

MERCETRIGIANI

Management Contract Considerations

I. FINANCIAL

A. Budget

1. When prepared (check documents)?
2. By whom?

B. Accounts

1. No comingling with other accounts
2. Require deposits in federally insured institutions with identifying account numbers
3. Require compliance with FNMA, FHLMC, FHA, and VA requirements
4. Require reconciliation statements to be sent directly to the Board by the institution
5. Require counter-signatures of management

Reserve Requirements

6. Require signatory authority of at least two Board members for withdrawals
7. Investment concerns:
 - i. Who is in charge of investment?
 - ii. Advice of third parties? - investment firms

C. Fidelity Coverage

1. “Loss oblige” requirement - FNMA requirements - difficult to obtain
2. Alternative defalcation safeguards in contract
 - i. Counter-signatures for all withdrawals

- ii. Account segregation
- iii. Defalcation made an express breach of management agreement and, thus, a breach of agents' "contractual liability" insurance

II. INDEMNIFICATION

- A. Gross negligence v. ordinary negligence
- B. Costs and attorneys' fees to prevailing party
- C. Arbitration/mediation?

III. CONTRACT ADMINISTRATION

- A. Require competitive bidding/disclosure of conflicts of pecuniary benefit
- B. Delineate responsibility for specification preparation
- C. Delineate responsibility for supervision of contract (e.g., submission by vendor of insurance certificates)
- D. Require that expenditures be within limits of the budget

IV. PERSONNEL ADMINISTRATION

- A. Delineate hiring, training and supervision or association employees
- B. Delineate responsibility for developing and maintaining job descriptions
- C. Delineate responsibility for payroll administration

V. TERMINATION

- A. 30-day without cause/60-day with cause (check documents)
- B. Clarify "no penalty, no termination fee" language