

FIORE RACOBS & POWERS

THE LEGAL PERSPECTIVE® COMMUNITY ASSOCIATION NEWSLETTER

Nine Ways Associations Can Avoid Contractors Becoming Employees



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A new California Court of Appeal case entitled *Cristler v. Express Messenger Systems* provides a good reminder of the importance of practices to prevent contractors from becoming your employees. Under the law, a community association has additional duties towards those persons who are legally considered employees of the association as opposed to being an independent contractor. For instance, employees are entitled to the following additional items, among others: overtime pay; workers compensation benefits; wage statements; and reimbursement of business expenses.

The *Cristler* case confirmed various factors which help determine under the law whether a particular person is an employee or an independent contractor. These factors include, but are not limited to, the following: the right to control the manner and means of accomplishing the result desired (the most important factor); whether the person can be discharged at will, without cause; whether or not the person hired is engaged in a distinct occupation or business; the skill required in the particular occupation; whether the association or the person hired supplies the instrumentalities, tools and the place of work; the length of time for

which services are to be performed; the method of payment, whether by time or by the job; and whether or not the parties believe they are creating the relationship of employer-employee.

Since it is to the association's benefit to avoid inadvertently creating an employer-employee relationship, community managers and board members will wish to follow certain guidelines. The following is a list of practices which will help the association achieve this result:

1. Enter into written agreements with independent contractors to clearly spell out the contractor's duties and the relationship between the association and the contractor.
2. Maintain documentation showing how the contractor was compensated (compensation for completion of a job as a whole helps prove independent contractor status, but payments by the hour or salary tend to prove employee status).
3. Clearly spell out in the written agreement that the person or entity hired is an "independent contractor", not an "employee" of the association.

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4. Where possible and appropriate, provide that the contractor may only be terminated for cause.
5. Advise the contractor as to the result to be achieved by the work. The association should not direct the contractor as to the manner and means by which the result will be accomplished. Some direction is acceptable, but make sure it is oriented towards the desired result and not every detail as to how the work will be completed and carried out.
6. Go out to bid for each job instead of hiring the same contractor over and over without any competitive bidding.
7. As much as possible, have the contractor supply the instrumentalities, tools and place of work (if the work can be completed off site) for the contractor to perform the work.
8. Where the association has a continuing relationship with a particular contractor, regularly review and evaluate the relationship to make sure it is not changing into an employer-employee relationship.
9. When hiring a contractor for construction work, make sure that the contractor is currently and properly licensed by the State Contractor's License Board to do the work in question, and that the contractor has workers compensation insurance. Otherwise, persons working for the contractor may be determined to be employees of the association for the purpose of workers compensation benefits.

These following practices will assist the association in avoiding the inadvertent creation of an employer-employee relationship, but please keep in mind that each particular relationship with those providing services for work is evaluated by a court on a case-by-case basis.

ANNOUNCEMENTS

Three attorneys from the Firm's Orange County office were recognized at the CAI-OCRC Awards Dinner on February 27, 2009. John R. MacDowell, Esq., the immediate past President of the CAI-OCRC, received the prestigious Ellen Elish Hall of Fame Award. Sarah M. Reed, Esq. received the Rookie of the Year Award. Alejandro Portales, Esq. and Sarah M. Reed, Esq. were acknowledged for their contributions to the Education Committee which won "Committee of the Year."

In a joint presentation with CAI-OCRC, Mr. MacDowell taught an extension course at Chapman University titled "A Guide to Running a Successful Association" on February 28, 2009.

Richard S. Fiore, Esq. and John R. MacDowell, Esq. will be the featured speakers at the Orange County Bar Associations' Real Estate Section lunch on April 28, 2009. They will be discussing new developments in Community Association Law.

Janet L.S. Powers, Esq. and Margaret "Gen" Wangler, Esq. were speakers at the CACM Southern California Law Seminar held at the Hilton in Costa Mesa. This event was attended by over 600 managers from the Southern California area. Erin A. Maloney, Esq. also served on the Legal Steering Committee which planned this informative event.

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