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In the current difficult economic environment, associations should exercise caution before making a large down payment to contractors or vendors. We have seen clients pay out large sums for a project only to see their contractor's business close down or declare bankruptcy before any work is actually completed. The association then faces the difficult prospect of seeking the return of its money through bankruptcy court or other legal proceedings.

Rather than paying out a large deposit before any work is performed, the association may wish to structure contractor or vendor payments so that, instead of a large down payment, regular progress payments are made after the association is presented with invoices for work actually performed on the project and for materials purchased for use in the project. That way, even if the vendor or contractor does fall on hard times, the association has only paid out amounts for work and materials it has actually received.

Another method is to require that the vendor or contractor provide a performance bond to secure the payments to be received under the contract with the association. Then if the vendor or contractor fails to complete the project, the association can make a claim on the bond to pursue recovery of funds to have the project completed by another party. Note, though, that the current state of the economy has bond companies performing extensive due diligence on a company's financial state before a bond will be granted. If time is of the essence, structuring payments to be based on progress may be the quicker option to help protect the association. As always, this is intended to be general advice, and specific situations may affect the association's ability to collect on performance bonds or affect the terms of an association's contract.

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