

# Golf, Country Club and Resorts

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## Managing Contractors & Vendors

The number and types of vendors and contractors at your club and/or resort may be more than you think. It is easy to recognize some of the vendors such as your valet operations or fire system contractor. Others may be less readily apparent such as the independent fitness instructor or spa technician. The services contracted to others can create a significant exposure for your organization if proper controls are not enforced.



Let's take a look at several possible events. Is your operation protected from the following incidents?

- Your contracted security service assaults a guest while responding to a disturbance in the lounge.
- The independent fitness instructors overwork a new member resulting in a heart attack.
- The sound speaker for a live music event falls striking a guest in the head.
- Your fire sprinkler contractor inadvertently leaves the valve closed for the sprinkler system that results in no activation during a fire event.

This newsletter will provide a general review of best practices needed when using third party vendors. Please consult with qualified legal counsel and/or insurance professional to address your particular circumstances and needs.

### Transfer of Risk

According to "Investopedia," the definition of 'transfer of risk' is: "The underlying tenet behind insurance transactions. The purpose of this action is to take a specific risk, which is detailed in the insurance contract, and pass it from one party who does not wish to have this risk (the insured) to a party who is willing to take on the risk for a fee, or premium (the insurer)." [www.investopedia.com/terms/t/transferrisk.asp](http://www.investopedia.com/terms/t/transferrisk.asp)

Transfer of risk can be a very positive action in the eyes of an insurance company, especially if, the service(s) being delivered produce a high liability risk to the club or resort. However, if proper controls are not in place when selecting and using third-party vendors, serious consequences can occur.



### Selection

Whether the club needs to hire a construction company or simply requires an additional (contracted) instructor for the fitness center, certain selection criteria should be used.

#### Contractors, vendors and/or service providers:

- Check to assure licenses are in place and up to date
- Check for certifications, if applicable
- Check references, Better Business Bureau, etc.
- Require written estimates with a detail of services, job schedule, warranty information, project costs, etc.
- Review language of the contractual agreements
- Does the contractor, vendor or service provider subcontract? This introduces a new layer of concerns and exposures requiring additional controls.
- Does the contractor, vendor or service provider have a formal safety program and require a formal safety program of their subcontractors
- Check the insurance policy to confirm the proper coverage (reviewed later within this document)

#### Temporary employees\*

- Reference checks, including Better Business Bureau ratings, etc.
- Confirm that insurance is in place
- Review contractual agreements with specific job duties/responsibilities, etc.
- Review safety programs; does the staffing agency provide preliminary safety training specific to the club/resort's operations

### Contracts

Before you begin any vendor relationship, you should carefully review, discuss, and negotiate the terms of your contract carefully. In the future, this may benefit your organization through reimbursement of your out-of-pocket costs. It may also lower your loss ratio because contract terms can improve an insurance company's opportunities for successful recoveries against vendors who are responsible for losses.

In working with vendors, service providers and contractors, whether your company is leasing equipment, purchasing supplies or making transit arrangements, keep in mind the following contract points:

- All vendors should submit Certificates of Insurance. Assess whether the coverage limits are appropriate.

- All vendors should submit a contract outlining the scope of work to be performed.
- It may be in your best interest to strike the following provisions from the vendor's contract:
  - **Limitations of liability** – On contracts such as purchase contracts, the sellers typically include provisions that limit its liability. For example, the seller might specify that the only recourse you, the buyer, has in the event of a defect is repair or replacement of the product by the seller, leaving the seller free from any other liability related to the product.
  - **Indemnity provision** – Contracts sometimes provide that your company agrees to indemnify a third party for damages caused by that third party. Although such contracts may be illegal in some states, in others this provision could force your company to indemnify a third party for their own negligence.
  - **Waivers of consequential damages** – Your company may also enter into contracts stating the seller is not liable for indirect or consequential damages including loss of income or profits, increased costs of operation, or any other potentially foreseeable loss, whether a claim is brought in tort or under any other type of action.
  - **Waiver of subrogation** – A situation in which both parties agree to waive all rights against each other for damages caused by fire or other causes of loss to property covered by property insurance, up to the policy limit.
  - **Statute of limitations** – Often a company enters into contracts with provisions that prevent them from suing the other party after a specific time period. You should try to delete these limitations (whereby the statute of limitations in the given state would apply).

### References

\*Special note regarding the club/resort's responsibility of a temporary employee's safety. OSHA (Occupational Safety and Health Administration) regards a temporary employee as those who are supplied to a host employer and paid by a staffing agency. If the temporary employee is under the supervision of the club/resort, his or her injury on the job would be recorded under the location's OSHA recordkeeping logs.

To ensure a clear understanding of the employer's role in protecting temporary employees, OSHA recommends that the temporary staffing agency and the host employer set out their respective responsibilities for compliance with applicable OSHA standards in their contract. Including such terms will ensure that the employer complies with all relevant regulatory requirements, thereby avoiding confusion as to the employer's obligations.\* ([www.osha.gov/temp\\_workers/](http://www.osha.gov/temp_workers/))



### Insurance and Certificates of Insurance (COI)

Insurance is an agreement between the insurance company and policyholder in which the insurance company assumes specific risks. Insurance agreements vary depending on the coverage, limits and other provisions. The most common forms of business insurance are worker's compensation, property, commercial auto and general liability. Contractors, vendors and service providers must maintain adequate insurance limits for the types of coverages specific to their operations. Additionally, subcontracted work or services by the club's contractor must have adequate insurance coverage. For example, in the event that a club contracts with a talent agency for social-event entertainment, the band selected by the agency should have their own liability insurance along with the insurance held by the talent agency.

The 'certificate of insurance' (COI) documents should display a contractor's, service provider's or vendor's insurance information. These are issued by the insurance company or agency and illustrate policy coverage(s), policy numbers, effective dates, limits of the insured coverage(s), insurance company name and other details. COI's should be requested prior to commencement of a third party's services and confirmed by calling the insurance company (or agent) listed. Expiration dates should be monitored and new COI's provided as needed.

Additional layers of protection are often advised depending on the scope of services provided by the third party contractor/vendor. Provisions such as hold-harmless agreements, additional insured's and release of liability statements will also dictate the extent of protection the club or resort has when using a vendor or contractor. Again, specific wording on contract agreements and provisions within insurance policies should be reviewed by the qualified legal counsel. Insurance companies and/or agencies may be able to identify liability exposures that need to be addressed to help ensure that when an incident occurs, your vendor is responsible for losses.

### Conclusion

The goal of a sound vendor/contractor management system is to acquire products or services that meet the expectation of the club. Transferring risk is often the best solution, especially when a service creates a potentially high liability risk. To eliminate the club or resort's exposure, vendors/contractors/service providers should be properly selected/screened and maintain adequate insurance. Contractual agreements must be properly prepared fully protecting the property from the third party's exposures.

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