

Addressing the Process of Choosing a Managing Agent

COUNSELS' CORNER

By **Kenneth J. Finger, Esq.,
Carl L. Finger, Esq., and
Daniel S. Finger, Esq.**
*Finger & Finger, Chief Counsel,
Building & Realty Institute (BRI)*



WHITE PLAINS—One of the most difficult decisions for a Cooperative, a Condominium and even, on occasion, a Landlord is choosing a new Managing Agent/Property Manager.

In going through this process, the Board, or Landlord, should solicit proposals from several different individuals and/or businesses interested in performing Professional Property Management Services.

Before even approaching the potential Agents or Property Managers, however, the Board should examine its property and finances and map out what the Board feels its needs are and what it would like to get from the Managing Agent. This will enable the Board to insure that all its requirements and criteria are addressed by the Managing Agent and that there is no confusion with regard to the Board's expectations, which will then be known to the Managing Agents bidding on the contract.

One way to accomplish this is to draft a Request for Proposal (RFP) that details all of the Board's requirements and expectations with regard to the new Managing Agent and provides a standardized format for the potential Managing Agents to submit their proposals. An RFP is designed to

allow the potential Managing Agents the latitude to inform the Board of each agent's individual approach to managing the property, setting forth a detailed statement of the services to be performed.

Specifics

As an example, many RFP's and Management Contracts provide for the start date, or proposed or anticipated start date. In addition, it is common for the management contract to be for a one-year term and to contain a termination clause that would allow the Board to terminate the contract on 30 days' notice by the Board to the Managing Agent for any reason, or no reason.

All potential Managing Agents are expected to make a detailed site investigation to familiarize themselves with the layout and content of the property before submitting their proposals. Often, the Managing Agent will walk the property with a representative from the Board prior to submitting their proposal. This provides a valuable opportunity for the Board member to observe the Managing Agent and get a first impression. The Board member should not feel compelled to ask questions at this time. Waiting for the interview to ask questions is probably a good idea, anyway.

Answering questions that pertain to the Managing Agent's evaluation of the property in preparation for his submission of his proposal may be necessary, although the Board member should not feel pressured to answer any questions on the spot. For consistency, it may be

helpful to have the same Board member or members supervise these site visits with all potential candidates where possible.

prospective agent and especially those who will have contact with, or be performing work or services, for the property. Prospective Agents should also include copies of all relevant and/or required business licenses (i.e., real estate broker licenses) from the State of New

York and should provide a list of at least three references for which the firm and team members have performed similar work in the last five years, with contact information. The RFP can and should be tailored by each board to require the submission of any other documentation or information that the Board feels is necessary to complete its evaluation.

The Duties of Managing Agents

The Managing Agent should be responsible for the management and supervision of staff, including the superintendent, porters and other staff; issuing monthly invoices for rent, maintenance, assessments and/or other charges; collecting payments for rent, maintenance, assessments and/or other charges; and paying invoices and bills.

The Managing Agent is also often responsible for supervising the maintenance of the property, including the Common Area Facilities in accordance with standards acceptable to the Board. Those include supervising the performance of vendors and/or third-party suppliers and/or Independent Contractors of normal repair and replacement work and other services performed on the premises, as may be necessary.

The Managing Agent should negotiate, retain and

The entire Board should review all proposals submitted and meet to discuss the proposals before deciding which potential Managing Agents the Board would like to interview. In addition, the entire Board should be present at all interviews, where possible. This helps make sure that every Board member has direct first-hand knowledge and access to all of the information about each candidate.

The Content of Proposals

To further facilitate the Board's evaluation, proposals by the prospective agent should provide resumes for the key personnel employed by the

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Plan for Winter Now—Why Bother?

INSURANCE INSIGHTS

By Ken Furst and Jason Schiciano, Levitt-Furst Associates



YONKERS—The leaves are falling, temperatures are dipping into the 30's at night, and many of us have turned our thermostats from "Cool" to "Heat."

But, of course, the most telling sign that summer is over and winter is around the corner is that the monthly meetings of The Builders Institute (BI)/Building and Realty Institute (BRI) have resumed!

While the memories of last summer are still easily recalled, I challenge you to think back a little further, to last winter, one of the coldest and snowiest in recent memory. That winter weather will be back soon, and, with it, many winter-specific insurance claims that insurance brokers can predict every year, with much more accuracy than the weather forecast on the local news.

As a Homeowner, Commercial Property Owner, Condo/Co-op Board, Managing Agent, etc., there are a number of preventive steps that you can take to help minimize your chances of having to file an insurance claim this year, including:

- **Reviewing Your Snow Removal Contract, Carefully:** If you or your building employ a contractor to plow/shovel snow from your driveway, parking lot, and/or

walkways, and apply snow-melt, you may be signing a contract or agreement for the services. Read the contract carefully. In addition to addressing when and how often the contractor will plow the snow, etc., there may be language pertaining to insurance and responsibility for accidents. Ideally, the contract should: 1) require that the contractor maintain at least \$1,000,000 of General Liability Insurance; 2) name you (the home or building owner) as an "Additional Insured"; and 3) provide you with indemnification for claims of bodily injury or property damage, arising out of the contractor's work or negligent acts.

Why bother? Too often, we sign contracts without taking the time to read what they say. This haste can have dire consequences when it comes to snow removal contracts. If someone falls on snow/ice at your property, and is injured, you could be held liable (especially in New York State). The contractor, having the contractual obligation to remove the snow/ice, may bear some or all of the responsibility for such a claim. However, without proper language in the contract, wherein the contractor agrees

to additionally insure, and indemnify the property owner, the property owner may be held liable. Yes, absent protection from your contractor's insurance, your liability insurance will likely respond to such claims, but, your insurance premiums will likely respond too, by going up!

