

CONDOMINIUM TURNOVERS

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WHAT IS A “TURNOVER”?

Before we get to the definition of this term, some background information is necessary. Most Michigan condominium associations are formed by the project developer at, or shortly after, the time the Master Deed is first recorded. Most associations are organized as non-profit corporations; the incorporator is usually the developer and the initial Board of Directors is simply appointed by the developer. These appointees govern the association until the developer arrives at the point where it is ready to turn over control of the association to the co-owners who have purchased the units.

It is important to bear in mind that the association is a corporation and therefore its actions are governed by the directors. The term “turnover” simply refers to the election at which a majority of the directors are elected by the co-owners. Although the developer may be legally entitled to retain one or more seats on the board based on the number of still unsold units, the fact is that if a majority of the directors have been elected by the co-owners, they are in a position to out vote the developer appointees. Thus, control of the association as a corporation has passed to the co-owners.

HOW AND WHEN DOES “TURNOVER” OCCUR?

The Condominium Act has requirements as to when turnover must occur. These requirements are based on the number of units which have been sold versus the total number that could be built and the amount of time that has passed since the project was started. Sometimes developers will be willing to conduct a turnover election prior to the time required by the statute and in most instances, this is in the best interest of the association.

The mechanics of the turnover process are quite simple. The developer appointees issue proper notice of an official membership meeting; usually the only item of business on the agenda is the election of directors. It is necessary that the quorum requirements in your Bylaws be satisfied so that an official business meeting can be conducted and usually there is ample co-owner interest and therefore a good turnout. At the meeting, co-owners may nominate themselves or other co-owners as candidates for election. Balloting is then conducted and the election results announced. As soon as the newly elected directors conduct their first directors’ meeting, the turnover will be legally completed.

WHAT A “TURNOVER” IS NOT.

A turnover is not the end of the developer’s obligations to the co-owners or the association. It has no legal affect on the developer’s warranty obligations. It does not relieve the developer of any other legal duties concerning the completion of the project. It is very common for turnover to occur before the developer has completed the project and at a time when there are many as yet unresolved warranty claims. Accordingly, the turnover is not an event that should be postponed or delayed until the project is completed. The turnover meeting is not an appropriate time to try to air all of the developer-related grievances or to try to resolve them. Turnover is definitely not a time to sign any type of release regarding developer obligations.

“TURNOVER” AS AN OPPORTUNITY

It should be obvious that the biggest opportunity presented by the turnover is the chance to have the association's business affairs controlled by co-owners who own units and have an interest in the long term well being of the association. Although the developer's appointees owe fiduciary duties to the association and its membership (to act in their best interests while they serve on the board), those duties often conflict and compete with the developer's own pecuniary interests.

Once the co-owner directors control the Board of Directors and therefore the corporation, they can re-examine how the association's business affairs are being conducted. They now choose whom the association will do business with and in most instances, the turnover will be the first opportunity for the membership to thoroughly examine the association's financial records and circumstances.

The Condominium Act does require that an advisory committee be formed by the developer prior to turnover to help smooth the transition of control from the developer to the co-owners; however, many developers ignore this requirement. Even when it has been fulfilled, the advisory committee members may have been kept in the dark as to many aspects of the association's administration. When one purchases a condominium from a developer, a large investment has been made but is still controlled by persons with interests adverse to the purchaser. When the turnover occurs, the people who have invested the money will now be in a position to control their investment. The longer the turnover is delayed, the longer the members may have to suffer with unsatisfactory vendor performance or unrealistic and short term oriented budget performance. When your association's turnover has been completed, you will recognize a large number of other advantages that flow from having control of the association.

WHAT DO WE DO FIRST?

Read your documents carefully so that you will have a complete understanding of when the turnover should occur for your particular project. If you believe the time is at hand and the developer is making no effort to proceed with the turnover process, you should certainly proceed to request that it not be delayed. Obviously, preparation is very important especially once the turnover meeting has been scheduled. To prepare for the turnover, try to organize a bit in advance so as to assure that enough qualified co-owners will be present and willing to stand as candidates for election. Prior experience is not as important an attribute as is the willingness to devote some time, an open mind, some basic people and business skills and a goodly portion of common sense and patience. You will not be paid in money if you are elected to the board, but you will have satisfaction, respect, esteem and a great learning experience. Surely, some of your fellow co-owners will not appreciate your sacrifice and there are apt to be some who will surely test your patience. On the other hand, the fact is that someone had better be running the show and this is one election where each vote really counts and those who are elected can really make a difference.

Turnover is most definitely a good time to retain experienced legal counsel and to review the operation of the association from top to bottom. At first, there will be a certain amount of confusion and uncertainty; having experience professionals early on will help your association get off to a fast start. This is a good time to consider professional property management or review any existing management arrangement.

WHAT DO WE DO ONCE THE “TURNOVER” OCCURS?

The first order of business is for the newly elected directors to thoroughly acquaint themselves with the business affairs of the association. Chances are there will be many demands on the time of the new directors and it will be challenging to rationally prioritize the new board's efforts. Your fellow co-owners will be demanding solutions to their developer problems and there may be disputes among the co-owners concerning enforcement of the Bylaws since most residents will be new to the condominium experience.

Having the advice of someone who has been through this experience many times will be of great assistance to the Board of Directors.

When we are retained to represent a fledgling association which has just been through the turnover process, we start out by meeting with the newly elected board and reviewing association operations. At this time, we will assist the board in establishing criteria that will allow you to prioritize your efforts. This will involve the use of detailed checklists that will minimize the chances of overlooking some important start-up concern. As time passes, these lists can be used to continue to establish priorities and delegate administrative responsibilities among the board members.

CONCLUSION

Generally speaking, the turnover of control of the association from the developer to co-owner elected directors is an opportunity that should not be delayed. Many co-owners will have questions and concerns about the turnover process simply because they do not know what is involved. Others mistakenly think that the turnover marks the end of the developer's legal duties concerning warranties or project completion. In reality, the turnover simply means that the co-owners have elected a majority of the directors and can now get on with the conduct of the association's business affairs in a manner which meets with the approval of those who have invested in a condominium home.