

**Published in the September 10, 2003 issue of [Southeast Tech Wire](#).**

Originally published in the August 2003 issue of "Multifamily Executive magazine"

## **Upgrade Protection - Best Practices to Implement While Changing Software**

By Pamela V. Rothenberg, Esq., and Boyer Taylor

Changes in the multifamily industry often occur in waves-and currently, property management software is riding the wave. As the masses adopt this technology, a new generation of Web-based property management software is coming online. To better understand the challenges associated with this trend, we talked with representatives from AMLI Residential Properties Trust, Archstone- Smith, AvalonBay Communities Inc., BRE Properties Inc., Camden, Gables Residential, Lincoln Property Co., and the National Multi Housing Council about their experiences. Our goal: Identify the best business and legal practices owners and managers should consider as they implement property management software changes-and the pitfalls they need to avoid.

### **Key Considerations**

An honest introspection of your company and its philosophies, culture, and objectives will dramatically impact your choice of vendors and products. Our case study companies spent considerable time and effort on self-assessment. Their concerns included consistency of data and the ability to roll up data for reporting and analysis, as well as to charge and account for other revenue. Another area of focus was on vendors with products that were the most advanced and that had substantial multifamily experience. Almost universally, the group strove to identify software that could take their companies where they wanted to go in terms of real-time management, and they frequently chose a vendor that was positioned to help them deploy a Web-based system with a centralized database. You should undertake a complete and thorough due diligence process for each prospective vendor and its product. Questions to ask include which company has the best developed Web-based product, and what is its level of technical competence. Also, the vendor's longterm viability, multifamily experience, and track record in rolling out new technology are important factors to consider. The companies we interviewed also were concerned with the absence of a vendor with a mature, fully developed product. As a consequence, some companies delayed their decision, waiting, in their opinion, for product availability. Interestingly, none of the companies could confirm that their chosen systems were fully developed at the time they made their selection, yet all reached the decision that they could no longer wait to make the move.

### **Organizational Support**

Changing to a new property management software has a wide-ranging and material impact on a company, its people, and its operations. Given the magnitude of the change and the daunting nature of the associated challenges, it's critical to have the full support of your organization, especially from top management, before making the change. This process will take more resources and time than anticipated- and the road is likely to be bumpy. Beyond management support, it's essential to dedicate a core group of staff to focus on the project (with no other distractions) in order to achieve a smooth, as well as successful, transition to the new software. Some companies will hire outside consultants. Others will use broad based and sizable project

teams for a successful conversion. These teams can be responsible for developing program requirements, vendor analysis and selection, and various phases of implementation. And, they should be populated from almost all sectors of your company. The team approach requires an investment in coordination, but it will pay off in sound decisionmaking and buy-in throughout your organization.

### **Serve No Wine Before its Time**

Before broadly deploying the new software, develop an implementation strategy. The first level test could be a pilot of the software performed in a conference room. When everything appears to be in order, test the software at one community. If that goes well, then deploy to another half dozen properties. If everything is still flowing smoothly, proceed to full roll out. Consider pausing once or twice during the roll out to review the deployment methodology. Most unfavorable results are caused by the premature deployment of a system that wasn't fully verified and working smoothly in the pilot setting. To avoid a conversion disaster, you must complete all of the required preconversion work before implementation. There are many pre-conversion processes involved, but examples include confirmation of data consistency (or clean up) and data validation. If you use different software programs or several versions of the same software, you are likely to find the same data in fields with different field names or in fields with different characteristics such as different field lengths. During conversion, you will be required to move all of this information into new fields that may not accommodate a transfer of all of these different variations. A classic example is where your old software lets you enter a movein date that was earlier than the lease date, but the new software doesn't permit this type of entry. These data distinctions can lead to conversion nightmare. Scrubbing the data and data validation before conversion are keys to a successful implementation process.

