



Community Association Maintenance

"A Legal Perspective"

CAI Saturday Seminar
March 10, 2012

Presented by:
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Partner
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Overview

- Legal definition of “Maintenance”
- Maintenance Responsibilities—the “Who”
- Types of contracts pertinent to HOAs
- Enforcement of contracts
 - Remedies
- Legal process
 - Arbitration
 - Mediation
 - Litigation
- Specific provisions pertinent to HOAs
- Licensed, Bonded & Insured
- Q&A

Define “Maintenance”

- Washington statutes
 - Condo Act
 - HOA Act
 - Non-Profit Corporations Act
- Governing Documents
- Rules/Resolutions
- Reserve Study
- Budgets

Maintenance Responsibility

- Who?
- What/Where?
- Chart



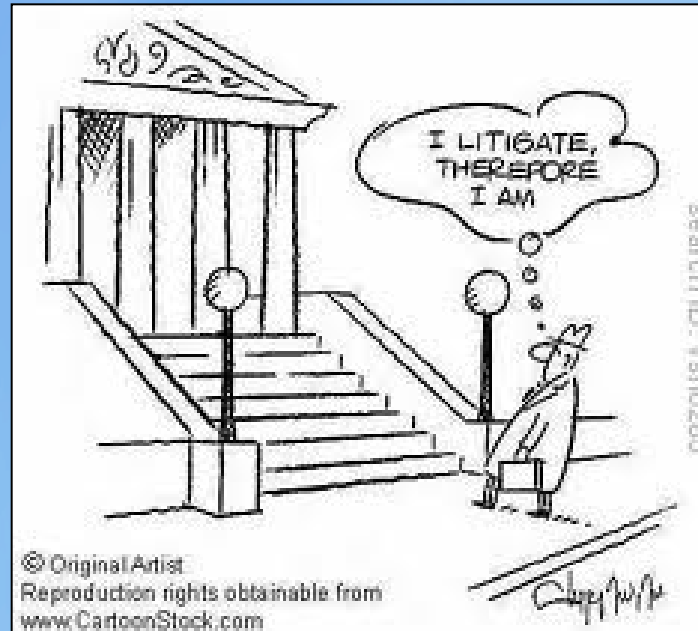
Types of Maintenance Contracts

- Management contracts
- Maintenance contracts
- Contractor / Construction



Legal Process

- Alternative Dispute Resolution (ADR)
 - Arbitration
 - Mediation
- Litigation
- Indemnity / Hold Harmless



Specific Contract Provisions

- Insurance – compatibility w/Declaration
- Limitations of liability
- Indemnity / Hold Harmless
- Third party insurance requirement
- Disclaimers
- Attorneys' fee provision
- Forum and dispute provisions
- Express warranties

Third-Party Insurance

- Require for large construction projects or high-risk activities
- Obtain copy of policy to verify coverage
 - Provide to Association's insurance agent/broker for review
 - AI certificate not sufficient

PRODUCER
 Redmond General Insurance Agcy
 PO Box 847
 Redmond WA 98073-0847
 Phone: 425-885-2283 Fax: 425-885-6631

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
 Mosbrucker Excavating, Inc.
 PO Box 745
 Bothell WA 98041

INSURER A: St. Paul Fire & Marine Ins. Co
 INSURER B:
 INSURER C:
 INSURER D:
 INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	KKO8400128	07/16/99	07/16/00	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$ 100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> Stop Gap				PERSONAL & ADV INJURY \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$ 2,000,000
<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					PRODUCTS - COMPIOP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY	KKO8400128	07/16/99	07/16/00	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> NON-OWNED AUTOS					
GARAGE LIABILITY					AUTO ONLY - EA ACCIDENT \$
<input type="checkbox"/> ANY AUTO					OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
A	EXCESS LIABILITY	KKO8400128	07/16/99	07/16/00	EACH OCCURRENCE \$ 4,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$ 4,000,000
	<input type="checkbox"/> DEDUCTIBLE				
<input checked="" type="checkbox"/> RETENTION \$ 10,000					
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					WC STATUTORY LIMITS OTHER
					E.L. EACH ACCIDENT \$
					E.L. DISEASE - EA EMPLOYEE \$
					E.L. DISEASE - POLICY LIMIT \$
OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 All operations of insured subject to policy terms and conditions

CERTIFICATE HOLDER ADDITIONAL INSURED; INSURER LETTER:
 GALLA03

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 Agency Account House



9. WARRANTY Jim Dandy Sewer Services, Inc. warrants that all labor, materials and taxes will be paid for, and there will be no potential lien claimants upon the completion of the work and final payment by the owner. Jim Dandy Sewer Services, Inc. further warrants that all work will be performed in a commercially reasonable manner and that there are no defects in materials or workmanship. This warranty is for a period of one (1) year from the date of final contract invoice. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY OR HABITABILITY OTHERWISE PROVIDED UNDER THE LAWS OF WASHINGTON. Any claim or cause of action arising under the terms of this contract, including the warranty, must be filed in a court of competent jurisdiction within one (1) year from the date of final contract invoice, Any claim or cause which is not so filed within one (1) year from the date of final contract invoice is waived. Any warranty work performed by Jim Dandy Sewer Services, Inc. does not extend the warranty of one (1) year from the date of the final contract invoice. This warranty shall be void if a person or firm other than Jim Dandy Sewer Services, Inc. performs or reperforms any work identified within the original scope of the work of this contract with Jim Dandy Sewer Services, Inc.

