

CONTRACTS 101

Basic Elements in Multifamily Agreements

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General Guidelines

- Is the contract fair?
- Is the contract clear?
- Are there obligations of the provider or only rights granted to the provider?

BEING A
LAWYER

— IS EASY, IT'S LIKE —

RIDING A BIKE

EXCEPT THE BIKE IS ON FIRE

YOU'RE ON FIRE

EVERYTHING IS ON FIRE

AND YOU'RE IN HELL

“Services”

“Services”

- Providers often want an expansive definition
- Owners often want the definition constrained
- “Services” vs “Marketed Services”

Access Rights

Access Rights — Easement / License / Other

- Easement vs license
- Scope of grant: in gross vs limited
- Perpetual access
- Recording rights
- Release of access rights
- Lender approvals
- Subordination provisions

“System”

“System”

- Define component parts
- Who provides; who installs; who owns; who maintains
- Timing for installation
- Wiring usage rights
- Distribution panel usage rights
- Ownership after term
- Removal

Plans

Plans

- Plan preparation
- Plan approvals
- Timing for approvals

Property Protections

Property Protections / Restoration

- Address movement within the property
- Repair and restore
- No liens
- Relocation

“Term”

Service Level Terms

Default / Termination

Marketing Rights

Marketing Rights

- What “Services” are to be marketed
- Exclusive vs non-exclusive marketing
- Training for Owner
- On-site marketing rights

Owner Compensation

Owner Compensation

- Door fee and/or revshare
- Clearly define what revenues get paid
- Tie marketing rights to compensation
- Audit rights

Courtesy Accounts

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- Video; Internet; telephone; WiFi
- Specify products
- Specify equipment

Bulk Services

Bulk Services

- Tie to product
- Responsibility for use and misuse
- Bulk prohibitions

Assignment

Assignment

- Provider can't assign to anyone or everyone
- Owner's obligations upon sale

Confidentiality

Confidentiality

- Is it necessary
- Who can receive confidential information
- Look ahead

Use of Names

Use of Names

- What is your intellectual property sharing policy
- Approve use of IP
- Control disclosures
- What is the value of your IP

Representations and Warranties

Indemnification

Insurance

Limitation of Liability / Disclaimer of Warranties

Force Majeure

Force Majeure

- Investigate what is covered by definition
- Should not relieve actor's own failures
- How long is too long for an outage

Waiver

Waiver

- Needs to be intentional or voluntary

Governing Law

Governing Law

- Applicable laws for contract interpretation
- Location where disputes must be resolved
- Beware hometown provisions
- Waiver of jury trial

Severability

Severability

- What applies if a provision is unenforceable

Entire Agreement Clause

Entire Agreement Clause

- Entire transaction is within the contract
- Anything important needs to be in the contract
- “We’ll sort it out later . . . ”

Alternative Dispute Resolution

ADR / Arbitration / Mediation

- Arbitration vs mediation
- Allocation of costs
- Do you want a jury trial

Attorneys Fees

Survival

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- Beware survival terms that sneak in perpetual access or control

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