fails to meet their obligations. You should follow in their footsteps and protect your condo association or HOA from negligent services. Before hiring a contractor, request a bond number and certification, and make sure that it is up to date. If you need more information on bonds and bonding requirements for contractors, you can contact your state/municipality's licensing agency. They usually understand state-specific bonding requirements or can point you in the right direction.

## Insurance

As with other sectors such as owning a vehicle or a home, insurance is important in protecting us against any unfortunate occurrences. Having a contractor who is insured is critical for your condo association or HOA. Insurance protects both you and the contractor in case accidents occur during the job. In fact, most states require a contractor to have insurance before they obtain a license or a registration to provide services.

**We will cover the two main types of contractor insurance on the next page.**



### **Liability Insurance**

Liability insurance covers damage to persons and property that occurs as a result of the contractor's work. Some services offered by contractors can result in damages if not done properly or if unfortunate events occur. For example, a contractor could do pressure washing to the exterior of a building during a certain project. If a condo resident slips and gets injured as a result of the washing, the contractor's liability insurance can cover the resulting medical costs. During a painting project, a worker's tools may accidentally fall off their cart and onto a homeowner's car. Such an accident is also covered by liability insurance. In other words, liability covers all third party damages that are caused by the contractor's work.

If a contractor performs unsatisfactory work, it is not the responsibility of the insurance company to compensate you. This is why a bond is so important, as this is the main (and sometimes the only) channel through which you can seek recourse for poor work performed by a contractor.

### **Workers' Compensation**

Workers' compensation is a type of insurance that provides compensation to workers who are injured on the job. It does not matter who caused the injury. Workers comp also provides compensation to a worker's family in the event that an injury on the job results in death. It is important for a contractor to properly insure his/her employees so that your association is not held responsible for accidents to those workers.

Contractor services such as waterproofing or exterior painting may involve crew members erecting and dismantling stage/scaffold equipment on rooftops. There is always a danger of accidents happening even if the crew members are trained professionals. Therefore, it is important to ensure that the contractor has appropriate workers' compensation for employees so you do not end up paying for such damages out of pocket or affecting your condo association or HOA's insurance policy.

## Scope of Services Provided

When considering which contractor to hire, it is important to take into account the scope of services that they provide. For example, your condo association or HOA may be in need of painting services. A painting job however involves more than just the painting of exterior walls.

In order to get the job done well, the contractor needs to pressure wash the exterior façade in order to remove debris, replace caulking/sealants around window & door perimeters or repair rotting trim or siding all prior to actually getting paint on the wall. As you can see, many of these services go hand in hand. Hiring a versatile contractor is key for your condo association or HOA to kill two birds with one stone and obtain a complete set of services.

When considering the scope of a painting project for your condo association or HOA, inspect exterior walls in need of stucco/EIFS/concrete repairs, windows that may be leaking that need to be re-caulked or delaminating or rotted wood that needs to be replaced.

Once you have a full scope of the job that needs to be done, you can look into hiring a contractor who provides a good package and specifically addresses the services that you need. The specifics of each work should be included in the contract (explained in more detail later in this eBook).





### **Employment Status: Contractor vs. Employee**

As a condo association or HOA manager, it is important to understand the difference between hiring an independent contractor vs. an employee. Even though the services and payment provided may be similar, there is an important legal distinction between the two. A contractor typically does not work on a regular long-term basis with the employer. They mostly work when their services are required for a particular duration.

Employees tend to be longer-term staff who are employed by the association. When seeking the services of a contractor, it is important that the condo association or HOA restricts the nature of the services to fall under an independent contractor as opposed to classifying the contractor as an employee. Here are important distinctions between employees and contractors.

### **Nature of Work Done**

Condo association or HOAs should be careful not to set up an independent contractor's responsibilities to appear similar to those of an employee. For example, employees are normally trained by the employer, provided with the tools they need to get the job done, and given specific working hours. You should avoid having a similar working relationship with a contractor.

In order for the contractor to truly fall under their category, the condo association or HOA should only generally supervise and occasionally inspect the work being done. You can also provide recommendations and deviations of the work as it is being carried out.

You should however avoid training, providing all the working tools and stipulating detailed and specific working hours. Such actions could cause the contractor to be classified as an employee, which makes you liable for taxes, insurance and negligent work of the contractor.

