

HELPING TO CREATE A PERFECT SUMMER

By Sara Barry, CMCA PCAM – Director of Operations
UNLV Certified Paralegal
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

Summer is fast approaching, if not already here by the publication of this newsletter. With summer coming an increased usage of the common areas of your community is expected. Even though they are used in Las Vegas to a certain extent all year long, spring, summer (evenings) and fall bring out more residents who want to enjoy a stroll along the paths and sidewalks and the pool and tennis courts and other recreational facilities. These will become the social hubs of your community. As a member of the Board or a Community Manager, you know that serious preparing for summer begins in the early springtime.

The decisions you make now will determine how perfect your summer will be as getting your communities ready now will have a lot to do with the outcome. The most efficient way to help guide the association in the “Perfect Summer” direction is to create a well scheduled, affordable list of maintenance and repair needs, establishing proper hiring procedures for those chosen to handle that list, and procuring adequate levels of insurance for the association during its busiest season.

The spring maintenance list should address the reasonable expectations of association members for the upkeep of the community, always keeping in mind, of course, the ability to meet those expectations. Gearing up for summer may mean no more than paying attention to small details – buying new signs for the pool area, turning on the solar heating, pounding nails into warped boards or re-stenciling unit numbers on the carports. On a much larger scale, maybe it is time to replace the tattered carpet in the clubhouse, improve the lighting or upgrading or converting the landscaping.

The community’s standards, the operating budget, the reserve study, and the actual conditions observed in your development will all aid the Board in creating the list of springtime to-do’s. Maintenance that needs to be completed for safety reasons or eliminating liability problems always comes first in creating the list. Then the Board and Manager can concentrate on maintaining the property to “Preserve, Protect and Enhance” the assets and value of the property.

Once a maintenance schedule has been prepared, it is critical that you take a seriously close look at who will be handling the work for you. To protect the association and the owners, you must clearly decide if those used to paint, pound and plant are to be association employees or not. If the Board has made a conscious decision to become an employer, it must do such things as obtain workers’ compensation insurance, have on hand and distribute a Illness and Injury Prevention Program, follow the hiring accommodation requirements of the Americans with Disabilities Act where applicable, inquire into the hiring eligibility of non-citizens and pay various employer-related taxes on each employee’s behalf.

Even though this may sound very burdensome, there are many associations of all sizes who do routinely accept employer responsibility for their workers and follow the proper procedures.

If the decision is made to hire no employees, then the Board must be very careful in hiring workers. In order to protect the associations financially, the association must confine its hiring to independent contractors. A true independent contractor is a person(s) who, among other critical provisions,

performs their work to the specifications requested but under their own direction. They bring their own tools, handle their own insurance and set their own hours. They also pay the appropriate taxes.

As an example, if the association hires Fred, the owner in Unit 200, to paint the trim in the complex for much less than a painting firm has bid does he provide this service for other persons? Will the association pay for the paint and supplies and give him weekly instructions? If so, \$10,000 later the job is complete, Fred leaves town, and the matter is history. Unfortunately, this is where the tax entities will come play as Fred never paid the taxes and according to tax rules Fred was an employee, not a contractor. Obviously the associations decision to hire Fred to save a few bucks was not a good one. This does not even take into consideration the insurance issue should Fred become disabled as a result of providing his service.

In a situation where the association is confident a worker is indeed an independent contractor, caution must also be exercised in the event that that contractor will bring other workers to the job site. The association should, at the least, strictly require any contractor employing others to provide evidence of valid contractor's license, liability insurance while on association property and current workers' compensation coverage for injury to those employees.

Looking at a Certificate of Insurance provided by the contractor is not enough. The Board needs to assess whether the limits on the contractor's policy have been reached and are there are enough funds remaining on the policy to handle potential property damage and liability exposures.

One last thing that the Board needs to assess is whether the association has adequate property and liability insurance for increased use as well. Vandalism usually peaks in the warm months with pools, sidewalks, stairs and parking lots becoming scenes of increased numbers of injuries as more people enjoy the outdoors. Unsupervised children can sometimes not only hurt property, but themselves and others as well. As each community's needs are different, an evaluation of insurance needs should be conducted with the association's insurance agent. This will help the Board to remain in "safe harbor" while fulfilling his and/or her fiduciary duty. Most documents require an annual review of the insurance policies and NRS 116 has insurance requirements as well. This is a good time to conduct the review and satisfy all areas.

As you prepare for the upcoming season, carrying out the most thorough maintenance program the association's budget will allow, utilizing prudent hiring practices to do so, and sufficiently insuring against major financial losses will all help to maximize the chances of enjoying the perfect summer and fall of this year.