

Developer/Homeowner Transition: A Guide To Success

A successful transition from developer control to owner control of a homeowners association or a condominium association is not necessarily a difficult process. However, it requires open lines of communication and information, common sense, perseverance, and a lot of smart, energetic people who aren't afraid of hard work.

When an association is developed, the builder/developer/declarant commits large amounts resources and dollars to construction of the project and its infrastructure and amenities. In order to protect his investment, provisions are built into the association's legal documents which allow him to exercise control over the direction and processes of the community until a time certain either a firm date several years in the future, or when a certain percentage of units have been sold to homeowners. As you can see, that developer control period can last months or even years.

During that time, the developer's representatives serve as members of the Board of Directors, and, as such, they are bound to act as fiduciaries and in the best interest of the association. It is a fine line to walk, since some decisions which are right for the community may result in unanticipated expenses for the developer.

Also, during that time, there are usually benchmarks that give homeowners some limited participation in the affairs of the association. These benchmarks can include formation of an advisory committee to make recommendations to the Board, and/or phased-in appointment of homeowners to the Board of Directors.

At some point, however, the developer must turn over control of the association to the owners. Responsible developer will have encouraged homeowner involvement and training along the way, so that the owners are well prepared to assume the responsibility of directing association operations.

Transition is usually accomplished at a special meeting held for the purpose of electing homeowners to serve on the Board of Directors. Once the owners are in control, the real work begins! The only thing that ends at that meeting is the developer's control over the functioning of the association not his responsibility to it, and probably not his involvement and interest in it. He may still be selling homes and may still retain seats on the Board.

The newly elected owners now have a huge responsibility. They must insure that (1) the developer provides the association with any and all pertinent information; (2) the association

reviews that information and questions the developer on any vague or ambiguous issues; and the Board develops a strategic plan to go forward from that point.

One of the first steps a new Board should take is an audit of the association's financial situation. It is important for members of the Board, as well as all the owners, to satisfy themselves that while the developer was in control, all income and expenses were properly accounted for. That includes, but isn't limited to, the financial obligation of the developer himself, if any, and aggressive pursuit of delinquent accounts.

All association boards, but especially condominiums, should consider hiring a professional engineer to perform a comprehensive inspection of the property and its physical plant. This serves two purposes: (1) it will determine if there are any warranty defects that may be the responsibility of the developer; and (2) it will serve as the basis for a repair and replacement reserve analysis. Such an analysis will estimate the useful life of a component, such as a building roof, the projected cost to replace it, and how much money needs to be set aside to ensure that special assessments are not necessary to maintain the association's assets into the future.

Good legal advice can also be important to the community. The association should retain independent counsel who is well versed in community association law, and who can ensure that the developer abides by his legal obligations and commitments.

The following are examples of the types of documents an association should determine the existence and location of during the transition from developer to member control. This list is by no means exhaustive, but can serve as a checklist to guide you. Keep in mind that jurisdictional requirements may vary in terms of time frames for developer responsibility, and specific transition documents.

General/Operational Items

1. All association books or records held by or controlled by the developer.
 - Original (or certified copy) of all recorded documents for homeowner associations and condominiums
 - Recorded copy of Declaration or Master Deed
 - Articles of Incorporation
 - Copies of filings
 - Certificate of Good Standing
 - Copies of annual reports filed

- Bylaws
 - Recorded (condominiums)
 - Non-recorded (homeowners associations)
 - Complete set of Board meeting minutes
 - Duly adopted rules and resolutions
 - Schedule of recordation dates
 - All other files and records
2. An accounting of association funds and financial statements, from the date the association is first entitled to receive funds through the date the developer/declarant control period ends.
 - Any audits performed during the developer control period
 - Current operating budget
 - Copies of all past budgets
 - Current statement of account balances, including that of developer
 - Current accounts payable information
 - Invoices both past/paid and outstanding
 - Current reserve/replacement schedule
 - Association bank accounts, checking accounts, certificates of deposit, etc.
 3. All association insurance policies
 4. Complete roster of unit owners and their addresses, as shown on the official records of the association.
 - Roster of mortgagees by unit, with addresses, to the extent that the association has such, and to the extent the information is available.
 5. Any and all contracts in which the association is a contracting party.

Warranty/Physical Facilities Items

1. Complete set of site plans and as-built drawings, including detailed measurements and dimensions.
 - Any approved landscaping plan
 - Recreational facilities plans
 - Storm and sewer system plans and diagrams
 - Roads and parking areas
2. Written warranties of the contractors, subcontractors, suppliers, and manufacturers, involved in the construction and/or maintenance of the association's facilities.
3. List of manufacturers of products and specifications used in the maintenance, repair or replacements in or on common areas or common elements

4. Copies of any bonds or letters of credit posted with any state or local agency
5. Schedule of quantities of the following:
 - Square footage of roof
 - Square footage of all paved area on the association property
 - Square footage of lawn surface
 - Square footage of exterior surface of each building
6. Confirmation of compliance with the local authorities
 - Completion bonds, either in place or already released
 - Traffic and safety regulatory signage
 - Fire code compliance
 - Designation of roadways and site lighting, both public and private

Throughout the transition process described above, professional management can and should serve as advisor to the Board, custodian of the association's books and records, and the entity to which the Board turns to assist in the development of long-term plans and goals to make that a community's early due diligence translates into future continued success and financial stability for the owners. If that happens, all parties involved developer, transition board members, future board members, owners, and management will gain great satisfaction in a job well

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