



ASSOCIATION POINTERS

Transition Transferring Authority From Developer to Homeowner Control

"The method used to transfer control of the association from the developer to the owners often determined the success of the association. Ideally, the transfer of control should occur through an extended process of transition, during which the owners are gradually involved in the association's operations and decisions.

Owners and developers are often reluctant to institute and complete the transition. The developer may fear that the unit owners will interfere with building and marketing efforts, threatening profitability. The unit owners may fear an unknown financial or legal burden and not want to accept responsibility for the association.

By achieving a better understanding of the transition process and the benefits gained from a successful transition, each party will be more comfortable working with the other." *GAP Report #3, p.5*

Transition is NOT the act of transfer or acceptance of the common elements or common property.

Transition IS a transfer of common property from developer to the owners in an early stage of the development process.

In planned communities, the common property is frequently deeded to the association prior to the sale of the first units or during early stages of the multi-phase development. This is most often done at the time that the plat is recorded, deeding the common area tracts to the Association (or to the City or other party).

Transition is also NOT the *turnover* of the common elements to owners who then have no further recourse to the developer for defects in the common elements. Transfer of control from the developer to the owners does not necessarily ensure that developer construction warranties have been met.

TRANSITION IS A PROCESS – A SERIES OF EVENTS – THAT TRANSFERS CONTROL FROM THE DEVELOPER TO THE OWNERS.

In a well-planned transition program, *turnover* is a mere formality that marks one event near the conclusion of an extended process. Both parties gain from a successful transition and early owner involvement. The developer benefits by gaining a good reputation. Owners benefit by learning all the facets of association operations.

The goal is to create a successfully-operated community association – a credit to the developer and a sound investment for the unit owners. Successful transition requires advance planning. Preparation for transition begins with the initial planning of the project and carries through until unit owners are in complete control of the association. It involves all phases of the development process. Though the process may be time consuming, eventually it will return dividends to all involved parties.

Ideally how it happens...

1. The developer meets with all those involved in the planning of the development (attorneys, architects, lenders, accountants, and marketing and management consultants).
2. After the planning is completed and the actual physical development is underway, the association's attorney should draft its legal documents.
3. A comprehensive maintenance manual should be developed to provide a concrete guide for the association – regardless who controls the board.
4. Education of new owners begins with materials and explanations provided during the sales process and with a new owner orientation program given shortly after conveyance. This material should include:
 - Explanations of the community association concept
 - Particular aspects of the documents and community standards
 - The association's operation and management
 - The transition from developer to owner control.The developer should identify activities in which the owners can become immediately involved and solicit participation in these activities. As owners increase in number, the developer or its representative should hold periodic meetings to discuss development progress and association operations. The meetings should also solicit owner input.
5. The developer should encourage owners to participate on the maintenance, insurance, orientation, communications, architectural review, and finance committees. Their recommendations should have increasing weight in the board's deliberations. When the



number of units sold reaches a pre-designated percentage (25%) owners should begin more formal involvement in the association's governance, electing their representatives to an interim committee, an advisory board, or the board of directors. These owner representatives would then have the opportunity to present unit owners' views to the developer-controlled board. As additional sale levels are achieved, unit owners are generally entitled to additional representation until eventually they hold a majority of seats on the board. At this point, the owners have complete control of association decisions, unless the developer has retained a veto over certain board decisions until the development is largely complete. In this case, complete control belongs to the unit owners when the developer's veto right expires.

In the "ideal scenario", *turnover* is a formality. The developer keeps phase-in owner responsibility and owners are already in charge of key committee functions when the developer leaves the community. Operations of the association do not skip a beat.

Any disputes between the association and the developer over such items as common area deficiencies still need to be adjusted, but board members can represent the owners' interests from the experience they gained during transition. Many problems regarding assessment collection, contract awards, and maintenance quality are identified and handled earlier in the process.