

## **New Residential Housing Development Information Homeowner Associations/Condominiums**

### **Transition from the Developer to the Association: The Basics**

Transition, to community associations, represents a time and series of processes when the developer passes ownership, governance and responsibility to the association. Transition is a time:

- 1) When the association has the opportunity to uncover potential deficiencies before they become the complete responsibility of the association;
- 2) For the association to assure that it is getting an acceptable product; and
- 3) That they are on the right track for funding of capital replacements required in the future.

Transition is a time for discovery and a time for resolution. After an association has transitioned, if thoroughly and adequately executed and resolved, the association should become independent of the developer's support, and be allowed to mature into ongoing governance by the unit owners.

The transition process deals with the transfer of general common elements and limited common elements. The general common elements and limited common elements are prescribed in the governing documents for each community. These are the components of the community the association is generally responsible for maintaining and replacing. Other items that do not fall into one of the two above categories may be the responsibility of the individual unit owner. These issues must be addressed through individual pursuit of the developer and the homeowner warranty. Examples of such issues are generally interior finishes, squeaks small (cosmetic) cracks, HVAC systems, etc. However, every community is different, and the common elements and limited common elements will vary based upon the governing documents. All problems should be brought to the attention of the transition engineer, via the engineer's resident questionnaire or otherwise, so that possibly large deficiencies may be identified while still minor.

#### **The Board of Directors**

The composition of the board of directors of the community is established in different ways. The developer initially appoints the board of directors. Through the transition process, the board of directors becomes composed of the unit owners. These new board members are challenged with the duty of representing the best interests of the Association. (See CAI-GAP Report #3 Transition from Developer Control, Second Addition for further information and process of board establishment).

## Professional Assistance

To assure that your community is properly represented and that the proper tools and knowledge are available to the Association, the Association should retain the services of a qualified and experienced management company, accountant, attorney and engineer. With the assistance of the Association's manager, the public offering statement, governing documents, site plans, architectural plans, municipal resolutions, bond release information, operational policies, financial information, repair information and everyday occurrences of complaints, problems and events should be collected and available for review by the professionals. Through the review and reporting by each individual professional, the association will be guided towards proper transition processes.

The next step of the process, once all information has been gathered, is to have the engineer begin to review the documents, conduct inspections of the common elements and prepare an engineering report. The engineering report should identify the "typical" deviations from the proposed construction and any construction deficiencies as may be visible, and suggest additional investigative work or evaluation, depending on the existing conditions. The engineering report should also provide recommendations for the Association, as a guide to remedy the discovered deficiencies.

The accountant's report will address issues such as whether the developer has paid all required maintenance assessments. The accountant will review the capital reserve study (discussed below) provided by the engineer regarding whether all funds were properly collected at closing and accounted for and evaluate the operating balances and expenses. Again, the developer and attorney will review the reports and seek resolution of any deficient circumstances.

Another portion of the engineering reporting should be the preparation of a Capital Reserve Study. Reserves are the fuel that keeps a community in prime condition. Proper reserve funding not only increases a community's value by allowing for timely replacement and repair of the common elements, but it also avoids large, untimely assessments to the residents. The developer is responsible for projecting the initial funding for the community when the community is under the developer's control. A capital reserve study prepared by an engineer is a means to assess the adequacy of the initial funding projection to the actual funding required, provided by the developer.

Every development has specific aspects associated with it and the reconstruction or repair efforts of common elements of that development should be equally specific. There are no "typical" costs associated with the replacement of common elements. Every project is unique and should be treated as such. Current replacement costs for each reserved item should be provided in the Capital Reserve Fund Analysis.

After review of the reports by the Association and its attorney, the issues are presented to the developer for remedy. The steps to follow include reviewing the potential problems that can occur from deficient construction, reviewing the costs to correct the issues, and discussing the means, methods and solutions with the developer. On-site meetings and correspondence between the developer, the attorney and the engineer are generally utilized to solve the problems identified. Continued communication and cooperation are paramount in resolving the transitional issues.

## Summary

Transition is a process. When properly completed it will benefit the homeowners and community. When shortcuts are taken or issues are not properly pursued, the community will be faced with hardship in the future. Cooperative efforts of both parties can result in a well-run association, with well-planned finances, and a community that is prepared for the future.

## The Street Acceptance Process

One result of the land development process may be the creation of a new subdivision street. Concurrent with approving the plans and plats, the local governing body will require the developer to post a performance bond for all public improvements, including the subdivision street. With the exception of Arlington and Henrico counties, Virginia subdivision streets are maintained by the Virginia Department of Transportation (VDOT) as a part of the Secondary System of State Highways, provided that they are designed and constructed to meet certain criteria. The minimum criteria that new subdivision streets must satisfy for acceptance and maintenance by VDOT are found in the VDOT Subdivision Street Requirements, which is a regulation of the Virginia Commonwealth Transportation Board.

While all specific criteria of the Subdivision Street Requirements must be satisfied, in general the street will qualify for acceptance if the following provisions are met:

- ◆ The developer dedicates the prescribed right of way to public use.
- ◆ The street has been constructed in accordance with the applicable specifications, standards and the plats or plans approved by VDOT.
- ◆ The street renders sufficient public service to justify the expenditure of public funds for its subsequent maintenance.
- ◆ The street has been properly maintained since its completion.
- ◆ The developer furnishes a maintenance fee, and also a surety fee to guarantee the performance of the street for one year. The surety may be waived, however, if sufficient inspection can be done by a VDOT-approved inspection mechanism. This may be inspection by VDOT at the developers' cost or by the local governing body if it has an approved inspection program.
- ◆ The local governing body requests that VDOT accept the street by a resolution guaranteeing unrestricted and unencumbered right-of-way.

Typically, the local governing body will not release a developer's construction performance bond for a subdivision until such time as VDOT accepts the streets or the Board of Supervisors adopts a resolution requesting state maintenance. The exact process to initiate county bond release and VDOT acceptance of streets varies between jurisdictions. For specific information relating to the local process contact the county and VDOT offices listed below.

Prince William County

Prince William County Department of Public Works (for inspections)

4379 Ridgewood Center Drive

Prince William, VA 22192

Telephone (703) 792-7441

Prince William County Planning Office (for bond release)

1 County Complex Court

Prince William, VA 22192

Telephone (703) 792-6830