

# BUSINESS ALERT

*CURRENT LEGAL ISSUES FOR THE BUSINESS COMMUNITY*

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## **HIRING TALENT TO REPRESENT YOUR PROJECT**

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If you are a real estate developer, investor owner or a middle-market company, you may be considering hiring a performer to be the spokesman for your project or company. For example, if you are a homebuilder, or resort developer, this performer may promote your projects on cable television, may create a signature line of specially designed houses, attend community events in the locale where the project is located, promote your project on the performer's own tours, etc. If you are considering this type of marketing plan, this article will concern you and your company. The purpose of this article is to describe the types of provisions you want to have in the agreement to protect the company. The agreement must be carefully drafted to avoid arbitration or litigation in case of default.

The agreement should be between the artist and the company. If the artist uses a talent agent, the company should require proof of agency and, in California, proof of a license. Talent agents are regulated by the Talent Agencies Act, California Labor Code Section 1700 et. seq. A talent agency is a person or corporation that engages in the occupation of procuring, offering, promising or attempting to procure employment or engagement for an artist. The definition of artist is very broad as set forth in Labor Code Section 1700.4 (a). Therefore, if the company is negotiating with an agent, the fee payment should be between the agent and artist and you should have a copy of the license.

The agreement should expressly cover the scope of services including, appearances on the company's behalf, signing autographs and plaques, publicity stills, etc. If the artist will be taping a segment for cable television, this tape should be included. The agreement should be exclusive in that throughout the term of the agreement, the services should be rendered only to the company. The artist may wish to have certain business expenses paid by the company including travel, expenses, etc. Additionally, if the performer is working with potential buyers/investors, there should be a non-compete clause drafted. A non-solicitation provision should be added prohibiting the artist from soliciting clients of the company for other transactions he or she is involved in, or on the artist's own behalf. If the artist will be promoting another developer's project, the agreement should clearly state the perimeters.

The term should be set forth and the compensation clearly stated. The Company should have the sole ownership rights for the work product produced for the company. The company should also have the right to suspend the agreement if the artist becomes incapacitated for a short (no more than 60 day) period of time. The parties will be concerned about indemnity obligations, whereas if the artist is promoting, for example the sale of resort condominiums, he or she will want to be defended against any defects relative to the end product. Also, if the artist is soliciting investors or customers on behalf of the company, the company would require indemnification in connection with misstatements that an artist may make, outside the scope of his duties which could expose the company to violations of the securities laws and/ or the Interstate Land Sales Act. The indemnity provision may in part be reciprocal.

A final issue is the type of dispute resolution set forth in the agreement. The parties may wish to consider a carefully drafted arbitration provision which expressly describes the scope of discovery,

choice of arbitrators, choice of law and other matters relative to the settlement of a dispute. For further information, in connection with the drafting of such an agreement please contact this office at (949) 219-0442.

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*Actual resolution of legal issues depends upon many factors including variations of fact and state laws. This article is not intended to provide legal advice on specific subjects but rather to offer insight into legal developments and issues. Consult with legal counsel before taking action on matters covered in this article. Copyright 2005 Harriet B. Alexson. All rights reserved.*