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DEVELOPER TRANSITION

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One of the most critical periods in the life of a community association occurs when the developer's involvement is about to end. Many significant events arise within a very short period of time. Following are some of the more common issues with which an association will need to deal:

Securing Completion and Turnover of the Common Areas. The Board needs to inspect the common areas to determine whether they have been appropriately completed, and whether the workmanship is adequate. Poor workmanship may not delay the transfer of the property from developer to association, but may give rise to claims for construction defects. On the other hand, failure to complete construction may require the Association to call on "on site completion" bonds (copies of which are lodged in the Department of Real Estate's files for the project.)

Obtaining Copies of Important Documents. While there are few documents the developer is required by law to relinquish to the new association, there are many documents which would be helpful and should at least be requested: **corporate records** (such as the articles of incorporation, corporate minute book, originals of bylaws and CC&Rs, and annexation documents); **real property records** (deeds, tract maps, condominium plans, easements and licenses); **bank statements**; **tax records**; **contracts** with vendors and service providers; **"as built" plans** for recreational facilities, irrigation systems, etc.; **grading plans**; **DRE final subdivision reports** ("white papers") for each phase; **DRE budgets** for each phase; **warranties** for equipment; **maintenance manuals**; **legal correspondence**; **insurance policies**; **subsidy agreements**; **records of architectural review applications and decisions.**

Arrange for Education of Homeowner Directors and Committee Members. The administration of common interest developments is a highly regulated area. Obtaining education, via Community Associations Institute classes, or by reference to texts on the subject, will vastly improve director performance and homeowner satisfaction.

Confirm Payment of Real Property Taxes on Common Areas. While the real property which will be "common area" is still owned by the developer, it is subject to property tax. When the common area is transferred to the Association, there should be no regular property tax due thereafter. Unfortunately, several things can go wrong: if the Assessor's office is not properly notified of the change in ownership, the lots continue to be taxed; if tax is assessed and not paid, the property may be sold by foreclosure of a tax lien. It is therefore essential to have a complete list of the common areas, and to confirm

when the transfer to the Association was recorded, and whether there were outstanding taxes at that time, or at present.

Bring Developer Current on Unpaid Assessments. Often a developer will fail to bring assessments current in the last stages of sales. Because the developer will no longer have a significant presence in the community at this stage, it is particularly important to either obtain full payment or lien the unpaid homes prior to the sale to a third party. While it is important to timely collect all unpaid assessments, sale of the units without a lien in place will make collection against a developer much more difficult.

Determine What Easements the Developer Will Retain. Most CC&Rs contain easements in favor of the developer to allow it to continue to market and sell within the community, even after construction is completed. Some developers claim a right to continue to occupy recreational facilities, even after completion of construction, on the basis of such retained rights. The Board needs to review these provisions to see what specific rights were retained, and whether the developer has the right to continue to occupy common area buildings without paying rent to the Association.

Determine Developer Voting Rights. After construction is completed, but before sales are done, the developer will typically retain rights to appoint some of the Board. It is important to determine how many developer-appointees are permitted, so that the Board may correctly conduct the election of homeowner directors.

Inspect Common Area Improvements for Possible Defects. While both developer and association desire to avoid litigation to resolve allegations of defective construction, it is important to note that housing constructed after January 1, 2003 is subject to a relatively short period wherein the Board must advance its claims, under the law commonly referred to as "SB 800." Old law allowed a board up to 10 years in some cases to pursue defects; current law shortens that period substantially in many cases (in some cases, to one year.) Accordingly, the Board needs to be vigilant in investigating claims of poor construction or landscaping. Furthermore, some CC&Rs impose on the Association an annual inspection requirement, and may further require the use of specified maintenance manuals prepared by the developer.

This is a short list of typical problems. In a bad economic market, the turnover process may be complicated by developer failure, lender foreclosures, and insolvency proceedings. Any of these will force the Association to obtain legal advice specifically addressing these problems.