

# Contract Tips That Will Save Your CIC Money

by Jeffrey C. O'Brien, Esq., Mansfield Tanick & Cohen, P.A.

If I had to choose one common mistake that I have seen time and again that businesses make when it comes to legal matters, I would have to say that it would be the failure to have proper, written contracts. Many legal disputes arise out of business transactions that are not documented, or are improperly documented.

The CIC world is no different than any other business setting. There are a multitude of contracts that arise in a CIC: lawn care and snow removal, waste removal, swimming pool servicing, maintenance, storm damage repair, management, capital improvement projects, all the way to community room rental contracts. In other words, contracts are as much a part of CICs as any other corner of the world, and care must be taken to properly document these contractual relationships.

## Statute of Frauds

In many instances, the law requires contracts to be in writing in order to be enforceable. Minnesota has a statute called the "Statute of Frauds" which requires certain contracts to be in writing to be enforceable. Minn. Stat. §§ 513.01-513.07. These include contracts for the sale of real estate, contracts for the sale of goods of \$500 or more, contracts that cannot be performed within one year, and

leases for more than one year. Without a written contract, attorneys such as myself are left trying to proceed with cases based on equitable grounds such as promissory estoppel, a far weaker position than an action for breach of a written contract.

## Clear Deal Terms and Remedies

A written contract, if properly worded, provides a clear explanation of the parties' deal terms in ways that handshake deals and/or verbal agreements cannot, as well as clear descriptions of the parties' respective obligations to each other. Further, a properly drafted written contract provides for adequate remedies in the event a party breaches the contract. For example, Minnesota law does not allow a non-breaching party to recover attorney fees in an action to enforce a contract unless the contract provides explicitly for such remedy. Hence, especially with contracts involving small amounts of money, whether a written contract allows for the recovery of attorney fees could mean the difference between bringing a lawsuit or writing off the debt.

## Dispute Resolution Mechanisms

Furthermore, and especially when you engage a business attorney worth their salt, your written contracts can provide for dispute resolution mechanisms short

of a full-blown court lawsuit that can save all parties time and money in avoiding litigation. Whether the alternative dispute resolution method be mediation, arbitration or something else, these processes can take less time and less money for the parties to resolve their dispute. Absent a contractual provision providing for alternative dispute resolution, however, the parties will have to proceed to court if they cannot voluntarily settle their issue (although the court will likely order mediation at some point prior to trial).

## Signing Contracts Incorrectly Can Put Officers at Risk

A corollary mistake made by business owners, in particular, when it comes to contracts is signing the contract on behalf of the wrong party. Too often, business owners who have taken the time, trouble and expense to set up a corporation or limited liability company for the sole purpose of shielding his or her personal assets from business liabilities defeat this purpose by signing written contracts in

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## GOVERNING DOCUMENTS *continued from page 5*

property records against a Common Interest Community Certificate of Title ("CICCT") instead of requiring it to be recorded separately against each individual unit within the Association.

It is not recommended that an association attempt to amend its governing documents without the assistance of an attorney experienced in this area, as an improper amendment and/or failure to follow the required procedures may invalidate the amendment and subject the association and/or board of directors to possible litigation by homeowners affected by the proposed amendment.

Additionally, amendments that are not properly drafted may be difficult to enforce either because the language used is vague or unclear or because the amendment actually conflicts with one or more other provisions of the governing documents or applicable statutes. For questions on amending your governing documents, feel free to contact the author. ■

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# Estimating How Long Your Roof Will Last

by Clay Curran, American Building Contractors, Inc.

Unless you have residents calling you up every time it rains, you probably don't spend a lot of time thinking about replacing your old, sloped, asphalt shingle roofs. On the surface, this makes perfect sense. You don't change a light bulb just because it's been in the lamp for a long time; you wait until it burns out. Unfortunately, the two situations are not analogous. A burned out bulb may be inconvenient, but it is not causing thousands of dollars worth of damage to your building until you can swap it out. Also, when you do decide to replace your roof, you can't just run down to Walgreens and buy one with the change you find in your couch cushions. When your roof gets close to the end of its useful life, you need to be ready with a budget and a plan.

## Factors Beyond Your Control

How can you tell how long your current roof will last? Unfortunately, there is no guaranteed answer. A number of factors beyond your control may play a critical part in its longevity. Depending on the severity, any of these conditions could significantly shorten its useful life. They include, but are not limited to:

- the quality of the labor and materials used on the original installation,
- the functionality of the roof's ventilation system,
- the exposure to environmental conditions (wind, sun, pollution),

- and non-essential foot traffic (hanging lights, adjusting antennae, etc.).

What are some things we *do know* that can help us estimate how long it will be until the roof needs to be replaced?

## Age

Let's start with the age of the roof. This is where a lot of people get confused. Don't be fooled by the number that was on the packages of shingles you bought (e.g. 30 years). Maybe roofs last that long somewhere, but not in Minnesota. Hot summers and cold winters take their toll on shingles. Assuming that the issues above are not significant factors, a realistic estimate would be closer to 10-12 years of solid, problem-free life, and maybe another 5-8 years where the roof is really on borrowed time, and periodic repairs may be necessary. But if your sloped, asphalt shingle roof is in this age range, you better start getting your plan together quickly.

## Condition

The second thing to consider is the observable condition of the roof. Obviously, be careful not to damage the roof while making these determinations. Things that should be cause for alarm are lifted and missing shingles, curling ends and shingle blistering (which looks exactly like it sounds). Even more disturbing is granular loss on the shingles. I'm not talking about finding a few granules in the gutter, which is completely normal. I'm talking about bare patches

on the shingles themselves. Those ceramic granules not only make the shingle look pretty, they protect the asphalt in the shingle from the sun's harmful UV rays. If the asphalt in your shingle is exposed to the sun, it's only a matter of time before it shrinks and decays, leaving you with a hole in your roof. When your roof starts exhibiting any of these problems, again, you better start figuring out how you can get the roof replaced in the relatively near future. If you're not comfortable determining the condition of the roof yourself, have a competent roofing contractor take a look and give you an honest evaluation. If you play your cards right, you can probably find someone to do this at no cost.

Most people feel the litmus test for a roof is: "Is it leaking?" While leaking is a great indicator that there is a problem, it is not the best gauge for determining the general condition of the roof. First, it's possible (and probably more likely) that a leak is due to something other than degraded shingles. Most leaks turn out to be some kind of flashing issue. If this turns out to be the case, a simple repair should correct the problem. I suppose I should note that the older the shingles get, the more brittle they become, and attempts to repair them are more difficult and less successful.

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their own name(s) instead of as an officer of the entity. This mistake results in the owner being personally responsible for the performance of that contract and puts the owner's personal assets at risk.

In summary, the simple act of negotiating a proper written contract – and incurring the expense of hiring attorney to review and/or prepare the contract – can save businesses and their owners much greater expense in the future. ■

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