

MERCERTRIGIANI

CONTRACT NEGOTIATION TIPS

Proposal

The first step in negotiating a contract is to prepare a request for proposals (RFP). The RFP should establish the work to be completed and the standards expected by the association. The RFP should be as specific as possible to ensure that expectations are clear. Preparing a worksheet that outlines selection criteria will make the evaluation process easier for the association. Review by legal counsel is not required, but it is recommended to ensure the terms outlined in RFP comply with the law.

The next step of the proposal is to investigate the bidders. An association should attempt to ascertain a contractor's financial resources, experience and ability to perform. All contractors should be properly registered in the State of Virginia, have the relevant licenses, and provide proof of insurability.

The association should also seek out references for the bidders. The CAI has a list of vendors that have provided services to the industry in the past. Legal counsel and management are also valuable resources as they should have knowledge of contractors they have satisfactorily worked with in the past. Even more importantly, these resources can inform which contractors to avoid.

CONTRACT

Pre-Petition Debt

At the conclusion of a Chapter 7 or Chapter 13 bankruptcy, an individual may receive a bankruptcy discharge. A discharge releases an individual from all debts with limited exceptions.

Chapter 7 – In Chapter 7 bankruptcy, pre-petition debt is discharged or paid by the trustee by selling the debtor's assets. If a discharge is granted, an association may not pursue collection of pre-petition assessments. However, an association may still collect pre-petition assessments secured by a judgment lien attached to property owned by an individual that receives a discharge in bankruptcy, unless the lien was specifically disallowed.

Chapter 13 – In Chapter 13 bankruptcy, pre-petition debt is discharged pursuant to a repayment plan, typically scheduled for five years. The debtor is protected from lawsuits, garnishments, and other creditor actions related to pre-petition debt during the time covered by the repayment plan. Like Chapter 7 bankruptcy, an association may not pursue collection of pre-petition assessments if an owner receives a bankruptcy discharge.

Post-Petition Debt

Chapter 7 – In Chapter 7 bankruptcy, post-petition debt is not discharged by bankruptcy. An association must wait until the automatic stay is complete before filing a lawsuit and obtaining a judgement against a debtor for post-petition assessments. Once the automatic stay is complete, an association may pursue collection actions for post-petition assessments.

Chapter 13 – In Chapter 13 bankruptcy, post-petition debt is not discharged by the repayment plan. Remaining current on post-petition debt is usually a condition of the repayment plan. If the debtor fails to remain current, the association should inform the Court that the debtor is not meeting his obligation. Bankruptcy court approval is required to pursue collection of post-petition assessments.