

Transitions

AN ASSOCIATION'S transition from developer to owner control should be a process, not a specific event. Unfortunately, it sometimes is the latter. Developers send homeowners a notice of the first annual meeting and hand the reins to new board members elected that evening.

Ideally, the developer should begin the process earlier by appointing homeowners to committees responsible for finance, grounds maintenance, architectural overview and covenants so they gain experience in running the association and help ensure continuity in policies. The developer should appoint one or two homeowners to the association board so they have the opportunity to be a part of the governing process, making decisions on budgets, rules enforcement and maintenance issues.

Although the developer retains control of the board until the official transfer, the appointed homeowners can learn and voice their opinions.

Some developer-controlled boards don't actually meet and conduct association business even though the governing documents require them to do so. In those cases, the homeowners can elect an unofficial board—with no actual authority—to convey concerns and suggestions to the developer.

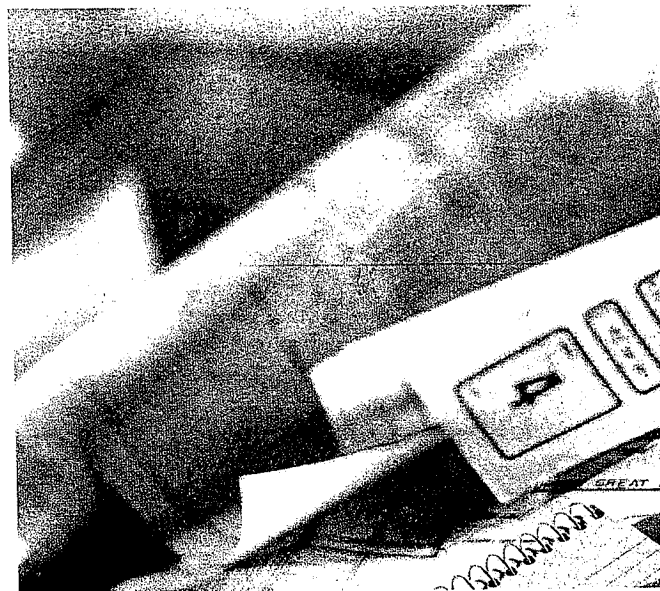
Continuity offered by homeowners is important for architectural control and covenant enforcement because some developers make exceptions to the rules to encourage sales.

Such contradictions make enforcement of the governing documents problematic. Earlier homeowner involvement might not prevent the developer from making exceptions, but at least homeowners would be able to try to influence decisions and formally record their opposition.

MAKE A LIST

Whether the transition has been a process or an event for your community, the first homeowner-controlled board should take steps to ensure the future well-being of the community. This checklist is intended to help boards and managers during that critical first year.

- Gather records.** The board should obtain the following documents from the developer or builder:
- Recorded copies of governing documents and amendments. If the association is part of a master or umbrella association, get a complete recorded set of those governing documents too. If incorporated, also get the articles of incorporation and copies of all annual returns.
 - Recorded copies of plats. Plats should show the overall development as well as sections, phases or even individual buildings. Check for any amendments.
 - Copies of all approved site development plans, including those reflecting amendments or changes to the documents the local jurisdiction first approved.
 - A complete set of construction drawings, including mechanical, electrical, foundations, framing, grading and drainage, landscaping, storm water management and plumbing. No one set of construction drawings shows all the changes made in the field, the relocation of a pipe or the specific location of shut-off valves, for example. Each subcontractor notes field modifications on a separate set of plans, and the project supervisor records major changes on a master plan.
 - Records of all developer-controlled board actions. This includes rules, regulations, resolutions and meeting minutes.



- All financial records, including those for operating funds, replacement reserves and working capital. The developer should also turn over the association check book, bank statements, certificates of deposit, stock certificates, bonds and investment account statements.
- Deeds to the common areas and copies of any easements, licenses or other restrictions against the property.
- Copies of all association contracts, especially the management contract.
- Records of all architectural change requests and their disposition.
- Records of all rules enforcement cases, including complaints, correspondence (including e-mail), hearings and decisions.

MOVE AHEAD

After obtaining the records, the board should take the following actions:

Check incorporation. Verify the association is in good standing with the state and the Internal Revenue Service. If not, ask the developer for information to file missing taxes or statements and resuscitate the corporate charter.

Retain professionals. Hire an attorney, an accountant and a manager who have experience with associations transitioning from developer control.

Commission warranty and reserve studies. The reserve study will tell the

board how much to contribute annually to the reserve fund. The warranty study will identify construction or design defects that should be remedied by the developer. Be aware there is a deadline for completing the warranty audit. The association might lose its right to legal recourse if the board doesn't act quickly enough.

The association attorney will analyze the warranty study, the public offering statement, marketing materials, the governing documents, local building codes, construction industry standards and state law.

Schedule an inspection. The board, the architectural committee and the manager should inspect the property. Compile a list of architectural violations, which the board can require the homeowners to correct before the statute of limitations runs out. If the rules are unclear, the board should consult with the manager and attorney to decide how to interpret them and notify

owners of that interpretation.

Review rules. Modify, delete or enact any rules that the board deems best for the community.

Review contracts. Many state statutes allow associations to void developer contracts without penalty for a certain period of time after the transition. Many contracts might be acceptable. However, contracts with companies affiliated with the developer warrant a closer look.

Develop policies. These will guide the board and homeowners alike. For example, a collection policy distributed to owners periodically can greatly aid assessment collection. Also, the board should adopt a dispute resolution policy unless state law requires a specific procedure. The board's policy on enforcing rules violations should provide residents with adequate due process.

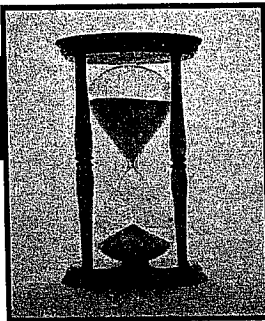
Establish committees. A covenants or rules committee and an architectural committee are essential. Some govern-

ing documents specify certain standing committees and allow ad hoc committees that the board deems necessary. Give each committee a written charter describing—and limiting—its powers and duties. In general, committees should implement policies or rules adopted by the board, but have no authority to make rules.

Communicate. Choose how to communicate with homeowners—by newsletter, website or bulletin board. The board also should establish a way for homeowners to contact the board.

While there are more things that a first board will be required to do, these steps will establish a strong foundation for the community. For this reason, the first board might be the most important because it has opportunities that, if lost, may never come again. **CG**

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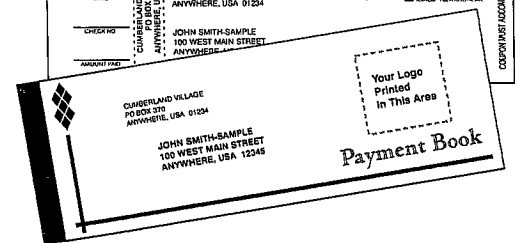
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