

Hopkins • Tschetter • Sulzer  
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# Landlord News

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## Vendor Contracts Traps for The Unsuspecting?

Clients frequently seek our advice about problem contracts. To name a few, vending machines, copiers, waste and snow removal, cable, laundry, and fire extinguisher services. Clients contact us because there is a problem with a particular contract. While not inclusive of all problems, most problems involve termination, accounting, removal, and/or performance issues.

Many of these contracts have automatic renewal provisions. This means unless you terminate in writing at the proper time, you could be stuck in a bad contract for many years. For example, we have seen waste removal contracts automatically renew for five years. If the community has new management or a new owner, sometimes they are unaware of the



termination time frames. As a result, bad contracts are automatically renewed because the proper written notice to terminate is not timely sent, or the opportunity to terminate gets missed due to onsite personnel changes.

If you have managed a community for a significant period of time, you should review applicable termination dates at least annually and calendar appropriate termination dates. If you are taking over a community, as part of your due diligence, you should review all contracts for termination dates. If you take over a community, and you know that you are going to terminate a contract, and the contract allows you to terminate at the end of the period by giving written notice at anytime, give written notice of termination now so you don't forget. If you are negotiating a contract, you should consider adding one or more of the following provisions: the contract does not automatically renew; you have the right to terminate early

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## NEW WORKSHOPS SCHEDULED IN 2010

In keeping with the Firm's philosophy that preventive law is king and the proven fact that better educated clients are less likely to get into legal trouble, HTS is committed to offering more educational workshops than ever in 2010. All of our workshops are designed to educate and assist owners, managers, and staff on today's complex landlord-tenant issues.



In addition to our regularly scheduled workshops on Basic and Advanced Fair Housing and Basic and Non-Monetary Evictions we will be scheduling a number of new workshops this year. **Our first new workshop that we will be offering in 2010 will be a Landlord Recovery-Collections class on Wednesday February 24th titled Minimizing Loss/Maximizing Recovery.** The class will focus on how you can start the process of minimizing your losses after move-out by showing you how to deal with tenants before they even move in. We cover all of the steps in the collection process and



demonstrate how a seamless transition from Eviction to Collection can save you time and make collecting your money easier. The class will be from 8:30 until noon in the conference center at HTS and anyone interested in registering for this new workshop can sign up on line or e-mail [mike@htspc.com](mailto:mike@htspc.com) or call Michael G. at 303-699-3484. As always space is limited so it is never too early to sign up.

Currently under development and coming in the second quarter of this year will be an Employment-Related Workshop with a specific emphasis on Sexual Harassment. This class was developed in response to requests of many of our clients who feel the need to have a broader understanding of the legal do's and don'ts associated with

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for a reasonable fee; you do not have to pay an early termination fee if the contract is terminated for cause; you have the right to terminate without cause if management, or ownership of the community changes.



Clients have reported accounting problems with vending machine and laundry equipment contracts. The vendor isn't timely, or accurately accounting. Sometimes the vendor isn't accounting at all, and won't return phone calls. To prevent these types of problems, you should always include key provisions in the

contract that requires the vendor to account. You should have the right to terminate upon fifteen days notice if accounting related issues are not resolved. You should also have audit rights so you may verify that the accounting you are receiving is accurate. Prior to signing a contract, discuss with the vendor how they can prove their accounting is accurate, and then be sure the issue is addressed in the contract.

Clients most frequently experience removal of equipment issues with copier contracts. Every community has to have a copier. Most communities are surprised to learn at the end of the contract that the community has to bear the expense of removing and delivering some outdated copier back to the vendor. Even more alarming, the contracts never specify a local point of delivery. Thus, clients are stunned to learn that they have to ship the copier to some place halfway across the country at their considerable expense. In the best case, this is a \$1,000 expense. To avoid this surprise, you should always insist that the copier vendor bears all expenses of removal under any circumstance.



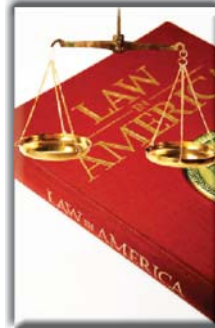
Having the vendor bear the removal expenses applies to any contract that involves equipment that is expensive to remove and/or ship. For these types of contracts, you should insist that the vendor bears all costs associated with removing and shipping the equipment. The vendor should be responsible for removal and shipping of the equipment regardless of whether the contract is terminated for cause, or at the end of the term. In one situation, a vending machine contractor failed to account to our client, communicate with our client, or remove the vending machine equipment. The contractor just kept restocking the machines. In another situation, the copier vendor was responsible for removing the copier but failed

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employment law and sexual harassment in particular. This workshop will be separated into 2 two-hour classes. The first two-hour class will be for both managers and non-management employees. The second two-hour class will be for managers and owners and focus on how



to deal with sexual harassment allegations, how to investigate harassment complaints, documenting personnel files and how to handle terminations effectively. Another workshop that is now in the development stage is a workshop on Mold.

The cornerstone and success of our training programs is our commitment to continually improve and update both our teaching materials and our presentations to maximize the benefit to those who attend the classes. We do this by staying on top of all of the changes, case law and nuances that are always evolving in the area of multi-family housing law.

