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Ten Things Community Associations Need to Know About Crane Swing License Agreements

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It can be overwhelming for associations and their residents to see a construction crane towering 200 feet or more over their property. Owners may become worried once they realize that the added weight of construction loads could be crossing over the association's pool or parking areas or are simply located a little too close for comfort near a unit owner's window or balcony.

As more and more associations are finding out first hand, the use of cranes in the development of neighboring properties may result in a temporary loss or encroachment upon the association's air space. Now more than ever, developers are beginning to secure temporary crane swing licenses from the affected owners of neighboring parcels.

Associations may be asked to sign a "crane swing license agreement." Before doing so, however, associations should consult with their legal counsel to gain a better understanding about what air rights they have and what other rights they may be relinquishing.

A crane swing license agreement is the document whereby the association is allowing a developer or others to operate a crane over, above, or along the association's property, including the association's air space, grounds, buildings, and other physical structures. Crane swing license agreements are growing in popularity as more developers are trying to mitigate their risk of committing a trespass into a neighboring owner's air space.

Typically, the parties to the crane swing license agreement include the association and the developer, contactor, subcontractors, crane supplier, and crane operator for the neighboring parcel.

These agreements should clearly define the association's property that may be within the crane swing path. Sometimes, the developer will include aerial photographs or a survey depicting the pathway where the horizontal arm of the crane or its boom may rotate in proximity to the association's property.

While this is not intended to be an exhaustive list, these are some of the provisions common to crane swing license agreements, that associations need to know about.

Temporary Crane Swing License

This provision describes the extent of the association's license to the developer and defines what access will be granted. For example, it may state that the association's license is limited solely to accommodating the horizontal rotation of the crane over the association's property. If the association's intent is to restrict any other movement other than the horizontal rotation of a crane over a specific portion of the association's property, the crane swing license should say so.

Conversely, if the association's intent is to allow construction loads to be transported over its property, this should be specified as well. If the association is prohibiting any portion of its property to be used by the developer as a staging area during the construction, the agreement should also specify this.

Term of Crane Swing License Agreement

The agreement should also provide a timeframe for when the temporary crane swing



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license will expire. This could be addressed in numerous ways. It may be defined as a specific date by which the agreement will expire, or it could be defined as the date when the crane is no longer needed by the developer. It may even be defined as the date when the neighboring construction has received its temporary certificate of occupancy. To prevent any confusion, the association should make sure that the agreement does not automatically renew without its consent and does not exist for an unspecified or vaguely defined timeframe.

Minimum Vertical Height Clearance

To avoid misunderstandings, the agreement should describe the minimum vertical height clearance that must be maintained at all times for each crane, until the crane is dismantled or removed.

Among other things, the agreement should also define the following:

- How many cranes will be used?

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- Where will the vertical mast of the crane be located?
- How far will the vertical mast be extended?

Means of Documenting the Association's Property

While the association should also consider performing its own property survey to provide a baseline of the conditions prior to the developer's construction, sometimes the developer will request the association's permission to have its own engineer survey the association's property before construction begins.

Generally, the survey should include all areas on or near the association's property where the developer's crane will be stationed and where the crane's horizontal arm and boom are expected to move. The agreement should also address when the association will be provided with a copy of the developer's survey of the association's property.

The association should consult with its legal counsel as to the following questions:

- How should the association document the condition of the association's property before the neighboring construction commences?
- Does the association have any leased equipment on site that could be impacted by the construction, such as a satellite, antenna, or cellular phone equipment on its rooftop or anywhere else in the path of the crane's horizontal arm or boom?

Protection of the Association's Property

The agreement should describe what measures the developer is willing to take to protect the association's property from damage and to protect the association's residents and invitees from danger. If the

developer agrees to promptly repair property damage and to restore it to the original condition documented in the initial property survey, the agreement should clearly state so. There should also be language in the agreement obligating the developer to comply with all applicable laws, codes, and ordinances in connection with the installation, maintenance, repair, operation, and dismantling of the crane.

Leased Equipment

The crane swing license agreement should describe what happens in the event any of the association's rental equipment is damaged or destroyed as a result of the neighboring construction.

The presence of leased equipment on the association's property presents a unique set of issues that the association should discuss with its legal counsel:

- Is the association a party to any lease agreements with satellite providers, cable companies, or cell phone providers?
- Does the association have any rented scaffolding on site?
- What are the association's obligations to protect leased equipment located on its property?
- Is any rental equipment within the anticipated swing path of the developer's crane?
- Does the crane swing agreement contain any provisions obligating the developer or others to prevent damaging leased equipment?
- How are these considerations addressed in the developer's indemnification to the association?

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Interruption of Service

The agreement should describe what happens in the event the association's utilities or telecommunications services are interrupted as a result of the neighboring construction.

By way of example:

- Will the developer reimburse any of the association's reasonable expenses to restore lost utilities?
- Will the developer provide backup generators to remedy the association's temporary loss of electricity?
- What is the impact to the association and its residents if the developer refuses to do so?

This could quickly become a life safety issue in condominiums where the residents are dependent on elevators, electronic garage gates, or door entry systems for ingress and egress or where the association's security system relies solely on electricity to function.

Indemnification

The association is advised to consult with its attorney about the circumstances which could trigger the developer's duty to indemnify the association.

At a minimum, the agreement should contain a provision in which the developer agrees to indemnify, hold harmless, and defend the association and its members, including any officers, directors, tenants, staff, or invitees, from any and all claims for property damage, personal injury, or death, resulting from the developer's negligent acts or omissions during the neighboring construction.

Insurance

Along with describing the

amount of insurance the developer has procured for the term of the crane swing license, the agreement should specify whether the association will be named as an additional insured under the developer's general liability insurance policies. The agreement should also require the developer to provide the association with advanced, written notice prior to any cancellation or reduction in the developer's insurance coverage.

Monetary Consideration

While the developer may not initially offer to pay much, if anything, for the privilege of using the association's air space, this does not mean that the association is prohibited from negotiating a reasonable air space rental fee. This rental fee could be a one-time lump sum payable by the developer to the association by a specific date, or it could be paid in installments.

In addition to air space rental fees, the association may wish to consider negotiating a separate monetary payment from the developer to offset the association's costs for, among other things, cleaning and removing construction debris, protecting building exteriors from construction materials, site rehabilitation, and the costs of monitoring the developer's work.

CONCLUSION

A thoughtfully written crane swing license agreement should describe the parties' respective rights and obligations to each other, define the scope and term of the association's crane swing license, and detail any monetary considerations or other protections the association is entitled to receive.

It is for all of these reasons that the association should consult with its attorney long before it executes any crane swing license agreement. ■



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