

BURDMAN & WARD

ATTORNEYS AT LAW

Construction Defect Attorneys
Tel. 888-350-9080
www.burdmanlaw.com

Law in Hand

RECONSTRUCTION SAVVY: MANAGING THE RECONSTRUCTION PROJECT

This is the final part of a three-part series providing an overview of the steps necessary for a successful reconstruction project. This final segment focuses on managing the reconstruction project.

Now that your association has chosen a contractor, and the reconstruction work is about to begin, you will play a key role as community manager to ensure the reconstruction project runs smoothly.

Establish the Community Manager's Role from the Beginning

Before construction starts, it is vital to establish your role and that of the board members or other homeowners who are participating in overseeing the reconstruction. Some associations will want to establish a reconstruction committee for the purpose of overseeing the reconstruction. As a community manager, your role should be limited to facilitating communications between the association, the reconstruction committee, homeowners, and the contractor.

Establish early who will be the main contact for communication with the contractor and who will be the point of contact for homeowners who have questions and concerns. The main contact may be you as the community manager, it may be the board president or other board member, or it may be a member of the reconstruction committee. Whoever this person is, it should be someone who is available on a full-time basis to communicate with the contractor. The contact person must be available to be on-site in a short period of time if a problem occurs. Because many board members work during the day and may not be available if a problem arises, this contact role may be best suited for the community manager. Whoever the contact person is, the contractor should be informed that all communications go through this individual.

Should the Association Hire a Construction Manager?

If the reconstruction project is large, or if there is no one available to oversee the project on a full-time basis, your association should give serious consideration to hiring a construction manager. Often, the construction manager will be a licensed general contractor who is independent from the contractor doing the actual work. This second contractor should have the expertise necessary to watch over the contractor and any subcontractors to ensure all necessary permits are obtained, all necessary inspections are conducted, and the work performed meets with the board's expectations.

The construction manager should ensure that the building permits are posted at the job site before work begins along with the plans and specifications. Additional copies of the plans and specifications should further be available for review by the various trades as work progresses.

The construction manager should maintain a job file as the project progresses. This job file should include copies of the contract, permits, change orders, inspection reports, receipts, notes, progress photographs, lien releases, punch-lists, correspondence, and all other documents related to the reconstruction project. Ensure the board maintains a copy of the job files in case any dispute arises.

During Construction

Except for the original down payment, progress payments to the contractor should not exceed the value of the work performed.

If a change to the scope of work or other change to the contract is necessary after work has started, this must be done by drafting a written change order. The change order must be agreed upon and signed by the contractor and the board, and becomes part of the reconstruction contract. This change order should clearly specify the changes required, and how much is added or subtracted to the original contract price as a result. The change order must also include the contractor's name, address, and license number, the approximate dates when the work will begin and be completed, a legal description of the location where the work will be done, and a "Notice to Owner" mechanics lien statement. The contractor must complete the job for the contract price, including any change orders submitted.

Keep the Homeowners Informed

During the construction process, it is important to keep the homeowners advised of what will occur so as to minimize any inconvenience or concerns. The homeowners should be notified at least a week in advance of any part of the reconstruction that will restrict homeowners' access to any part of the community. For example, if the community pool will be closed during reconstruction or certain parking spaces will be unavailable, notice of this inconvenience should be posted on each homeowners' door at least one week in advance, with a reminder posted 24 hours before the work begins. On this notice, be sure to provide a name and phone number of the association's contact person. Maintaining clear communications with the homeowners will go along way to assuring a smooth and orderly project.

The Final Walk Through

Before the association makes the final payment, the contractor should have a final inspection with the building department.

Additionally, the construction manager should conduct a walk-through with the contractor and create a punch list of final items to be completed. The board should not make the final payment to the contractor until all punch list items are completed to the board's satisfaction.

What If Problems Occur?

Sometimes, even if your association does everything right, problems with the contractor will arise. The board should attempt to resolve any problems directly with the contractor first. The board should do so in writing, clearly identifying the problem, and what the contractor must do to resolve the issue. If the board and contractor cannot resolve the issue, a complaint can be filed with the Contractors State License Board. Complaints may be filed for many reasons, including, but not limited to, poor workmanship, breach of contract, abandonment, building code violations, or failure to pay subcontractors, material suppliers, or employees. If a goal of the board is to obtain restitution from the contractor, the board should consult with an attorney before filing the complaint.

The Contractors State License Board operates an arbitration program for resolving disputes that involve restitution up to \$50,000. If the amount at issue is less than \$12,500, the contractor must submit to the arbitration. If the amount is between \$12,500 and \$50,000, the contractor's participation in arbitration is voluntary. Regardless of the amount, participation in the program is always voluntary to the consumer. If the dispute is not handled through the arbitration program, the board can pursue its remedy in court, or by other means provided for in the contract.

Obtain Lien Releases

Shortly after the job commences, the board may receive preliminary lien notices from subcontractors and suppliers. These notices serve the purpose of letting the board know the names of each subcontractor and supplier the board needs to receive a lien release from before the work is complete. The contractor should obtain these lien releases for the board before final payment is made.

Part two of this series, went into greater detail on the issue of mechanic's liens and ways to protect against them. These methods include putting a "release-of-lien" clause in the construction contract, using a joint control company, and obtaining a payment bond. The board should maintain a checklist of contractors, subcontractors, and material providers and whether lien releases have been received for each phase of the reconstruction project.

In all, any reconstruction project will involve difficult situations and present complicated issues. However, advanced and proper planning will help make a complicated process a bit easier.

If you think you have potential construction defects, contact Burdman & Ward for a free, no obligation inspection with a licensed contractor.

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