

A Contract Reminder For Wisconsin Condominium Associations

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Practice Area: Community Associations

Hold-Harmless Clauses In Contracts Are Not Harmless - Handle With Care.

Several years ago, a friend and I were taking our then-young sons to an indoor climbing facility, and before the kids could don their helmets and start to scale the wall, we grown-ups had to sign releases which absolved the place of any liability and agreed to protect the place if it got sued.

"Oh, those aren't enforceable," my friend said, as he casually signed. I also signed, though less casually. Thank goodness, we never had to test his theory that clauses which release others for their own negligence are not enforceable. We think condominium boards should be wary of such clauses and assume that these clauses are enforced.

Here is a worse story.

A non-Wisconsin condominium hired a fire protection company. The company failed to install the sprinklers properly and did not discover the problem even though it also had the inspection contract. There was a serious loss due to smoke and fire.

The facts:

- The condominium board had signed a contract which not only absolved the fire protection company of liability for its own negligence; it also agreed to hold the company "harmless", which meant that the condo association promised to pay the costs and fees and damages attributed to the fire protection company.
- The fire protection company, but not the condominium, was sued.
- The company demanded that the condominium hire a lawyer to defend it, i.e., to hold it harmless.
- The condominium's insurance company said: We do not insure you or provide a defense for you based on your contractual assumption of liability of someone else where you have no liability of your own. Sorry.

The morals of the story:

- All contracts should be reviewed.
- Don't assume pre-printed contract forms are gospel (you probably knew that already).
- Protecting a vendor (through a hold-harmless clause) from claims of your members is a bad idea. You don't control your members.

Wisconsin condominium boards should treat hold-harmless clauses with extreme caution. While there may be defenses to such clauses, start with the assumption that they may wreak havoc.

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