5 STEPS TO SUCCESSFUL DEVELOPER TRANSITION

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Developer transition refers to the shift of responsibility and control from the developer to the individual owners of a community association. During the developer transition process, the individual owners, who are represented by a board of directors, take control of ownership of association property, governance, and maintenance responsibilities. The following are the 5 key steps to ensure a smooth developer transition process.

1. Create a Transition Committee

In California, there are a variety of triggering mechanisms that state when a developer shall transfer control of an association to the individual owners. Often, the details on the timeline for transition are stated in the association's Covenants Conditions and Restrictions ("CC&Rs") or Bylaws. The CC&Rs or Bylaws typically provide that a developer should withdraw from the board of directors after a certain percentage of units/homes have been sold. While the CC&Rs may establish a transition timeline, it is important for the turnover to begin early to ensure the timely and diligent transfer of association files and project documents.

Owners in the community should establish a committee to communicate with the developer through the transition process. The committee should be created at least a year before the start of the transition process. The committee needs to work closely with the developer and other professionals to make sure that they are provided with all the information and documents necessary to properly run the association. These committee members may become the first homeowner board members of the association.

2. Hire Professionals to Assist in the Transition

The developer transition process should not happen quickly. The process is best done slowly with the assistance of diligent and competent professionals. Management companies can assist in assembling the necessary expertise for the transition process and support the owners throughout the process of becoming an independent association.

There are three key experts that should be consulted during transition.

First, the association should engage a licensed engineer or architect to analyze and inspect all common area components. The engineer or architect will be investigating construction defects such as excessive asphalt cracks, foundation cracks, faulty electrical wiring, and structural issues.

The second professional that should be retained is an accountant who can audit the developer's financial records and ensure the budgets and reserves have been set properly. The accountant will also check if there has been any mismanagement of funds by the developer.

Finally, the association needs to retain a general counsel attorney to assist the board with legal questions. The attorney can also review contracts, governing documents and warranties. If potential construction defect issues arise during this process, a construction defect attorney should be contacted to review the issues and provide guidance to the association on the correct legal recourse.

3. Obtain and Audit all Documents

When creating an association, the developer will accumulate contracts, owner information and correspondence, maintenance records, insurance certificates and claims history. We have created a "Transition Checklist" detailed list of details and items that the owners should obtain and audit during the transition process.

The developer will also have meeting minutes, financial statements, tax returns, and warranties. These documents properly belong to the owners of the association. The owner committee or owner board of directors needs to obtain, audit and understand all these documents. The documents should be safely stored in a secure manner, so they are not lost or damaged.

The owners should ensure any contracts executed on behalf of the association are reasonable. An attorney can be a great assistance when checking contracts, especially if the owners need to withdraw from an unreasonable contract.

The developer may have established community rules and regulations. These rules may not include necessary details on pets or parking. The owners should ensure that the rules are fair and amend any rules that are not relevant to the community. Management and legal counsel can assist the owners during this process.

4. Inspect the Common Areas

The owner committee or owner board members should carefully inspect the community's common areas with a licensed engineer and create a punch list for the final transition. The engineer will provide a list of alleged and discovered construction defects. Doing this before transition ensures the defects are the developer's responsibility so the association will not have to pay for these issues in the future.

Through the inspection process, the owners or owner board members should obtain information on warranties, permits, and utility line locations. Understanding this information will allow the owners to address issues with the developer before transition occurs. This safeguards the developer claiming lack of responsibility because they no longer control the association.

5. Audit all Finances

The owner committee or board should check the developer's accounting records so that they understand what has been paid and to ensure they have a proper understanding of the association's finances. The association's accountant will also analyze if the developer has handled funds correctly and make recommendations about utilizing money in the future.

In summary, the owner committee or board needs to pay attention to details and move slowly through the developer transition process. When proper steps such as communication and cooperation are taken by both the developer and owners, the transition process should be a success.

A transition checklist can be obtained by e-mailing elaine@naumannlegal.com.

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