

Transition from Developer to Homeowner Control

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.

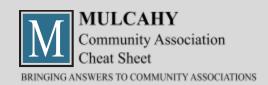
Common Transition Issues

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:



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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.

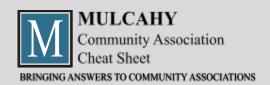
Obtain Advice

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.



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A Checklist of Documents for Transition

Association Documents		Architectural History	
	CC&Rs and any amendments		Architectural guidelines, standards, and files
	Articles of Incorporation and any amendments		Architectural submission records/action
	Bylaws and any amendments	Mainten	<u>ance</u>
	Rules and Regulations		Reserve study, with the date of completion
	Declaration(s) of Annexation		Original and revised landscaping and irrigation plans and drawings
	Plat and all other maps		Set of "as-built" drawings for all buildings, facilities, water
Associat	ion Meeting Documents		and sewer systems, roads, etc.
	Regular meeting minutes past and present		Common area facility plans such as pool house, roads,
	Executive session minutes past and present		paint, etc.
	All actions by written consent		Square footage for common area facilities
F: i -	Board and committee rosters		Warranty information on equipment and property owned or
Financia	A possible description of a total total and a total an	_	maintained
	Annual federal and state tax returns since the date of incorporation		List of construction sub-contractors and principals for each
	Tax exempt exemptions (if any)		company
	Association budget with backup information		Specifications and list of paint manufacturers and colors,
	Certified audit of association's books and records –past and present		roofing materials, etc. Keys for facilities (i.e. pool, equipment room, clubhouse,
	All association funds accounting and control financial books, records, ledgers, bills paid, canceled checks, and financial statements past and present		gates, etc.)
<u>Policies</u>			Schedule of major capital items (roofs, streets, etc.) with
	Collections policy		dates of installation and life expectancy
	contentions pointy		
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