

Chapter 15 - Independent Contractors



Creating Community

ABC'S OF HOA LAW IN NEW MEXICO

A Guide to New Mexico Community Association Law

Independent Contractors

Many associations have questions regarding the hiring of independent contractors. For example, an association may wish to have a handy man perform services around the complex, or hire an owner in the community to shovel the snow off the walks in the winter. If the association is evaluating hiring an independent contractor, it should keep the following general principles in mind:

1. Is the independent contractor insured?

The purpose of insurance is to protect the association from any liability that the contractor may create. Additionally, if the contractor does not carry workers' compensation insurance, the association could possibly see itself dragged into a suit for any injury suffered by any employees or the contractor. If the association cannot find anyone else to perform the work that the association needs performed, the association should contact its own insurance company to see whether it can obtain any insurance to help protect itself in this situation. Additionally, the association could consider requiring the independent contractor to sign a waiver form claiming that it will not hold the association liable for any damage that the contractor suffers, and claiming that the contractor will indemnify the association for any property damage or personal injury caused by the contractor. However, although the waiver may be valid to the extent that the association does not act recklessly, the indemnification portion is only worth as much as the person is worth. If the contractor has no money, he will not be able to pay to indemnify the association and pay its costs of defense. That is why the association's insurance is so important.

2. Does the association have any other options?

If the association has a difficult time finding a contractor who is adequately insured, it may try to work with a neighboring subdivision to see if it can work out a contract with a contractor who is already performing work for other subdivisions in the area.