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Breach of Contract: What Every Association Should Know

By Rachel Nagrant

Whether it is signing a credit card receipt or a mortgage on a house, in this day and age, most people are familiar with at least a basic idea of a contract. While there are many types of contracts, in varying lengths and forms, in its simplest form, a contract is an agreement between two or more people or entities. The legal term for when one or both parties to a contract don't do what they are supposed to is called a "breach".

Here is some information and common hypothetical examples related to breaches of contract that every Association should be aware of:

- Contracts can be written or oral. Anyone who has dealt with an attorney can attest to the most commonly given advice: "get it in writing". However, it is important to note that the law recognizes both as **equally enforceable**. Therefore, if, for instance, an agent of an Association verbally agrees to a payment plan with a unit owner, in exchange for not proceeding with legal action, that constitutes as an oral contract. If the unit owner continues to pay, as agreed, but the Association forwards it for collection action, the Association has now breached the contract. This most often will result in any legal fees incurred being rendered uncollectable from the unit owner.
- Breaches can take many forms. It is important to remember that while contracts can take many forms, so can a breach. A breach can be quite obvious - like a unit owner failing to pay a settlement, as agreed; but a breach can also be related to time - like an Association failing to renew its insurance policy and allowing it to lapse, even though the Declaration requires that it be covered at all times. As these examples show, a breach can be a failure to do something altogether or a failure to do it "on time". To determine whether a breach has occurred, you must look first at what the contract required and then see whether or not it was fully completed.
- ANY party can breach a contract. Say an Association has a contract with a vendor to shovel the sidewalks of a condominium complex, in exchange for payment. For the sake of argument, let's further say that the vendor was supposed to shovel every Monday, Wednesday and Friday from December through March. In exchange for those services, the Association promises to pay an agreed upon sum on the last day of each month. If the vendor does not show up for one of those days, they would be in breach. However, it is also considered a breach if the Association fails to pay the vendor, as they agreed. Therefore, it does not matter what side of the contract you are on when determining whether or not a breach has occurred.

- However, only a party to the contract can be in breach. Oftentimes, when a contract begins to fall apart, blame can be spread as to who was at fault for a contract term not being completed. It is noteworthy, however, that only a party to the contract can be in breach of it. Here's an example involving vendors - say an Association has hired a company to paint all unit owner's front doors. Now say that the vendor walks off the job halfway through and only paints half of the doors. The vendor has clearly breached the agreement, because they did not do what they were supposed to. One of the unit owners whose door did not get painted tries to sue the vendor, claiming that they breached the contract. This wouldn't be enforceable, because the contract wasn't between the individual owner and the vendor. Instead, the Association would have to bring a claim, because it was a party to the contract.
- The parties can agree on how to handle a potential breach. Sometimes a contract can actually specify what happens if a party breaches the agreement. Say your Association hires a management company for a five year contract. If the parties would like to, they can include a provision of the contract that designates what will happen if either the Association or management company wants to terminate the contract. Oftentimes, this will take the form of some sort of "early termination" penalty. However, it should be noted that, with few exceptions, these kind of provisions can only be included in the contract if they are a) agreed upon by both parties and b) agreed upon at the commencement of the contract. If the contract itself does not provide for what will happen in the event of a breach, then local contract law will dictate the consequences to the breaching party.

If you are unsure whether or not you're dealing with a breach of a contract, but don't know where to start, please do not hesitate to contact our office to assist you.