- **Have Gutters Cleaned by an Insured Contractor:** If your home or building has gutters, have them cleaned in the late fall, after all of the leaves have fallen, by a qualified, insured contractor (make sure the contractor names you Additional Insured and provides indemnification).

Why bother? Two words: Ice Damming! Leaves and debris in gutters can clog leaders (downspouts). When snow/ice piles-up on your roof, and then eventually melts, if the water cannot exit via the leaders, it fills the gutters. When temperatures drop again, the water in the gutters freezes. As the cycle continues, with the gutters filled with ice (creating a "dam"), when additional roof ice/snow melts, the water has no place to go, so it piles-up on top of the gutter, and eventually backs-up and pushes under roof singles, and then enters your home/building. Leaves and debris in

gutters can also flow down leaders, and clog drainage pipes in your foundation, eventually causing leaks which can cause water to enter your basement.

- **Shut-Off Outside Faucet/Hose Water Supply Lines:**

If your home or building has outside water faucets (for hose connections), be sure to turn-off the valve within the home/building that supplies the hose bib (i.e. the water line that leads to the outside faucet). After shutting-off the water supply, turn on the outside faucet to bleed the pipe.

Why bother? Water supply lines filled with water and exposed to freezing temperatures can freeze, causing expansion, and then burst, filling the interior of your home or building with hundreds of gallons of water behind the walls.

- **Have Your Chimney Inspected and Cleaned by An Insured Contractor:** If you have, and enjoy using, a wood fireplace to warm-up your home in the winter, have your chimney inspected by a qualified, insured contractor (make sure the contractor names you Additional Insured and provides indemnification).

Why bother? Over time, wood-burning fireplaces cause soot, and a flammable chemical called creosote, to build-up in your chimney. Poorly maintained chimneys can cause fires and/or smoke damage. (If you have a gas fireplace, you should have your burner system and chimney inspected to insure proper operation and ventilation).

- **Beware of Portable Heaters:** If you don't have a fireplace, and/or need a "local" heat source to keep your tootsies warm during the winter, you may end-up plugging-in a portable electric heater (or "space heater"). If so, consider purchasing a newer unit, with built-in safety features, rather than your grandmother's, which has been sitting in your attic, basement, or garage since the Nixon Administration of the 1970's. If all you have is an old unit, with brittle wire, and an exposed heating element, do yourself and your family a favor—grab some blankets for the night, and plan to go to Home Depot over the weekend.

Why bother? Not a winter goes by without a story about a home or apartment fire caused by a portable electric heater. Unfortunately, they often hap-

pen at night, and are often deadly. Portable heaters that cause fires are most often old, and lack the safeguards built-into today's units.

- **Set Your Thermostats When Going on Vacation:**

If you'll be traveling during winter holidays and school vacations, be sure to keep your heat on and your thermostat set to around 60 degrees.

Why bother? If your thermostat is set too low - or worse, left "off" - and the temperature outside falls below freezing, eventually the temperature in the spaces behind your walls where your water pipes are located can also dip below 32 degrees, allowing your pipes to freeze, and then leak or burst.

- **Buy Snow-Melt Now!** We're starting to see them! The pallets of salt or ice-melt at gas stations and home improvement centers. Do yourself, or your building, a favor and stock-up now.

Why bother? With the first weather forecast for snow and/or ice, guess who's going to be rushing-out to buy snow/ice melt products? Everyone! Don't be the one running all over town in search of a suddenly scarce commodity. If you're responsible for salting walkways and stairs to insure the safety of those who live at, or visit, your home or building, make sure the snow/ice melt product is available when you need it. Failure to do so could lead to injuries—and yes, lawsuits (followed by increased insurance premiums.)

- **Give Notice!** Landlords, building boards, and managing agents—consider including a "Winter Preparations Reminder Notice" annually with a fall billing statement (and posting the notice around the building). The notice can include relevant topics in this article, as well as others specific to the building.

Winter's coming. Plan now! Why bother? "An ounce of prevention..."

For more information on winter preparation tips for your home, building, or business, to safeguard your property, and avoid liability, contact your insurance broker or Levitt-Furst Associates at (914) 376-2500.

Editor's Note: Levitt Furst Associates is the Insurance Manager for The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region. The company is based in Yonkers.

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evaluate contracts for services, such as landscaping, Common Area maintenance and repairs; compile and maintain vendor lists; obtain competitive bids for projects when requested; maintain the Board's records; provide competent management and oversight

views, where possible. This helps make sure that every Board member has direct, first-hand knowledge and access to all of the information about each candidate.

The Board should require that both a principal of the proposer and the specific manager that would be assigned

well. Some Boards also make unannounced visits to the offices of the prospective agents so that they can see the "real life" workings of the office on a "normal day."

If the Board has any questions or requires any additional information or explanation from a potential Managing Agent after either reviewing the proposal or following the interview, they should certainly follow-up with the candidate before making any decisions.

A detailed RFP helps insure that the Board receives proposals that are all based on the same clearly understood scope of work. Having clear communication with the Property Manager right from the beginning eliminates confusion and is essential to a good working relationship.

Editor's Note: The authors are attorneys with Finger and Finger, A Professional Corporation. Finger and Finger, based in White Plains, is Chief Counsel to The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region.

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of routine maintenance contracts; and oversee routine contracts, monitor the progress of the work, and verify that the work is completed as scoped and budgeted.

The entire Board should review all proposals submitted and meet to discuss the proposals before deciding which potential Managing Agents the Board would like to interview. In addition, the entire Board should be present at all inter-

views, where possible. This helps make sure that every Board member has direct, first-hand knowledge and access to all of the information about each candidate.

Meeting or talking to other employees of the Managing Agent—including possibly the comptroller and/or the "back office" staff—may be helpful as

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