

Before Hiring an Independent Contractor:

What a contract should include to prevent unwelcome costs

By Ashley Winberg



Benefits of Hiring an Independent Contractor

With costs on the rise, many condominiums are choosing to retain independent contractors to provide superintendent and/or cleaning services, which tend to come at much more affordable rates in comparison to larger companies.

Also, by retaining an independent contractor, as opposed to an employee, there is no need for a condominium to set aside funds for vacation pay, benefits and statutory deductions, such as CPP and EI. Independent contractors are also not entitled to reasonable notice of termination or pay in lieu thereof, which can save a condominium thousands of dollars upon the relationship coming to an end.

Deemed Employee Upon Termination

However, problems arise when an independent contractor provides services to a condominium on paper as an “independent contractor,” yet their relationship with the condominium resembles a traditional employer/employee relationship.

In such a scenario, the independent contractor may be deemed by the courts to be an employee for the purposes of termination and, as such, may be entitled to reasonable notice of termination or pay in lieu thereof upon their relationship with the condominium being terminated. This can result in a condominium being forced to pay thousands of dollars as pay in lieu of notice and/or incurring exorbitant legal fees if sued for wrongful dismissal.

Tips for Independent Contractor Contracts

A condominium can safeguard itself from the foregoing risks and benefit from the cost savings associated with retaining an independent contractor by ensuring that the solicitor prepares a carefully drafted contract in advance. To ensure that the contract achieves its intended purpose, it should contain provisions that reflect the following:

1. If the independent contractor is economically dependent on the condominium, they will be deemed to be an employee for termination purposes. Accordingly, the contract should be non-exclusive and enable the independent contractor to perform work for other condominiums.
2. The contract should also stipulate that the independent contractor is responsible for arranging and paying for their insurance, remitting their statutory deductions and taxes, and providing all of the tools and supplies required to perform the services under the contract.
3. If the independent contractor does not have some degree of control over the day-to-day performance of the services, it is more likely that a court will find that the independent contractor is an employee for termination purposes. Thus, the contract should be drafted in a manner that provides the independent contractor with some degree of control over how and when the services will be rendered daily.
4. A well-drafted contract can only achieve its intended purpose if the parties govern their relationship following its terms. Accordingly, it is advised that a “failsafe” provision be included in the contract stipulating that if the independent contractor is deemed to be an employee of the condominium if and when the contract is terminated, the independent contractor’s entitlements upon the termination of the contract (and consequently their employment) will be limited to the minimum statutory entitlements provided under the *Employment Standards Act* (the “**ESA**”). If such a clause is not included, the condominium runs the risk of the independent contractor being entitled to notice of termination or pay in lieu thereof at common law, which is always substantially more than the minimum entitlements provided under the ESA.

If a condominium is considering retaining an independent contractor, it should ensure that its solicitor drafts a contract in advance of one being retained and that the contract contains provisions reflecting these recommendations. Doing so will allow the condominium to reap the cost savings associated with retaining an independent contractor, while at the same time, safeguarding itself from having to incur exorbitant costs upon the relationship being terminated.

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