#### IMPORTANT HTS JANUARY DATES

January 1st	<b>All Courts Closed New Year Holiday</b>
January 1st	<b>HTS Closed New Year Holiday</b>
January 14th	Colorado Springs Client Lunch Elbo Room Ritz Grill 15 S. Tejon Street Colorado Springs 11:30 a.m. - 1:00 p.m.
January 15th	North Client Lunch Dave & Busters Westminster, Colorado 11:30 a.m. - 1:00 p.m.
January 18th	<b>All Courts Closed Martin Luther King Holiday</b>
January 20th	Basic Fair Housing Workshop HTS Conference Center 3600 South Yosemite Street Lower Level 8:30 a.m. - Noon

During a recent password audit, it was found that a blonde was using the following password:  
**MickeyMinniePlutoHueyLouieDeweyDonald-GoofySacramento**  
*When asked why such a long password, she said*  
..... she was told that it had to be at least 8 characters long and include at least one capital.

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to remove the copier. For this reason, it is imperative that these contracts grant you the right to remove and store the equipment at the vendor's expense, if the vendor fails or refuses to remove the equipment.

You should make sure that the contract adequately addresses repairs, warranty, and non-performance issues.



Communities are often surprised to learn that a vendor has no obligation to repair or replace non-operable equipment. Many copier contracts are similar to car leases, but without

the warranties. Specifically, many copier contracts disclaim all warranties and are leased "as is" with no responsibility of the vendor to repair or replace malfunctioning, or inoperable copiers. If your leased equipment does not work, make sure that under the terms of the contract the vendor is responsible for repair, or replacing at vendor's cost. Make sure that all warranties are in writing and that you understand them.

Many contracts contain venue provisions. For example, the contract might specify Florida as the venue for legal action. This means that you could only sue the vendor in Florida if the vendor has breached the contract and owes you damages. Demand that all venue provisions be stricken, or changed to Colorado. Similarly, many contracts contain choice of law provisions. For example, the contract might say that it is governed by Texas law. This means in a lawsuit, the court would have to apply Texas law. Demand that all choice of law provisions be stricken, or specify Colorado law governs the contracts.

You also want to make sure breach, notice, and cure related issues are adequately addressed. These are simple contractual concepts, but you would be surprised how many times they are not adequately addressed in contracts that we review. If

the vendor is in breach, the contract should clearly specify applicable time frames and the procedure you should take to terminate the contract if the breach is not cured. All of these contracts give the vendor the right to recover their legal costs if you breach, but seldom do they give you the right to recover your legal costs. All of your contracts should give you the right to recover your legal costs if the vendor breaches, regardless of whether you have to file suit or



not. We can't overstate the importance of this provision. Vendors know it makes no economical sense for you to sue them for \$4,000, because it will cost several thousand dollars in attorneys' fees. When the vendor is on the hook for your legal costs, it is powerful leverage to get the situation resolved without having to sue.

Many vendors will refuse to alter their contracts to include the provisions discussed. However, it is a competitive world. If a particular vendor won't treat you fairly, there are many others that will. Most of the provisions discussed above are the equivalent of traps. If a vendor won't adequately address these trap issues by either removing or adding applicable contract language, you would be better off not dealing with this type of company.

Finally, many of the contracts that we review were signed by onsite personnel, without the contract being vetted and reviewed. It happens. You take over a property, the property doesn't have a copier and the onsite personnel just gets one as quickly as possible to become operational. Educate your onsite personnel not to sign these types of contracts until they are properly vetted and reviewed. Alternatively, lease on a month-to-month basis until you can get an adequate long-term solution in place.

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- *"The ultimate measure of a man is not where he stands in moments of comfort, but where he stands at times of conflict and controversy"* -

**Martin Luther King Jr.**

## HUMOROUS THOUGHTS TO MAKE YOU SMILE

1.. My wife and I divorced over religious differences.....She thought she was God and I didn't.

2.. I don't suffer from insanity; I enjoy every minute of it.

3.. I Work Hard Because Millions On Welfare Depend on Me!

4.. Some people are alive only because it's illegal to kill them.

5.. I used to have a handle on life, but it broke.

6.. Don't take life too seriously; No one gets out alive.

7.. You're just jealous because the voices only talk to me.

8.. Earth is the insane asylum for the universe.

9.. I'm not a complete idiot -Some parts are missing.

10.. Out of my mind. Back in five minutes.

11.. God must love stupid people; He made so many.

12.. The gene pool could use a little chlorine.

13.. Consciousness: That annoying time between naps.

14.. Ever stop to think, and forget to start again?

15.. Being "over the hill" is much better than being under it!

16.. Wrinkled Was Not One of the Things I Wanted to Be When I Grew up.

17.. I Have a Degree in Liberal Arts; Do You Want Fries With That?

18.. A journey of a thousand miles begins with a cash advance

19. Stupidity is not a handicap. Park elsewhere!

20.. They call it PMS because Mad Cow Disease was already taken.

21.. He who dies with the most toys is nonetheless dead.

22.. A picture is worth a thousand words, but it uses up three thousand times the memory.

23.. Ham and eggs: A day's work for a chicken, a lifetime commitment for a pig.

24.. The original point and click interface was a Smith and Wesson.

25.. Dogs Have Owners ~ Cats Have Staff

26.. Experience is a wonderful thing. It enables you to recognize a mistake when you make it again.

