

Section 4

Contracting

The condominium association board has oversight into every aspect of association operations, and using outside experts should be an integral part of your management strategy. Board and committee members change periodically and commitment levels vary, therefore these professionals provide continuity and stability. In addition, whether they consult a qualified expert is one of the things they will be judged by—should anyone ever question their decisions.

There are a few basic procedures that the board should employ regardless of what type of consultant, expert, or contractor you hire, and there are a few specific things you should know about their primary professional partners—the attorney, accountant, reserve specialist, and insurance agent.

Decide what you need. Make a list, include the volume of work for each item on the list, and prioritize it. In some cases, this list may develop into a specification that you would use to solicit bids. In other cases, it may simply help you decide whether to pay a professional on an hourly basis or put them on retainer—a flat monthly fee. Share your list with all prospective candidates, and ask them if there is anything they would add to it.

Find the right people. Finding professionals who are knowledgeable about and specialize in condominium associations can be challenging, but it's vital that the professional partners understand your unique needs. The Yellow Pages won't have a subheading for condominium associations, but there are other good sources that can provide names of the people the board will want to work with. Other condominium associations in the area are another good source of referrals—as is a professional manager. Managers are an excellent source of information about professionals who specialize in condominium associations because they work with many of them daily. If they have already hired one professional like an accountant, for instance, that person can likely refer the board to appropriate attorneys, reserve specialists, or insurance professionals because they're all working in the same industry and tend to know one another.

General guidelines for selecting professionals

Contact several prime candidates. Share the condominium's list of needs, and invite them to submit a proposal or letter of interest. Decide on two or three and invite them to meet

with the board for an interview. The sections below provide somewhat more detailed information on this part of the process for each professional the board will work with.

Check references. Always ask for at least three references. Prepare four or five key questions, pose the same questions to each reference, and compare the responses. Don't rely on the references to make the decision—use the information received to confirm a decision the board has already made or to help decide between two equally acceptable candidates. Also, ask other professionals, such as attorneys or engineers, for information about the chosen candidate. Use this information to confirm that the best choice is made.

Create a small team to interview candidates. The board will work closely with the professional you select, so you want to select someone you are comfortable with. Therefore, more than one member of the board should be on the team. You may want to also include unit owners or other who are not on the board, but who can share useful opinions and impressions.

Visit each candidate's office. Make appointments to visit each candidate for a consultation during regular business hours in his or her office. Take note of how far in the future the consultation is set—this may be an indication of how accessible the professional will be in the future. At the time you make the appointment, ask that literature about their firm or business be mailed to you. Ask for samples of billing statements, monthly status reports, opinion letters or other relevant documents. Also, ask for references from other community association clients.

Look for professionalism and timeliness. During your consultation, observe the professionalism and timeliness of the professional and their staff. For instance, was your team kept waiting?

Be candid and informative. Let the professional know that you are “shopping,” and that you will be interviewing more than one candidate. Give the candidate the list you compiled of your association's needs. Include on the list the name and phone number of one member of the team who is the primary contact.

After the team has interviewed all the candidates, discuss the results. These will vary between professionals and firms, so you will be comparing apples to oranges—however unavoidably. Focus on the differences, and see how important those areas are to the unique needs of your association. Rank your list and select the candidate you believe best fits the association and the personalities of the Board members.

Once you've made your decision, ask the professional you selected to draw up a detailed engagement letter (a contract between the association and the law firm) that sets out the hourly fees for all billable personnel (including minimum billing increments). If you decide not to pay by the hour, ask for a list of standard fees and ask how direct costs such as copying and faxing are billed.

Where to Get Referrals of Qualified Professionals

- Ask other condominiums in your area who they work with.
- Ask other professionals already working for your association.
- Contact the local or state office of the appropriate professional organization, such as the bar association or CPA society.
- Contact your state licensing organization. If it recognizes a real estate or association specialization, it may have a directory of members.

Review the condominium association professional's performance periodically. Make sure that everyone understands what is expected. Don't settle for second best. If the board members are not satisfied, begin the search again until the best professional for your association is found.

The Attorney

There are nearly a million licensed attorneys in the United States at the beginning of the 21st century. Finding one that specializes in community association law and fits the unique needs of the condominium requires the board to be informed and organized. The more organized your search, the more successful the board is likely to be.

