



OREGON CHAPTER

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Understanding Contracts

February 8, 2013

Luncheon



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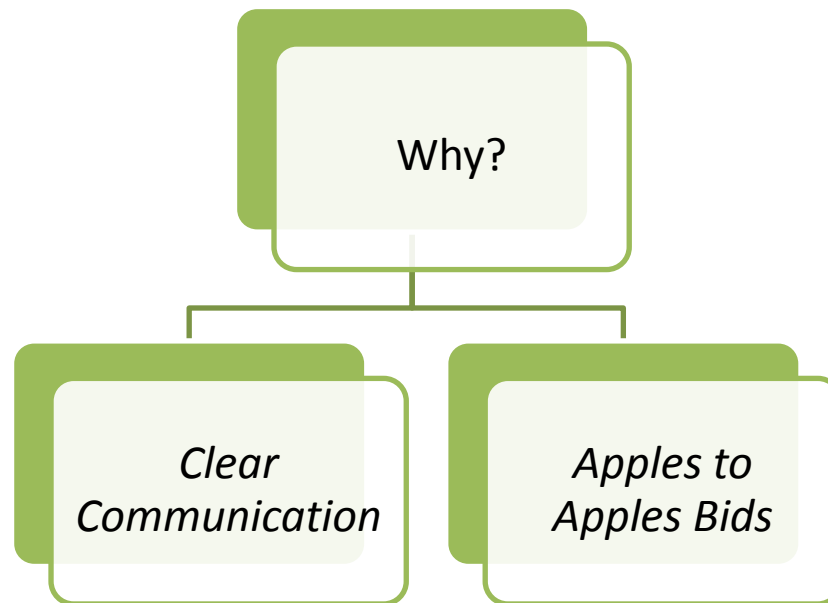
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Association Contracts: A Manager's Perspective



Avoiding Problems with Contracts

- Detailed Written Specifications



Check References



Are they good vendors?



Or do they just have good sales people?



Verify Insurance & Licenses

Property

Liability

Workers' Comp

Bonds

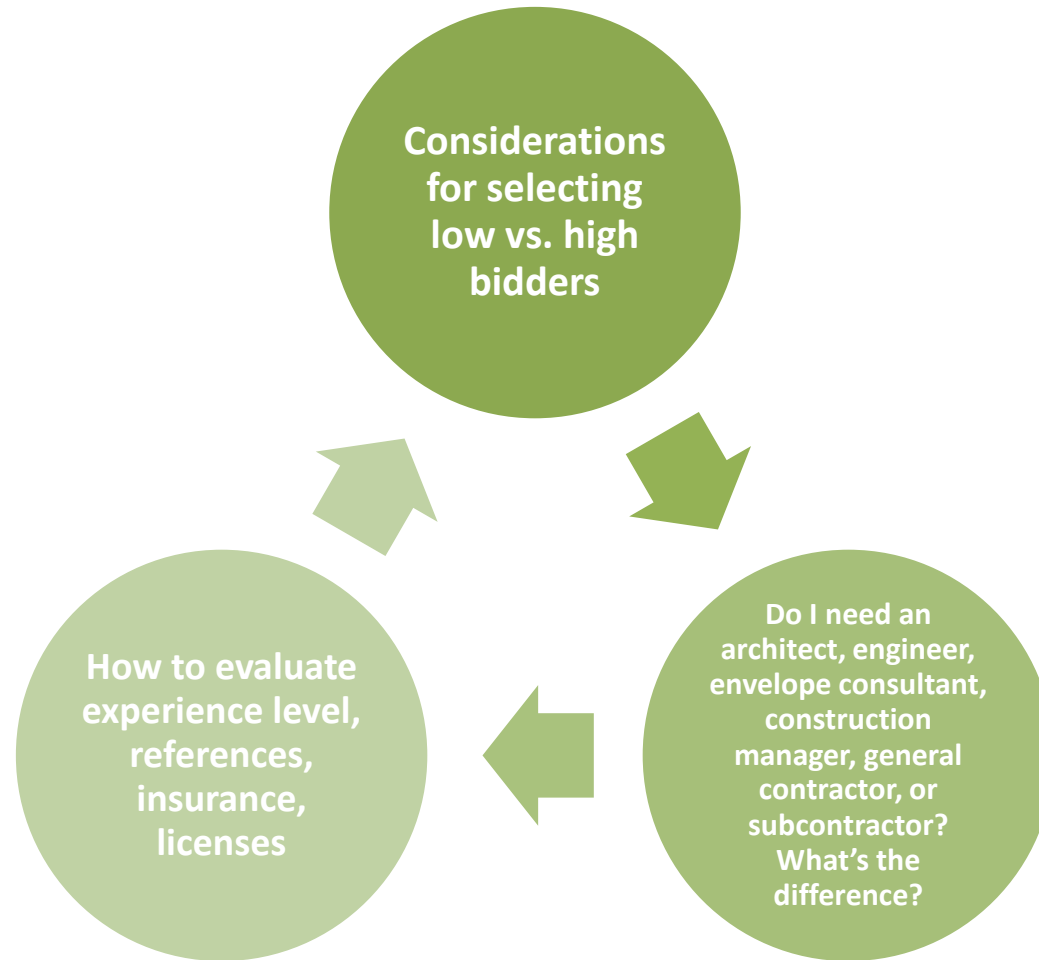
How to verify licensing?

