

Condo Insights

#34 – Transition to Homeowner Control of the Association – Part 1

Transition is the process of passing control of the condominium association board of directors from the Sponsor to the condominium unit owners. The condo owners elect members from among themselves to serve as Board members, to make decisions on behalf of the members and to lead the Association. The New Jersey Condominium Act and the association's governing documents include specific benchmarks and timeframes including the requirement that the association transition to unit owner control when the Sponsor has sold 75% of all units.

Transfer of control commences when the Sponsor holds a transition meeting with the unit owners. The Sponsor turns over all association records and documents and reviews the association finances. The Sponsor resigns from the board and unit owners elect new members to the board and now control the majority, if not all positions on the Board, until the last unit is sold by the Sponsor. Transition is a multi-faceted process in which the unit owner board, with the guidance of its property manager and other professionals, confirms that the complex was constructed in accordance with approved plans and in accordance with code requirements and that the Sponsor accurately maintained the association finances and honored its other obligations to the association.

Once elected, what does the board need to do? The Board will receive and should review the association records and documents including: the public offering statement, recorded Declaration and/or Master Deed including by-laws and any amendments, filed articles of incorporation, recorded common interest percentage, construction plans and survey, deed restrictions, rules and regulations, owner contact information, meeting minutes, financial records, insurance policies, warranties and certificates of completion, service contracts, maintenance records, list of building contractors, building registration certificates, municipal services agreements, performance bonds and any other contracts or documents executed by the Sponsor on behalf of the association. A waterfront association may have environmental and governmental permits, grants or licenses for maintenance and use of beaches and waterways affecting the condominium. To the extent possible, these documents and records should be stored in a safe secure location as well as online so that the Association has a permanent record of these documents. The board may want to consider a website or other online presence for the association to serve as a records and document repository and means of communication with and between members.

Though the Board may not be aware, the local planning board and the municipal building inspector vetted the project whether new construction or conversion of a former multi-family building or motel. Conversion ordinances ensure a new condominium will meet standards for structural stability, mechanical/electrical requirements, and life-safety features. Notably, for conversion projects there is no warranty for common elements and the project is marketed "as is". There may be information about the condominium available at the municipal construction office including the local planning board resolutions for site plan approval for the project.

Condominium board members are typically not compensated and serve in volunteer positions to lead their Association. Two important considerations for board members: time and knowledge. Board members should be willing to commit the time necessary to make sure the Association has set up an effective and efficient operating format compliant with State and local laws, codes, and regulations. The knowledge required to lead the Association is broad and extensive. Association boards rely on various professionals including property managers, engineers, attorneys and accountants for advice and guidance. The board must also select and register with the New Jersey Secretary of State an agent to receive government and legal notices.

Once transition to owner control of the association has occurred, the Board must decide how the Association's essential functions and services will be executed and managed. These essential functions and services include administration, bookkeeping, operations, and maintenance. Typically these services are handled by a property manager. If the Sponsor contracted with a property manager, the new board must decide whether to retain the existing property manager or to select a new one. Almost any association regardless of size would benefit from formal management to assist in the numerous issues affecting the association.

For example; who will open bank accounts in the name of the association and/or transfer any current accounts for board member signatures; who will collect condo fees and keep track that owners are paying their condo fees; who will authorize expenses, review invoices and pay bills; who will establish the operating budget, schedule meetings, track insurance policies, establish policies and procedures; who will be responsible for making sure the property is clean and that trash is handled; who will clean and operate the pool and monitor water chemistry; who decides how many hours are needed for operations and maintenance staff to perform these and other important tasks and duties; and determining who owners or residents contact if there is a problem at the building.

A property manager can guide the association through transition, assist the board in establishing operating procedures and practices and serve as a resource to the association board and its members. A property manager will educate board members in understanding the practices and standards involved in condominium association operation and management. From a financial standpoint, these practices will contribute to developing effective operating and capital repair budgets and a rational projection of future needs and spending. It is fairly common for associations to increase the annual operating budget once under member control to reflect member desires for increased levels and costs of services. Often it is several years from the time the adequacy budget was prepared to the time the first operating budget under owner control is prepared.

Jim Yost owns Elite Management and Advisory Services, LLC and is managing partner for Ocean Property Management Corporation, based in Wildwood. The firms manage numerous community, condominium and homeowner associations in southern New Jersey. He can be reached at yostpmc@comcast.net. Past columns are available online at www.oceanpropertymgmt.com.

Karim Kaspar, Esq. is Senior Counsel with Lowenstein Sandler LLP. He serves as general counsel to numerous community and condominium associations throughout New Jersey. He specializes in complex commercial litigation and real estate matters and has been active and instrumental in the firm's pro-bono activities. He can be reached at kkaspar@lowenstein.com.