

VIEW FROM LONG ISLAND

Spring Landscaping BY MARC H. SCHNEIDER

Spring is here and, for Long Island community associations, that means it is time to address your community's landscaping needs. Selecting a landscaper to cut the grass, prune the trees, and plant the flowers is just the beginning.

Once a landscaper is chosen, your board should take the proposal sent from the landscaper and send it immediately to the community's attorney to make sure your cooperative, condominium, or homeowners association is protected by a proper contract. You may be thinking, "What can go wrong?" The answer: a lot.

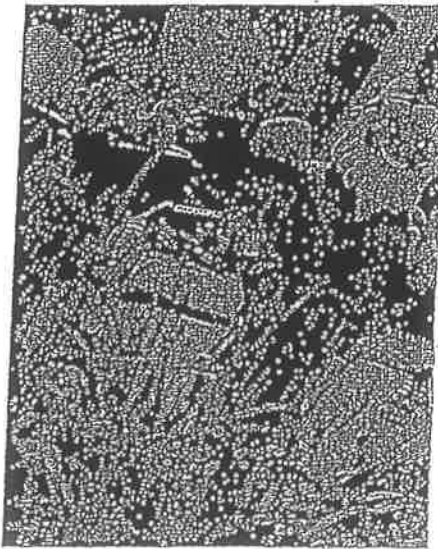
Obtain information about the landscaping company. First, are you entering into a contract with a legal entity? Your attorney should inquire to make sure the entity that is claiming to enter into the contract with your community is a legally existing entity. For example, if the landscaper is a corporation, your attorney should check with the New York State Division of Corporations to determine whether or not it is an active corporation. Your attorney may find that it was dissolved and, as such, for all intents and purposes, it is not a legal entity entitled to conduct business.

You should inquire about how many years the landscaping company has been in business and for how many communities similar to yours the contractor presently provides landscaping services. Your attorney may also want to contact the county department of consumer affairs to request information concerning whether any complaints were filed against the landscaper.

In addition, a contractor who mows the grass for a single-family homeowner may not be able to handle the landscaping needs of a large community. Find out how many employees the contractor has. How many employees will be on the property when rendering the services? Always ask for references and check them.

Make sure the landscaping company is properly insured. You must also make sure your landscaper has the proper insurance coverage in the appropriate amounts of insurance. Any contract with a landscaper should:

- (a) clearly delineate the amount of insurance required;
- (b) clearly delineate the types of insurance coverage to be maintained;
- (c) require the association and its managing agent to be named on the contractor's insurance policies as an "additional insured";
- (d) require notice be given to the association and its managing agent in the event of cancellation of the policy; and
- (e) require the policies be main-



tained in full force and effect (including all premiums being paid on time) during the term of the agreement.

In addition to the amount of insurance, your attorney must require that the proper types of insurance are maintained during the term of the contract. These insurance requirements are critical, as they will protect the association in the event of an injury or other loss that occurs as a result of the contractor's service at the association's premises.

You can probably anticipate a person's property getting damaged by a lawnmower. However, you must also consider circumstances such as the not-as-obvious claim that occurs as a result of one of the landscaper's vehicles hitting a resident while driving

through the community. It is for this reason that your attorney must be sure to require, at a minimum, the contractor have and maintain the following types of insurance:

- (a) statutory worker's compensation and employer's liability insurance;
- (b) single-limit comprehensive general liability insurance including, but not limited to, premises, products, and contractual for bodily injury;
- (c) property insurance; and
- (d) comprehensive vehicle liability insurance including, without limitation, owned, non-owned, hired, or rental vehicles, covering bodily injury and property damage.

Make sure the landscaping contract has an indemnification clause.

Obtaining proper indemnification from the contractor, as well as requiring the contractor to "hold harmless" the community, its board members, officers, and residents, is equally as important as the insurance requirements. A proper indemnification and hold harmless provision drafted by your attorney will insure that the contractor - not the community - will be responsible for injuries that occur and lawsuits resulting from those injuries or other claims caused by the landscaper's negligence, or any other issues. Without an indemnification provision, the community would be required to defend and possibly pay for a claim involving injuries, property damage, or other losses resulting from the landscaping work, which would be costly.