Construction Contractors
Board

What if contractor doesn't
have licensing obligation?

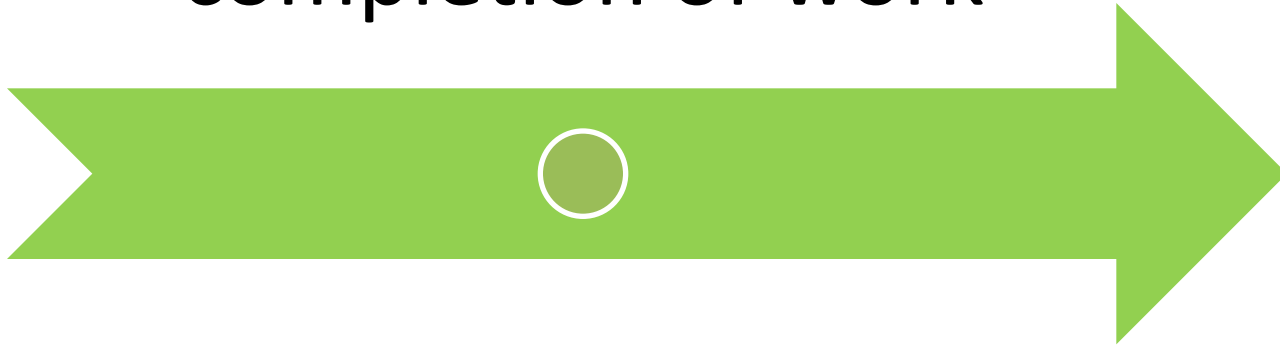


Selecting Vendors



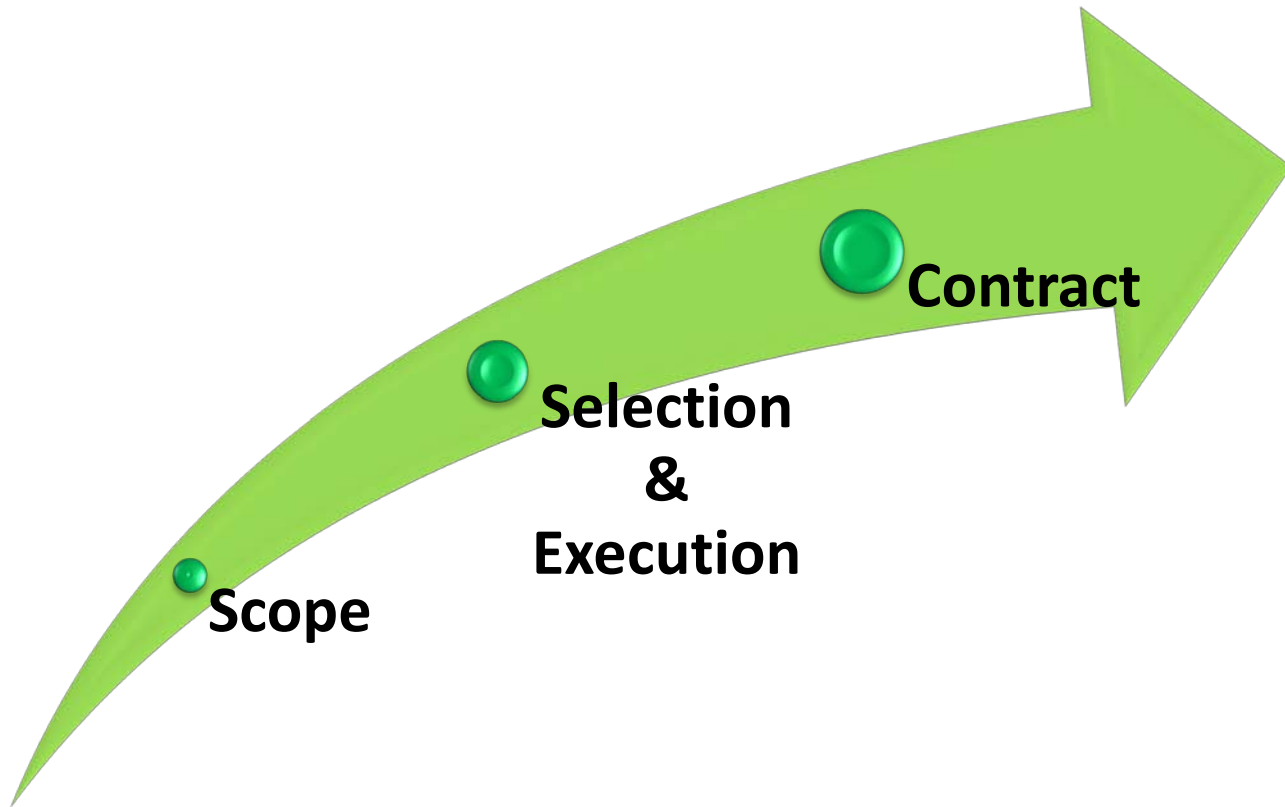
Payments

Tie payments to
completion of work

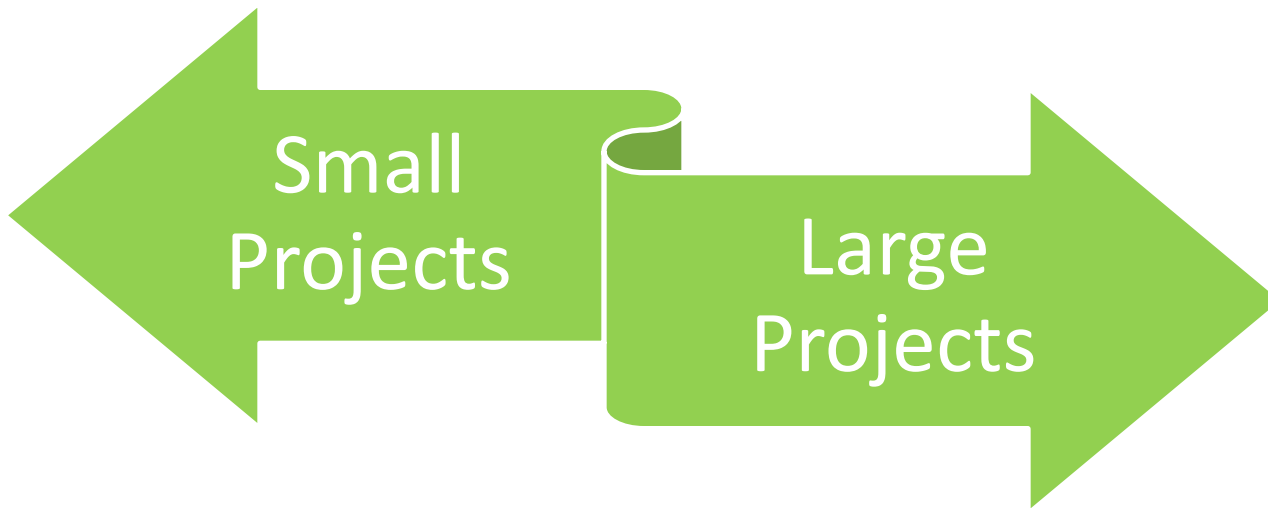


Association Contracts: An Owner's Perspective





Selection Considerations



Selection Considerations

Small

Repeat
Purchase

Lower
Risk

Large

One Time
Buyer

Higher
Risk



Be Thorough

- **Ask Advisors**
- **Face to Face Interviews**
- **Do your own reference checking**
 - No cherry picking
 - Ask tough questions of other clients
- **Be streetwise**
- **Ask for detail appropriate to the job**
 - e.g., financial statements



Reference Checking

- **Relationship**
 - Would you hire them again?
 - Communication
- **Performance**
 - Budget
 - Schedule/timeliness
 - Change Orders
 - Quality
 - Cleanliness
- **Warranty**