What Attorneys Do For Condominium associations

1. *Collect Delinquent Assessments*: Write and send routine demand letters, file liens, process foreclosures, litigate if necessary.
2. *Enforce Deed Restrictions*: Write and send routine demand letters, file lawsuits, litigate if necessary.
3. *Litigate*: for collections, to enforce deed restrictions, to defend the board.
4. *Review Documents*: Review governing documents, rules proposed by the board, or contracts with other service providers.
5. *Provide Legal Opinions*: Advise the board in all matters pertaining to the association.
6. *Educate*: attend meetings to answer questions, explain concepts or documents, and provide information to unit owners or board members.

Interview Questions for the Attorney

Develop a standard set of questions to pose to prospective attorneys during an interview. Place the most important questions first in case you don't get through all the questions. Consider questions covering the following areas.

- *Personnel*: Ask about the attorney's education and experience—especially in community association matters. Ask whether the attorney employs any associates. How many other support staff would work on your account?
- *Documents*: Review with the attorney the billing statements monthly status reports, legal opinion letters or other sample documents that you received prior to the consultation. Ask that the billing rate and type of billing be fully explained. Make sure you understand and find acceptable the reports and legal opinion letters.
- *Qualifications*: Ask the attorney what certifications he or she may have. For example, your state may require board certification. Ask whether the attorney specializes in community association law. Ask what percentage of the practice is devoted to association law and the type of community association issues typically addressed.
- *Billing*: Ask if it is standard procedure for an assignment to be given to the lowest-billing person when possible. Ask questions about hourly rates, retainers, and direct costs.

The Accountant

Before the board embarks on its search for the right accountant for your community association, they need to be aware that there are different types of accountants. They can be sole practitioners or associates in a large firm. They can be public accountants (PCs) or certified public accountants (CPAs). CPAs are licensed by the state, and only they are qualified to perform audits. CPA firms are monitored by peer review, and they should ask for a copy of the last peer review from any firm they are considering hiring. Since only a CPA can perform the services required by your governing documents, the board will want to make sure to select this type of professional.

How to Work Effectively with the Accountant

Regard the relationship as long-term. The advantage to developing a long-term relationship with an accountant is that it provides consistency and historical perspective for new board members and volunteers.

Know what you want. There are two types of services the accountant can provide to the association—required and discretionary. The governing documents will tell the board which is which for your condominium. For instance, audits and financial statements are usually required, and the documents will specify the requirements for the audit or state when the financial statements should be completed. On the other hand, if the board is assuming management from a developer or management company, they may want additional discretionary services. Specialized discretionary services might be needed if the association is facing potential litigation or finds itself in unusual circumstances.

Define the accountant's role. Consider the capabilities and roles of the volunteers who will work with the accountant such as the board, the treasurer, or the finance committee. Consider also the capabilities and job descriptions of the staff. Are there gaps the board wants the accountant to fill? Who will the accountant work with most directly—volunteers or staff, treasurer or finance chair? Answering these questions will help define roles, responsibilities, and expectations for each person involved.

What Accountants Do For Community Associations

- Audits and transition audits
- Reviews
- Compilations
- Budgets
- Expert testimony
- Reserve studies
- Tax returns
- Performance reports
- Develop accounting policies and procedures
- Design and implement systems for internal control
- Formulate investment policies
- Evaluate, select, and install accounting software
- Train bookkeepers and other accounting staff
- Prepare monthly or quarterly financial statements
- Make recommendations for interviewing and hiring accounting staff
- Educate and train board or committee members on technical matters
- Make presentations at meetings
- Evaluate and explain work of other professionals such as engineers
- Evaluate and advise on replacement funding strategies
- Advise on budgets and long-term financial plans
- Assist in obtaining financing
- Answer technical questions
- Provide business and financial advice

Set a schedule. Let the accountant know when work is to be completed and when reports such as financial statements should be delivered to the board. Similarly, ask the accountant when he or she needs certain documents from the board in order to complete services, particularly audits, reviews and compilations. If they gather these documents for the accountant, it may save time, and perhaps lower the audit fees. Include on the schedule a date for the accountant to meet with the board or treasurer to discuss the audit results. Ask for this in writing and ask the accountant to include his or her observations of or comments about conditions the board should be aware of.

The accountant is a vital part of the condominium's professional team. Success requires that the board knows what the accountant does, how they can benefit from the accountant's capabilities, and what they want and need. As the board develops a long-term relationship with their accountant, the condominium will benefit from his or her advice, industry expertise, and wisdom.

The Reserve Specialist

From time to time the condominium needs to replace some very expensive common elements such as a roof. The board must set aside enough money each year for that roof so that when the time comes to replace it, they have the funds to cover it. How do you know how long the roof will last? How do they know how much the new roof will cost at that time in the future? A reserve specialist can answer these questions.

