

**CONDOMINIUM/TOWNHOME OUTREACH SEMINAR  
DEVELOPER TRANSITION (TURNOVER) OBLIGATIONS  
Presented By David M. Bendoff**

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# **CONDOMINIUM/TOWNHOME OUTREACH SEMINAR-- DEVELOPER TRANSITION (TURNOVER) OBLIGATIONS**

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This material will highlight the developer's obligation to turnover control of a Condominium Association to the unit owners, and the developer's post-turnover obligation to provide books and records to the Association.

## **TURNOVER OF CONTROL FROM DEVELOPER TO UNIT OWNERS**

### **What is Turnover?**

A condominium association is operated by its Board of Managers. Turnover is the "passing of the baton" of control of the Association from the developer (or the developer appointed Board of Managers) to a Board of Managers elected by and from the unit owners.

### **Timing of Turnover**

The Turnover (election of the first unit owner Board of Managers) must be held not later than the earlier of: (a) 60 days after the conveyance by the developer of 75% of the units, or (b) 3 years after the recording of the declaration of condominium. The developer must give at least 21 days written notice of the meeting to elect the first unit owner Board of Managers. The developer must provide to any unit owner within 3 working days of the request, the names, addresses, and weighted vote of each unit owner entitled to vote at the meeting turnover meeting.

Practical Tip: If your Association has not been turned over and is approaching the time for turnover, the owners should form a committee and the developer should be contacted as soon as possible to establish a timeline for turnover and a procedure to solicit candidates for the first unit owner Board. The solicitation should take place prior to the issuance of the notice of the turnover meeting. This way, the known candidates can be identified in a proxy to be provided to the owners with the notice of meeting (for use if the owner can not attend in person) and on the election ballot.

## **POST-TURNOVER OBLIGATION TO PROVIDE ASSOCIATION BOOKS AND RECORDS**

### **When Must Developer Provide Books and Records:**

Pursuant to the Illinois Condominium Property Act, the developer is obligated to provide certain books and records of the Association. The developer has sixty (60) days following turnover to comply; however, as you will see, there are certain books and records that a Board will need immediately.

## What Books and Records Must Developer Provide:

The books and records required to be turned over by the developer are described in five general categories:

### Governing Documents/Contracts:

All original documents as recorded or filed pertaining to the property, its administration, and the Association, such as the declaration, articles of incorporation, other instruments, annual reports, minutes, rules and regulations, and contracts, leases, or other agreements entered into by the Association. If any original documents are unavailable a copy may be provided if certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual document recorded or filed.

Practical Tip/Corporate Matters. The Board should confirm that the Association has been incorporated as an Illinois not-for-profit and is in "good standing" with the Secretary of State. The Registered Agent/Office for the Association should be changed from the developer to Association counsel. Make sure that payroll/withholding records are complete. Has a tax id number been issued for the Association? Have federal and state tax returns been filed? Practical Tip/Rules. The Board should review the rules prepared by the developer and make necessary revisions of rules for the operation and use of the Property. Practical Tip/Contracts-Timeline. The Board should index all contracts/insurance policies and keep a record of review and expiration dates of contracts (and note any auto-renewal provisions-often found in management, laundry room/equipment, cable television, and elevator maintenance agreements). It is also helpful to prepare a timeline of recurring Association events (e.g., exterior façade inspection/reporting, annual meeting, budget preparation, insurance expiration) that the Board can review at each Board meeting.

### Accounting Records:

A detailed accounting by the developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the property, copies of all insurance policies, and a list of any loans or advances to the Association which are outstanding. Practical Tip: Did the developer pay assessments on unsold units? Signatories to bank accounts should be changed from the developer to the appropriate Board member/property manager. Practical Tip/Insurance. Confirm that the Association has procured necessary and appropriate insurance policies. The Board should have copies of owner proof of insurance, if required by Declaration.

### Association Funds:

Association funds, which must have at all times been segregated from any other moneys of the developer.

### Real Estate/Personal Property:

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A schedule of all real or personal property, equipment and fixtures belonging to the Association, including documents transferring the property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills.

Practical Tip/Association Owned Property. If the developer is required to convey any property (e.g., unit, parking spaces/hospitality room, janitor's unit) to the Association, the Board should follow up. With respect to the status of title to such property, the developer should provide a title commitment evidencing that there are no encumbrances (e.g., liens), and that there are no unpaid real estate taxes. Also, Association owned units or other real estate owned by the Association should be assessed at \$1.00, resulting in no real estate tax liability to the Association.

#### Legal Proceedings/Drawings:

A list of all litigation, administrative action and arbitrations involving the Association, any notices of governmental bodies involving actions taken or which may be taken concerning the Association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any Association requirements, copies of any documents relating to disputes involving unit owners, and originals of all documents relating to everything listed above.

#### Unit Owner List-Limited Common Element Assignments

This is not included in the statute, but confirm that the Association has an accurate list of the legal title holder of all units. Similarly, the Board should have an accurate list of limited common elements (e.g., storage areas, parking spaces) that have been assigned to particular units.

#### What Can the Association do if the Developer Fails or Refuses to Comply:

If the developer fails to fully comply with the requirement to deliver books and records within the 60 days, the Association must issue a written demand to the developer. If the developer fails to fully comply within 10 days of written demand mailed by registered or certified mail to his or her last known address, the Board may bring an action to compel compliance. If the court finds that any of the required deliveries were not made within the required period, the Board is entitled to recover its reasonable attorneys' fees and costs incurred from and after the date of expiration of the 10 day demand.

#### POST-TURNOVER CONTRACT TERMINATION-ASSOCIATION RIGHT TO CANCEL CERTAIN CONTRACTS

The Association may be able to terminate certain contracts after turnover. Upon election of the first unit owner Board of Managers, any contract, lease, or other agreement made prior to the date of election of the first unit owner board which extends for a period of

more than 2 years from the date of the election, is subject to cancellation. Cancellation requires a majority of the votes of the unit owners other than the developer cast at a special meeting of members called for that purpose during the 180 day period beginning on the date of the election of the first unit owner board.

At least 60 days prior to the expiration of the 180 day cancellation period, the Board of Managers must send notice to every unit owner, notifying them of this provision, what contracts, leases and other agreements are affected, and the procedure for calling a meeting of the unit owners for the purpose of voting on termination of such contracts, leases or other agreements. During the 180 day cancellation period the other party to the contract, lease, or other agreement shall also have the right of cancellation. The cancellation is effective 30 days after mailing notice by certified mail, return receipt requested, to the last known address of the other parties to the contract, lease, or other agreement.

## CONCLUSION

The first elected unit owner Board of Managers of a Condominium Association has the seemingly daunting task of setting the course for the Association. An early investment in the Board will reap endless rewards for the organization. To assist in the turnover process, the Board should retain a good team of professionals: property manager, attorney, accountant, and insurance advisor.