Association Contracts: An Attorney's Perspective



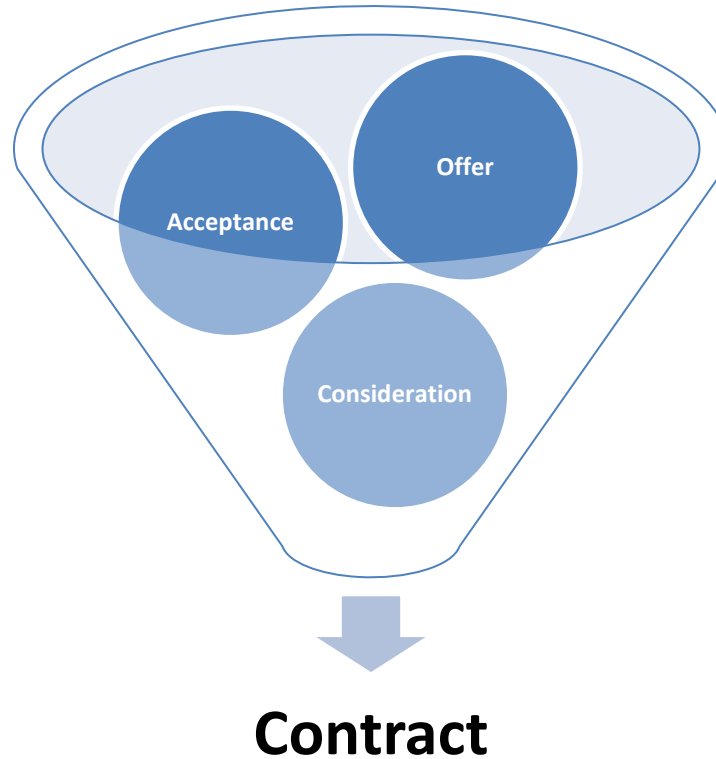
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Overview

- **What is a contract?**
- **Common Types of Association Contracts**
- **Key Provisions**
- **Common Clauses**
- **Tips**



What is a contract?



Types of Contracts

- **Management Contracts**
- **Maintenance Contracts**
- **Professional Services**
 - Accounting
 - Legal
 - Consultant
- **Construction**



Key Provisions Explained

- **Scope of Work**
- **Payment**
 - *Retention*
 - *Progress payments*
 - *Change orders*
- **Termination**



Common Clauses Explained

- Indemnity
- Insurance
- Dispute Resolution
- Attorney Fees



Indemnity

- Requires the indemnitor to defend, indemnify and hold harmless the indemnitee from claims made by a third party when the claims arise from the acts/omissions of the indemnitor



Indemnity by [REDACTED], Inc.: [REDACTED], Inc., will indemnify, defend and hold harmless the Client from any and all claims, actions, liabilities, damages and expenses, including attorney's fees (collectively "Harms") arising out of [REDACTED], Inc.'s., negligence with respect to services performed in this agreement; provided that to the extent any Harms result from the concurrent negligence of the Client, its employees, agents or other contractors, Client and [REDACTED], Inc., shall bear the percentage of Harm which corresponds to its percentage fault.

Indemnity by Client: Client shall indemnify, defend and hold harmless [REDACTED], Inc., its owners, employees and agents, from any and all actions, liabilities, damages and expenses, including attorneys fees (collectively "Harms"), arising out of the negligence of Client, its employees or other contractors (provided that to the extent any such Harms result from concurrent negligence of Client and [REDACTED], Inc., each party shall bear the percentage of Harm which corresponds to its percentage of fault). To the fullest extent permitted by law, Client will defend, indemnify and hold harmless [REDACTED], Inc., its owners, employees, subcontractors and agents, from any future related claims or damage at the site, including potential claims from third parties that may name [REDACTED], Inc., as a claimant.

Liens: It is understood by the Client that should payment not be made in accordance with the provisions outlined in this agreement, [REDACTED], Inc., may, in addition to other remedies provided by law, lien the subject real property improved by the services described within this agreement as provided by RCW 60.04.