### **Legal Considerations**

As you proceed through implementation, and before you sign a binding agreement, you should consider material legal protections. By incorporating provisions addressing these matters into your vendor agreement, you can prevent contract issues from adversely affecting the integrity of your business processes. In order to assure a meeting of the minds, in your contract, you must include precise specifications for the software, detailed service level covenants by the vendor (including the exact technical and training support you can expect), and the hardware and communications systems you must have so the software functions as warranted by the vendor. Detailed vendor warranties for the software should be expressly stated in the contract. As you progress through the due diligence and evaluation process with each vendor, keep detailed notes about statements the vendor makes concerning the software and later insist that these representations be incorporated into the agreement you sign. The goal here is to avoid any surprises and to have complete clarity about how the software will perform, its exact functionality, and your expectations about the services the vendor will provide to your organization at every level.

### **Contractual Dos and Don'ts**

Favorable termination rights are an essential contractual provision. You must retain the right to exit from your relationship with the vendor if, at any point, the vendor, the software, or the process isn't meeting your expectations. Negotiate for a lengthy due diligence period that affords you sufficient time to meaningfully evaluate the software and the vendor and the right to

terminate the contract and your entire relationship with the vendor for all of your communities without penalty if your due diligence isn't satisfactorily completed. Following due diligence, retain termination rights in the event that the vendor defaults under the contract. It is imperative that the vendor's specific obligations under the contract be definitively spelled out in sufficient detail to allow you to assert and prove the vendor is in default and to successfully invoke your termination rights. Also consider including a buy-out right in your favor that permits you to terminate your relationship with the vendor for any reason (or no reason) upon the payment of a termination fee. While this fee may seem prohibitive right now-and a strategy you ultimately elect not to rely on-it is better to have a costly safety valve in the contract than no way out at all. Include transition protections in the contract so that the vendor is obligated to support the software and your operations for a reasonable period of time upon the termination of the contract for any reason.

### **Protect Your Data**

Include specific provisions relating to your rights of access to and the protection of your mission critical data. You must be afforded 24/7 access rights to the data, subject only to vendor-required downtimes that are specified with detail in the contract. This will enable you to anticipate and manage downtimes, minimizing their impact on your operations. Clarify how the vendor intends to protect your data, as well as your ability to access the same, through the use of specifically identified vendor back-up systems and redundant networks. Also, obtain your own right to back-up your data on your own separate servers and computers to protect the data and your associated access rights. Confirm that each staff member who will be using the software does in fact have the right to do so under the contract. Insist upon strict confidentiality protections with respect to your data. The vendor must be expressly prohibited from using, changing, tampering with, sharing, or otherwise disclosing your data to any party in any form, whether or not sanitized, without your express prior written approval. Finally, require the vendor to identify the specific measures it will implement to protect the security and integrity of your data and operations. Seek to shift all security risks to the vendor in order to obtain comfort that it will address your security issues with the highest level of attention and technical capabilities. As with any contract you sign for your portfolio, try to obtain non-recourse carve-outs that limit your liabilities to the specific properties that are the subject of the contract and not your company's assets as a whole. Conversely, be vigilant about eliminating from the contract any limitations of liability in favor of the vendor (which are included in virtually every vendor form contract) and require broad vendor indemnifications in your favor for losses you suffer as a result of the vendor's acts, omissions, or breach of contract.

### **Your Time is Coming**

The property management software wave is coming, and it's inevitable that you will at some point face pressure to tackle this challenge. The costs of being less competitive by failing to implement new economy strategies are beginning to increase. While there are still risks associated with making a change of this magnitude, you can manage the associated costs by both learning from the experience of industry leaders who have already taken the leap and by requiring favorable contractual provisions to protect your rights.

Pamela V. Rothenberg, Esq., is a member of the real estate technology practice at Womble Carlyle Sandridge & Rice PLLC in Washington. Boyer Taylor, is president of Solution Partners

LC in Houston. They can be reached at [prothenberg@wcsr.com](mailto:prothenberg@wcsr.com) and [boyer@solutionpartnerslc.com](mailto:boyer@solutionpartnerslc.com), respectively.

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