

Wisconsin Condominiums and Independent Contractors: Labels Count, But Not Too Much

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Practice Area: Community Associations

True Story:

Many years ago, a Milwaukee charity hired Steve, a sky diver, to jump out of an airplane. It was part of a promotion for the group's annual fund drive. The jumper hit the ground wrong and was injured. He made a claim for Workers compensation benefits, and the charity said, "He was no employee, he was a volunteer. He has never worked for us. He was unsupervised. We don't owe under this policy."

But one jump was enough, the Wisconsin Court of Appeals held. Steve was an employee and the charity was responsible.

Untrue Story, But It Could Happen:

Green Acre Condominium hired Jim, one of its members, to fix chimney screens on half a dozen roofs in the community. Jim was capable; he applied for the job and offered a good price. Jim signed a document acknowledging that he was an "independent contractor" and thus would pay his own social security taxes and be responsible for himself. Then Jim fell off the roof, and incurred substantial medical expenses.

In this *it could happen* story, we think Green Acre, not just Jim, has serious problems, now. Jim's medical insurer, or if he doesn't have one the hospital legal office, will wonder why the condominium isn't paying the medical expenses. The State of Wisconsin will ask the same question -- why wasn't Jim covered by Workers Compensation? If Green Acre does not have such a policy, it will probably be responsible for Jim's medical expenses and also a penalty -- all paid out of member funds. Perhaps worse, Jim is free to sue the Association, which he could not do if Workers Comp covered the fall.

This is what Steve the sky-diver, Jim the roof climber, the charity and Green Acre have in common: They discover too late that there can be nontraditional definitions of "employee" under various social welfare laws. Documents which attempt to contract for the status of "independent contractor" often are not respected. The facts rule, not written agreements.

Here Are Some Takeaways:

- If the individual is not actually running a business (with tools, other customers, perhaps signage, etc.) he is unlikely to be considered independent.
 - It is always good policy to review a contractor's workers compensation and liability policies before finalizing a contract.
 - Even if the worker has no supervision, if the worker's occupation exists only because of Green Acre, Green Acre will probably be deemed an employer.
 - Workers and unemployment compensation insurance agencies will rule in favor of "employee" status if doing so protects an individual who is otherwise unprotected. Compensation insurance was intended for this purpose. The IRS will rule in favor of "employee" status (regarding social security contributions and withholding) because it enhances revenue collection. Each of these agencies has ample legal justification for its decisions.
 - Moral: We recommend that our client associations carry liability insurance, of course, and also workers compensation insurance in at least a minimum amount, even if there are no regular employees. Review your insurance with an agent familiar with your operations and always talk to a lawyer or an accountant before concluding the worker is an "independent contractor" who must fend for himself.
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