Although every community should have appropriate insurance to protect itself from these types of claims, it is not a guarantee that the insurance carrier will defend the claim. As a result, the community would be forced to pay an attorney to defend such a suit and would have to pay any eventual settlement or judgment regarding the claim from the community's funds.

Assuming the community's insurance carrier does defend the claim, the property will probably suffer future increased premiums or the possibility of not being able to renew or obtain insurance. Therefore, it is imperative to have an appropriate indemnification clause in a landscaping contract so that



such a claim would be handled by the contractor's insurance carrier. Additionally, be sure your attorney includes attorneys' fees as a cost the contractor will be responsible for in the event of a claim.

What services are to be provided and when? Your landscaping contract should spell out the primary day for service. There can and should be a secondary day specified in the event of inclement weather. You want continuity so that your managing agent and community can properly plan around this work.

Make sure the term of the contract is specified. When does the service start? When is the final date of service? If you are considering a multiple-year contract, you might, instead, consider a one-year contract with the right to extend for additional years at the community's option. Indeed, most multi-year contracts do not contain an option to cancel, except when the contractor fails to properly perform the service. As a result, these types of contracts are difficult to terminate and provide little incentive for the contractor to properly and accurately perform its contractual obligations to the best of its ability until the final year of the contract.

In that regard, when a community claims a contractor failed to provide the proper service and, as a result, the community claims the contract should be terminated, the contractor will undoubtedly argue that he did not breach the contract. This will result in a lawsuit that will cost legal fees and likely some financial settlement to avoid additional fees and expenses beyond what is claimed in the lawsuit. Therefore, a one-year contract is preferable as it provides an incentive for a landscaping company to do the best job possible in order to obtain a renewal the following year.

In addition, make sure the contract appropriately spells out the actual services to be provided. Every community is different and generalized terms, such as "landscaping services," should not be used. Make sure the work, labor, materials, and services are specifically delineated so there can be no surprises or misunderstandings as to what exactly each party expects.

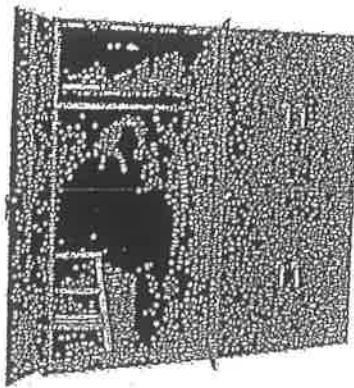
What are the fees? Be sure to specify the cost of the service and payment terms. Define the total contract price for the season. Delineate the cost of extras (i.e., plants, seeds, etc.). Be sure to specify whether the price in the contract includes the sales tax or whether

sales tax is to be added to each payment. Specify the dates of payment for service. Usually, the full cost of the contract for the season is divided evenly among the number of months of service. This will insure the community has not overpaid for the work if the agreement is terminated, or the contractor ceases rendering services, or some other circumstances occur. In addition, this will assist the community with budgeting, since the money used to pay for the service come from monthly assessments, maintenance, and/or common charges.

While some of these practical considerations, when requested, may be refused by your present landscaping company or one that may have otherwise been chosen, your community is much better off finding another landscape contractor who is willing to contractually bind himself to the terms you want. Indeed, the money and time your community may save with a contractor who doesn't agree to a contract with these provisions will probably cost you far more money if the contractor does not meet your community's expectations. **H**

TENANT STORAGE LOCKERS

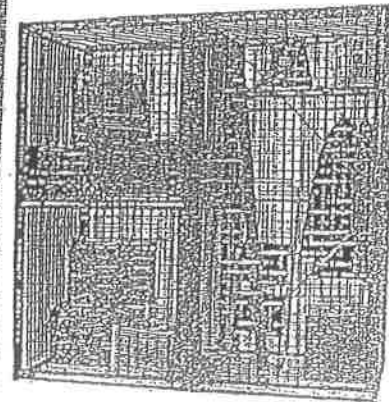
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- We are a NYC manufacturer. Many sizes are available.

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