### **Employment and Tax Laws**

Employment and tax laws vary between a contractor and an employee. In the case of an employee, the employer withholds taxes, Social Security and Medicare from the employee's paycheck. Labor and employment laws also apply to employees.

For a contractor, the employer does not withhold any taxes and the contractor is not subject to employment and labor laws. The contractor is therefore responsible for reporting any income to the IRS through a form 1099.

### **Hiring Practices**

Employee and contractor hiring processes vary. An employee is hired through the human resource department by submitting an application. A contractor, on the other hand, interacts directly with the department or person within the

association that is requesting the services. The work to be carried out is agreed upon via a contract.

### **Recognizing Fraudulent Contractors**

Fraudulent contractors can prove to be a liability nightmare for your condo association. Contractors who are classified as fraudulent mostly claim to be insured and/or licensed while in truth they aren't. Working with an uninsured contractor can lead to the association paying out a large claim in the event of an injury to an employee of the contractor.

Some condo association or HOAs have come to realize this the hard way. When an accident occurred on their property, they were probably thinking that the contractor was insured, only to realize that either their policy had expired or they did not have coverage to begin with. The association therefore becomes liable for such damages.

While there are serious repercussions for contractors who misrepresent their coverage, the damage will have already been done to your condo's insurance policy.



## Ensure You Are Hiring a Properly Licensed & Insured Contractor

The first step is to request to see detailed insurance policy information from the contractor. The condo association or HOA manager should request a certificate of insurance, and take the additional step of calling the listed insurance agent in order to obtain information on coverage limits and validity of the policy.



What insurance limits should you look for? For contractors painting the exterior of a 10-story condo building, the common \$1 million liability limit might not be sufficient. Proper coverage should include an excess limit or clauses explicitly stating excess liability. This is because a shortfall in the contractor's liability policy could hold your association liable for the difference in the claimed amount.

Depending on the nature of the work that you need done, be sure to specify the coverage limits that will best protect you from liability. The good news is that since most condo association or HOAs have their own workers' compensation policy, shortfalls in the contractor's liability can be covered by the association's policy.



## What a Contractor Should Include in Their Contract

It should go without saying that a vendor contract is a necessity for even the smallest job that needs to be done. Managers should not try to short cut the process under any circumstances, because the liability ramifications can be huge — even for a small job. A well-written and detailed contract should be prepared by the contractor and reviewed by the condo association or HOA's board and legal counsel. The contract should be clear and specific, outlining the services being provided.

### **It is important for the following items to be included in the contract:**

1. The scope of work to be carried out by the contractor: This includes any painting, pressure-washing, waterproofing, caulking and wood replacement.
2. The time line for completion of the work, including what should be done if deadlines are not met or if delays occur.
3. The price to be paid: This is one of the most important parts of the contract. If the scope of the job includes a combination of services such as painting along with pressure washing, the contractor may provide separate pricing for each service.

### **This information should be explicitly stated in the contract, and how each service will be paid for:**

1. How contract breaches will be addressed
2. Employment status of the vendor: The contract should explicitly state if the vendor is an independent contractor or an employee. The working relationship must also be clearly defined.
3. Liability clauses: The contract should explicitly state who is liable for damages to persons and property, and under what circumstances.

# Who Should Review the Contract?

Legal language can be complex to understand, even for most managers. A vendor contract may exclude a single clause that leads to the condo association or HOA assuming more liability than they thought. For example, indemnification and arbitrary provisions can cause a noticeable swing in liability exposure. It is therefore important for the contract to be reviewed by legal counsel representing the condo association or HOA. The counsel has experience in handling vendor contracts and can identify loopholes and controversial clauses within contracts.

The members of the condo's Board of Directors should also review vendor contracts to make approvals on the scope of the job to be done, pricing and payment information and their extent of liability by being parties to the contract. Before the final version of the contract is signed, the contractor, manager, legal counsel, and board should all be fully satisfied with its stipulations.

# Conclusion

To sum it all up, hiring a contractor to provide services for your condo association or HOA appears simpler than it actually is. While contractors provide many important services to associations on a regular basis, there are important legal frameworks that need to be considered when seeking vendor services. Contractors should be licensed, bonded and insured; and managers should be able to verify the information that the contractor provides.

In addition, the working relationship should be clearly defined and fall under an independent contractor status so that the association can avoid additional liabilities. Finally, the condo association or HOA and the contractor should agree on a contract that is detailed, clearly written and reviewed by legal counsel as well as the board of the condo association or HOA.



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