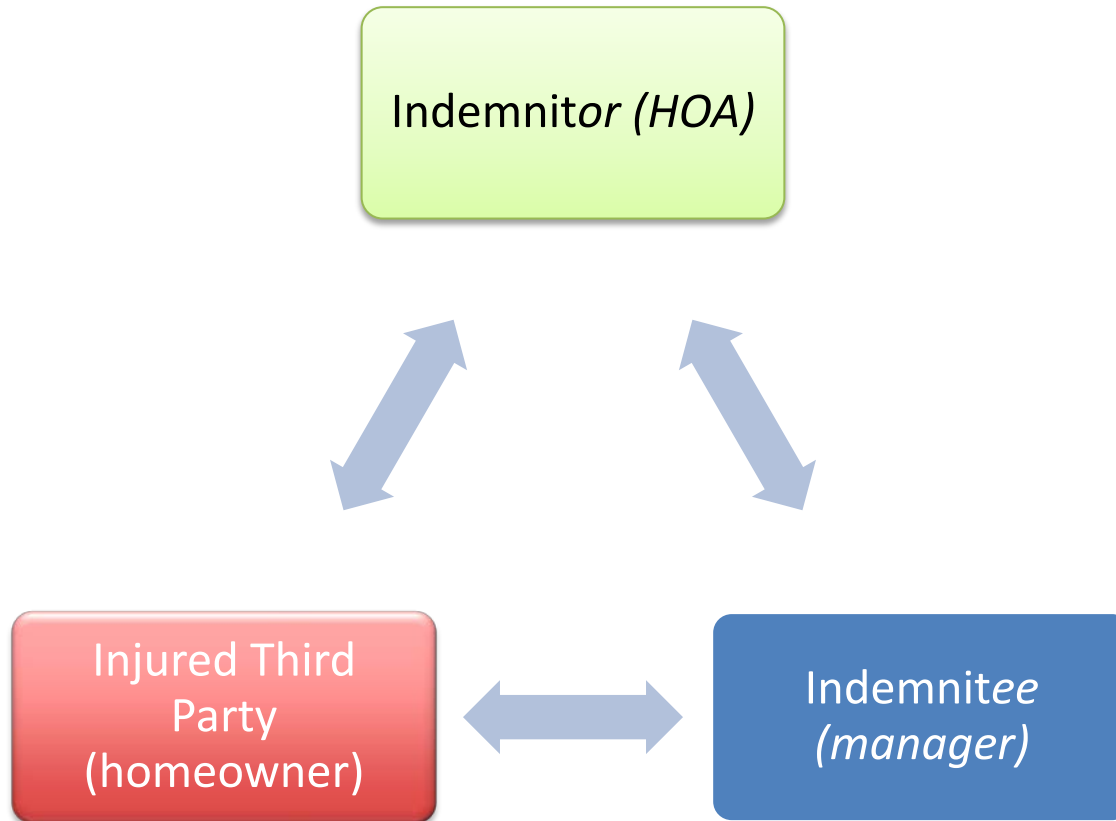
It is understood that [REDACTED], Inc., reserves the right to file pre-claim notice at commencement of the services described herein.



[REDACTED]



Indemnity Example



Insurance

- Required for large projects or activities where significant risk is involved
- Obtain copy of policy to verify coverage (to be reviewed by Association's agent/broker)
- Additional Insured coverage may be needed



ACORD. CERTIFICATE OF LIABILITY INSURANCE		FORM - 1	DATE (MM/SS/YY) 04/04/00	
PRODUCER Redmond General Insurance Agency 20 Box 647 Redmond WA 98073-0847 Phone: 425-885-2293 Fax: 425-885-6631		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
ISSUED TO Mosbrucker Excavating, Inc. PO Box 715 Bothell WA 98041		INSURERS AFFORDING COVERAGE INSURER A: St. Paul Fire & Marine Ins. Co INSURER B: INSURER C: INSURER D: INSURER E:		
COVERAGES				
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.				
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> STOP GAP GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> MO <input type="checkbox"/> LTD	KKOB400128	07/16/99	07/16/00	EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one loss) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP 4999 \$ 2,000,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	KKOB400128	07/16/99	07/16/00	COMBINED SINGLE LIMIT (Per person) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per insured) \$ PROPERTY DAMAGE (Per insured) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACCIDENT \$ AUTO ONLY AGG \$
EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000	KKOB400128	07/16/99	07/16/00	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$ \$ NC STATE TORT LIMITS BOTH OR \$
WORKERS COMPENSATION AND EMPLOYERS LIABILITY OTHER				ALL EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS, LOCATIONS, VEHICLES, ETC. ACCORD TO ENDORSEMENT/FEDERAL PROVISIONS All operations of insured subject to policy terms and conditions				
CERTIFICATE HOLDER <input checked="" type="checkbox"/> ADDITIONAL INSURED <input type="checkbox"/> INSURER LETTER		CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPROVE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.		
[Redacted Signature]		[Redacted Signature]		
ACORD 23-3 (1/97)		© ACORD CORPORATION 1998		

LIABILITY INSURANCE FORM - 1 | 04/04/00

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

Dispute Resolution

Statutes of Limitation

Mediation

Arbitration/Litigation

Attorney Fees & Forum Clauses

- Common in many standard contracts
- Prevailing Party entitled to attorney fees, costs?
- Which law is going to apply to disputes?
- Where do you have to go to enforce your contract?



Tips for Contracting

- Don't simply sign the other party's contract
- Designate someone on the board to be in charge of contracting
- Ask your attorney to review
- Make sure your contract terms are reasonable and not too one-sided



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