

MERCERTRIGIANI

Waste Disposal Agreements

One of the most significant agreements for an association, both financially and for quality-of-life, is a waste removal agreement. As with any agreement, the board of directors must make a number of basic contract considerations, such as confirming association authority to enter into the agreement, that the contractor is licensed and has the skills to perform the work, that insurance is adequate, and that the contractor remains an independent contractor. Waste removal agreements frequently have specific provisions that require additional consideration.

1. Services to be Provided. The agreement should clearly identify the nature of services to be provided – solid waste, recycling, bulk trash, and white goods (historically, white goods refers to appliances).
2. Service Intervals. The agreement should clearly state how often (usually the number of times per week) that each type of trash will be collected.
3. Equipment. Equipment supplied by the contractor, if any, should also be specifically established, including the number and size of totes for trash and recycling and the process for requesting, supplying, and paying for replacements. The size and capacity of waste removal trucks may also be addressed.
4. Term. Waste removal agreements are frequently long-term (3-5 years) and often include automatic renewal unless the agreement is terminated in a specific way. It is common for an association to miss the opportunity to terminate the agreement resulting in an extended commitment to an underperforming contractor. Automatic renewals are **not** recommended.
5. Compensation. Compensation for waste removal services may include not only base compensation but also any automatic escalation during the term or any renewals. Also, any additional fees such as fuel surcharges, increases in government fees for waste disposal, and separate or additional charges for disposal of yard waste should be clearly stated and understood.
6. Termination. Most waste disposal agreements limit association ability to terminate. A provision allowing termination without cause is recommended. If the contractor will not accept termination without cause, the length of the agreement should be carefully considered.
7. Right of First Refusal. Many waste removal agreements also give the contractor a right of first refusal. A right of first refusal requires the association to advise the current contractor of terms offered by a new contractor. If the current contractor agrees to accept those terms, the current contractor may keep the contract and the parties are bound by the accepted terms and conditions.
8. Damage. The agreement should also address contractor responsibility for damage to persons or property caused by the negligence or intentional contact of the contractor or its employees and indemnify the association against any such claims.

As with all agreements, waste removal contracts should be reviewed carefully and fully understood. Consultation with counsel is recommended.