The reserve specialist will prepare a reserve study that provides you with guidance on how to keep the condominium's physical assets from deteriorating faster than the financial assets increase. That study will include an inventory of items that need to be replaced, an estimate of the useful remaining of these items, and estimate of the cost to replace them, and a plan for funding the replacement.

The reserve specialist cannot prepare a reserve study without the board's help. He or she will need information such as records of past projects and the most recent reserve balance and the rate of reserve contributions. Additionally, they can provide information on the current condition of certain major components that may not be obvious.

Types of Reserve Studies

Full reserve studies and update reserve studies are the most common approaches to analyzing the condominium's future needs. A full reserve study includes a site visit, and an update study may or may not. If the condominium hasn't conducted a reserve analysis, or hasn't had an older analysis updated recently, the board should begin with a full reserve study and maintain it with periodic update studies.

For a **full reserve study**, the reserve specialist will visit and inspect the condominium carefully. He or she will prepare an inventory of all components, assess the conditions, estimate the life and value of the common elements, analyze the reserve fund status, and recommend future funding. During the on-site inspection, the reserve specialist will evaluate all the condominium's common elements to determine which should be included in the reserve component list by answering four questions:

1. Is it a common element maintenance responsibility?

2. Is the component life limited?
3. Does the component have a predictable life limit?
4. Is the replacement cost above a minimum threshold level?

In an **update reserve study**, the reserve specialist will also visit and inspect the condominium, assess the condition of the existing inventory, estimate the life and value of the common elements, analyze the status of the reserve funds, and recommend a plan for future funding. However, this study takes less time than the full reserve study because the reserve specialist will only re-evaluate items on the reserve component list and will only spot check a few quantities for accuracy.

The reserve specialist can also complete an update reserve study without a site visit. For this update, the reserve specialist adjusts the life and value of the existing inventory and funds.

The reserve specialist has the expertise and experience to accurately determine the life cycles of your association's components. He or she can evaluate not only physical deterioration (the surface of the tennis court is chipped and cracking), but also aesthetic decay (the recreation room looks like a 1960s movie set) and technological obsolescence (the intercom still works, but replacement parts are no longer available). In addition, the reserve specialist also has a number of resources with which to develop appropriate repair or replacement cost estimates.

In addition to evaluating the physical components of the condominium association, the reserve specialist is also expert in analyzing the financial resources needed to maintain the common elements over time. The reserve specialist balances the size of the reserve fund against the deterioration of the reserve components in the reserve funding plan.

The condominium association's physical assets are constantly decaying, but the reserve studies prepared regularly by your reserve specialist will provide the board with the information they need to protect these assets.

The Insurance Agent

Insurance agents, like doctors and lawyers, have a broad range of specialties and areas of expertise. Condominium associations have unique needs and exposures, so the board must select an agent with experience in this area.

Once the board has selected the insurance agent, they will vest in that person and his or her firm the same confidence they have in your attorney and accountant. When they establish and maintain a successful, long-term relationship with your agent, they contribute to the stability and security of the condominium and to the success of its asset protection plan.

Your insurance agent should be an advocate and a resource. If they select someone who has worked with condominium associations, the board can expect an extra measure of professionalism and experience. Developing a positive working relationship with your agent improves your chances of satisfactorily meeting everyone's needs—the condominium's and the resident's.

To implement the insurance aspects of the board's plan, it is important for the board to have some basic information about the insurance industry. Some insurance agencies place insurance for more than one insurance company. Others place insurance only with their company. Also, some agents or brokers can bind (legally commit) the insurance carrier and others cannot. Therefore, the board should ask an insurance representative whether he or she has the power to enter into a contract on behalf of the association.

The board should also consider if the insurance carrier or its agents have attained professional designations such as **CPCU (Charter Property and Casualty Underwriter)**, **ARM (Associate in Risk Management)**, or **AIS (Associate in Insurance Services)**.

A good relationship with the carrier is crucial because it helps to ensure efficient servicing of the policy. It is also helpful because:

1. The carrier's representatives can conduct a risk management study of the

What Insurance Agents Do For Associations

- Review the association's documents, recommend the legal minimum insurance requirement, and recommend additional coverage that might be appropriate.
- Inspect the community physical layout and amenities and identify exposure that needs to be addressed.
- Verify the property values for replacement and/or reproduction costs. This can be accomplished through an appraisal service, a company survey or various other means.
- Review the association's fidelity bond, and ensure that all parties (board members, committee members and managers) with access to the association's assets are included in the definition of an employee.
- Obtain premium quotations, and help the board select the program that best suits the association's needs.
- Explain to the board, in plain English, the coverage being offered as well as the exclusions and limitations of each.
- Educate the residents about the association's policy at an association meeting or by preparing a written fact sheet or letter. Explain where the association's coverage stops and the residents' and owners' responsibilities begin.
- Offer the unit owners special coverage and reduced rates.
- Assist the board in drafting a resolution stating how claims deductibles will be processed.
- Create a claims procedure manual.
- Customize a risk-management program
- Review the association's claims annually and recommend how the association can reduce similar future claims.

community that might help the association reduce the cost of insurance.

