



## Transition From Developer Control

The transition from developer control occurs when control of the association shifts from the developer to the owners. The transfer of control can occur in several ways. However, the most common method is a weighted voting approach whereby the membership voting ratio is arranged so that the developer will transfer control to the association after a specific percentage of the homes have been sold (typically 75%).

Ideally, the transfer of control from the developer to the owners should occur through an extended process of transition during which the owners gradually become involved in the association's operations and decisions. Some associations create one or more homeowner committees (such as transition, maintenance, finance, management, or insurance) that investigate and identify problem areas between the association and the developer and bring them to the developer's attention with recommendations. In addition, these committees provide excellent training opportunities for future board members regarding the issues that face an association.

## Common Transition Issues

In some instances, there are outstanding issues between the developer and the owners at the time of transition. Set forth below are the most common transition issues:

1. **Construction Defects:** We suggest that associations in the transition process consult with an engineer to create a punch list of defects, determine the nature and extent of the defects and consider the possible remedies. (Examples of construction defects may include: leaky roofs, windows, and balconies; stucco cracks; grading and drainage problems; settlement and cracking of foundations; and damaged sidewalks.
2. **Failure to Adequately Fund a Reserve Account:** The association's developer has a fiduciary duty to adequately fund the association's reserve account. The association should consider obtaining a reserve study or advice from a qualified reserve analyst regarding how much money should be/have been in the reserve account and/or general checking account at the time of transition.
3. **Failure to Deed Common Areas to the Association:** This problem can be corrected by the developer quit claim deeding the association's common area to the association.
4. **Misappropriation of Association Funds:** The association should consider hiring an independent certified public accountant to conduct an audit of the association's books and records to determine if the developer has paid "developer" expenses with association funds.

## Arizona Law Regarding Declarant Control and Transition in Planned Communities

**A.R.S. Section 33-1820** provides the following with regard to declarant control and transition in planned communities:



Notwithstanding any provision in the community documents:

1. Each declaration that provides for a period of declarant control of the association shall also provide for a date of or method for calculating the date of the termination of declarant control.
2. For every planned community, without regard to whether the community documents provide for the termination of declarant control, declarant control terminates not later than the date on which the second to last lot in the planned community is conveyed to a buyer.
3. After termination of the period of declarant control and while the declarant owns one or more lots in the planned community, the association shall:
  - a. Provide at least the same level maintenance of common areas that the declarant provided.
  - b. Not impede the declarant's ability to develop, construct and sell its lots and not impede access to and use of common areas by the declarant in the same manner as other members.

## Obtain Advice

We strongly suggest that a transition committee or the board (post-transition) obtain advice from an independent legal counsel who represents community associations (i.e. not the developer's attorney) regarding any unresolved transition issues before the transition or shortly after the transition. Several Arizona laws affect how long an association has to bring suit against a developer and there is a detailed process an association must follow under Arizona law to bring a legal claim against a developer.

Mulcahy Law Firm, P.C. provides a free consultation to the association's transition committee or the board of directors (post-transition).

## To-Do List

- Determine that common areas have been properly transferred to the association (if the association is a planned community). Change the address for the common area property taxes with the County Treasurer and Assessor (if the association owns common areas). Change the statutory agent/address of the corporation, if necessary, with the Arizona Corporation Commission.
- Record a new Notice of Contact Information with the Maricopa County Recorder's office.
- Check existing contracts (landscaping, management, etc.) to determine liability for the association, terms, and cancellation policies.
- Read and understand the governing documents.
- Consult with a qualified community association attorney on matters dealing with transition.



## A Checklist of Documents for Transition

### Association Documents

- ☐ CC&Rs and any amendments
- ☐ Articles of Incorporation and any amendments
- ☐ Bylaws and any amendments
- ☐ Rules and Regulations
- ☐ Declaration(s) of Annexation
- ☐ Plat and all other maps

### Association Meeting Documents

- ☐ Regular meeting minutes past and present
- ☐ Executive session minutes past and present
- ☐ All actions by written consent
- ☐ Board and committee rosters

### Financial Documents

- ☐ Annual federal and state tax returns since the date of incorporation
- ☐ Tax exempt exemptions (if any)
- ☐ Association budget with backup information
- ☐ Certified audit of association's books and records –past and present
- ☐ All association funds accounting and control financial books, records, ledgers, bills paid, canceled checks, and financial statements past and present

### Policies

- ☐ Collections policy
- ☐ Enforcement policy
- ☐ Fine policy (if separate from enforcement policy)

### Enforcement Files

- ☐ Enforcement records
- ☐ Violation histories

### Miscellaneous

- ☐ Annual report filed with the Arizona Corporation Commission
- ☐ Copies of all deeds to association common areas
- ☐ Lot files and list of owners and addresses or mortgage companies (if available)
- ☐ All correspondence and files
- ☐ Original or copies of existing contracts (i.e. pool, management company, trash, security, landscape, etc.) signed by the developer-controlled board
- ☐ Original or copies of all employment contracts in which the association is a contracting party
- ☐ Association property inventory – including all tangible association property
- ☐ All insurance policies in which unit owners, the association, or its directors and officers are named as insured persons (i.e. director and officer, workers compensation, liability, property, fidelity, earthquake, flood, non-owned auto, etc.)
- ☐ Contact information for the management company and board members

### Architectural History

- ☐ Architectural guidelines, standards, and files
- ☐ Architectural submission records/action

### Maintenance

- ☐ Reserve study, with the date of completion
- ☐ Original and revised landscaping and irrigation plans and drawings
- ☐ Set of “as-built” drawings for all buildings, facilities, water and sewer systems, roads, etc.
- ☐ Common area facility plans such as pool house, roads, paint, etc.
- ☐ Square footage for common area facilities
- ☐ Warranty information on equipment and property owned or maintained
- ☐ List of construction sub-contractors and principals for each company
- ☐ Specifications and list of paint manufacturers and colors, roofing materials, etc.
- ☐ Keys for facilities (i.e. pool, equipment room, clubhouse, gates, etc.)
- ☐ Schedule of major capital items (roofs, streets, etc.) with dates of installation and life expectancy

### **PUBLIC REPORTS/OFFERINGS**

#### Disclosure Documents

- ☐ Statement that street, traffic, safety, and regulatory signs are installed in conformance with state or local ordinances and association documents
- ☐ Confirmation from local authorities that the fire hydrants are under the local government maintenance plan
- ☐ Confirmation that city or county emergency centers have mapped the association for dispatch of emergency vehicles and that private addresses are visible
- ☐ “Statement of determination” of the public agency or utility responsibility for streetlights and sewer systems maintenance
- ☐ Statement that appropriate public agencies have or have not released the completion bonds on the improvements where those bonds are required
- ☐ Copies of certificates of occupancy and/or other permits issued by governmental bodies
- ☐ Marketing and sales materials used by the developer