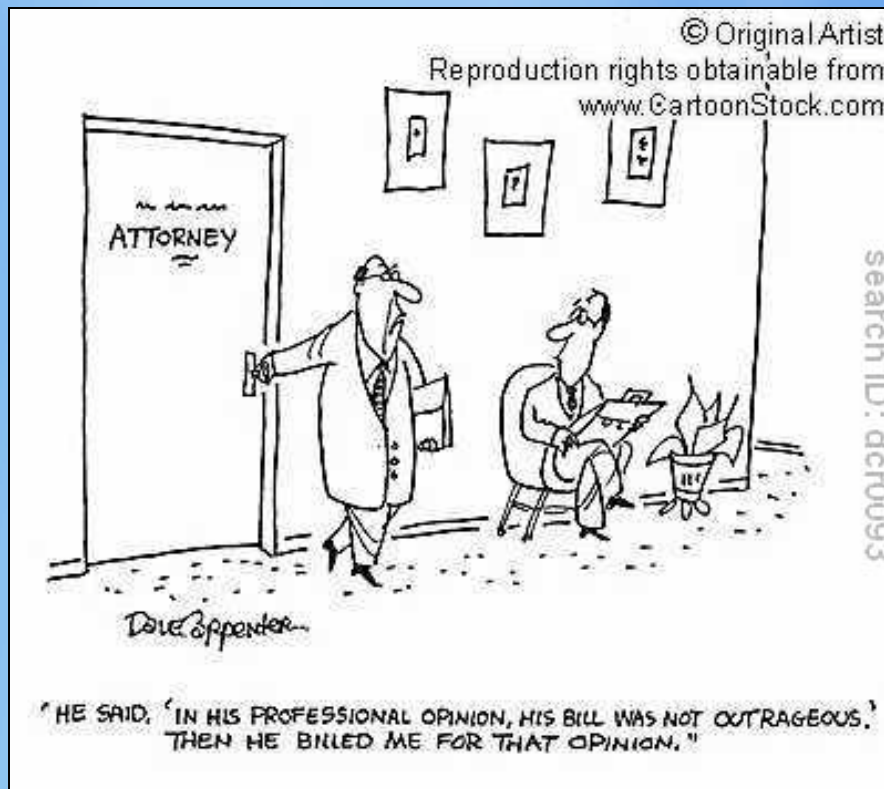
9. Punch List. Customer shall prepare a punch list of items necessary to be addressed for the Contractor to have performed every obligation to be performed on its behalf under the Agreement. Contractor and Customer specifically agree that: ANY ITEM OR CONCERN NOT ADDRESSED ON THE PUNCH LIST SHALL BE DEEMED FULLY AND FINALLY ACCEPTED BY THE CUSTOMER AS HAVING BEEN PROVIDED BY THE CONTRACTOR IN STRICT COMPLIANCE WITH THE AGREEMENT; AND WHEN CONTRACTOR ADDRESSES THE PARTICULAR CONCERN WITH AN ITEM AS NOTED ON THE PUNCH LIST THAT ITEM SHALL BE DEEMED FULLY AND FINALLY ACCEPTED BY THE CUSTOMER AS HAVING BEEN PROVIDED BY THE CONTRACTOR IN STRICT COMPLIANCE WITH THE AGREEMENT.
10. Subcontracting: Contractor may, from time to time, subcontract any or all portions of the Work.
11. Contractor Access: Customer shall provide Contractor complete and uninhibited access to the project throughout the term of this contract during the hours from 7:00am to 5:00pm, Monday through Friday.
12. Dispute Resolution: Any claim or action by Customer related to or arising out of this Agreement must be commenced not later than one (1) year after substantial completion of this Agreement. All claims, disputes, and other matters in question arising out of, or relating to, this Agreement, or the breach thereof, shall be decided by arbitration that shall be conducted through and in accordance with the rules of the Arbitration Service of Vancouver. In addition to such other

jurisdiction and venue as provided by law, Customer consents to the jurisdiction, at Contractor's sole option, of the courts of the State of Washington with venue in Clark County. No party shall be entitled to its attorney fees or costs related to any claim arising out of or related to this Agreement regardless of when or how such claim is commenced.

13. Full Integration: This contract contains the entire agreement between the parties related to the Work and the Project and cannot be changed orally. All previous oral and written agreements and contemporaneous oral agreements related to the Work and the Project are merged into this contract.
14. Severability: If any language in this contract is invalid, that language only shall be considered deleted from this contract, and all other language in this contract shall remain valid and enforceable.

Attorneys' Fee & Forum Clauses

- All over the board
- In Washington, must be reciprocal
- Common



Any party hereto may change the address by written notice in accordance with this Paragraph. Notices delivered in person will be deemed communicated as of actual receipt; notices delivered by overnight delivery service will be deemed communicated as of one (1) day after sending; mailed notices will be deemed communicated as of three (3) days after mailing.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington without application of conflicts of law principles and all litigation arising under this Agreement shall be brought in the State courts of Clark County, Washington, and the United States District Court for the Western District of Washington, USA.. Client and [REDACTED] both agree that Vancouver, Washington is both the place of making and the place of performance of this Agreement.
13. **Attorney's Fees.** In any litigation or arbitration between the parties regarding this Agreement, the substantially prevailing party shall be entitled to recover its reasonable attorneys fees and all costs of proceedings, including costs of appeal. Costs shall be interpreted as broadly as allowed by law, and shall not be limited to costs awardable under Washington statutes.
14. **Non-waiver.** The failure of either party at any time to require performance by the other of any provision hereof shall not affect the right of such party to require performance at any time thereafter; nor shall the waiver of either party of a breach of any provision hereof be taken to be a waiver of any later breach of such provision or as a waiver of the provision itself.

Damages/ Relief

- Money
- Specific performance
- Injunction
- Declaratory relief

Licensed, Bonded & Insured

- Licensed
- Bonded
- Insured





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