2. The carrier's agent can help educate the association owners.

The board must also consider which carrier will offer the most insurance for the best price. Therefore, the board must solicit bids in a manner that will permit it to compare bids systematically.

Maintenance Contracting

In some situations, the maintenance committee may actually perform minor maintenance functions. This is particularly true in communities that must keep assessments as low as possible. In most communities, however, the day-to-day maintenance functions are performed by employees or outside contractors.

Some of the advantages of hiring *in-house employees* include the following:

1. They are available during business hours, and sometimes after hours, to address emergencies.
2. They are responsive to association leaders.
3. They may have a high level of pride in the community.
4. They can provide continuity.
5. Their work schedules can be flexible to adapt to circumstances such as weather.

Some of the advantages of hiring *independent contractors* include:

1. They are more likely to be specialists.
2. They eliminate the expense of equipment and storage.
3. They pay for insurance including property, liability, and worker's compensation insurance.
4. They are responsible for preparing income tax forms.
5. The association knows its costs in advance.
6. The board is not required to directly supervise workers.

Many of these advantages only exist if the person legally qualifies as an independent contractor. The board should consult its attorney to determine the legal criteria for determining independent contractor status.

In order to determine whether to hire in-house employees or outside contractors, the board should consider the level of expertise required to perform the tasks. Generally, a higher level of expertise and talent is available from outside contractors.

It should also consider how labor intensive the maintenance function is. If the maintenance activity requires extensive personnel on a short-term basis, the association may prefer to rely on a contractor.

Another factor the board should consider is the type and amount of equipment and supplies necessary to perform the function. If the function requires specialized tools and

equipment or a substantial investment for supplies, the board may prefer to use a contractor.

If the maintenance tasks require substantial equipment and supplies, the board needs to determine whether it has sufficient space to store the equipment and supplies. If association property does not have the capacity to provide work or storage space for personnel, equipment, and supplies, the board should hire a contractor.

There are three general types of maintenance contracts.

1. ***Service Contract***—A typical service contract covers recurring maintenance needs. Examples of maintenance service contracts include those for maintaining landscaping, pools, grounds, and parking areas; and contracts for janitorial, pest control, heating, and air-conditioning services. A service contract should specify the level of service needed, the dates of performance, and whether or not materials are included in the contract, as well as the price for service and the payment schedule.

2. ***Specific repair contracts***—These contracts are designed to address infrequent, nonscheduled maintenance and repair needs. These needs include painting exterior structures, repairing roofs, repairing asphalt paving, restriping parking areas, and renovating landscaping. The terms of this type of contract should be job specific.

3. ***Preventive Maintenance Contracts***—Typically, preventive maintenance contracts provide for routine inspection and maintenance of mechanical equipment and components. These components include electrical distribution systems, pool equipment machinery, air conditioning and heating equipment, boilers and hot water heaters, elevators, fire extinguishers and fire sprinkler systems, and grounds maintenance equipment.

If the association has a professional manager, the manager or management company also will play a role in the maintenance management system. The manager's principal role will be to develop a maintenance program that is consistent with the standards and goals established by the board. It will oversee the maintenance functions and supervise volunteers, employees, and contractors. He or she will also evaluate performance and maintenance needs and recommend actions to the board. Management can assist the board in recruiting, selecting, and supervising independent contractors. Depending on the size of the company, some management companies also perform maintenance tasks.

Additional Resources

How to Select & Use Association Legal Counsel (GAP 13). Hindman & Jordan, Community Associations Institute, 1998.

Bid Specifications & Contract Preparation, 3rd Ed., (GAP 9). Stephen R. Bupp, CMCA®, AMS®, PCAM®, Community Associations Institute, 1997.

Community Association Insurance: A Guide for Condominium, Cooperatives, and Planned Communities, 4th Ed. (GAP 4), Treese & Rosenberry. Community Associations Institute, 1997.

Community Association Risk Management, 3rd Ed., (GAP 25), Treese, Community Associations Institute, 1998.

A Complete Guide to Reserve Funding and Reserve Investment Strategies, 4th Ed., (GAP 24), Frumkin & Juall, Eds., Community Associations Institute, 2001.

Notes