

Condo Insights

#35 – Transition to Homeowner Control of the Association – Part 2

An association benefits from retaining a qualified experienced property manager that can provide insight and guidance throughout the transition process. A property manager cannot replace other professionals but can help and guidance to the board to fulfill its duties and lead the association and help the board identify and select the appropriate engineer, attorney, and other professionals for the association.

The board may hire a property maintenance service for general property custodial duties for interior and exterior common areas, pool operation and management, maintaining the recreational facilities, daily demand maintenance, monitoring operation of essential equipment and systems and executing the periodic maintenance programs. Depending on the facility and unit owner's expectations, property maintenance services could involve as little as a few hours per week to several workers on site daily throughout the year.

An attorney will answer legal questions, review contracts and the governing documents and provide general legal advice to the Board. The attorney should have experience representing community and condominium associations through transition, be well versed in condominium association law, contract law, collections, and real estate. For brand new developments, the attorney should have experience dealing with construction quality claims and defect resolution.

An accountant reviews the association's financial records, ensures the Sponsor maintained accurate records, paid its share of common expenses, established, and funded a reserve account, and followed generally accepted accounting practices while it was in control of the Association. The accountant will prepare annual financial statements and the association tax return.

An engineer will make sure the complex as constructed is consistent with the project as approved by the municipality, to inspect the community's common areas for code compliance; to identify any code violations, to review warranties, permits, service records for essential systems and even utility line locations when the association assumes control. If a newly constructed facility, the board may consider engaging an engineer to perform a transition study to evaluate whether the facilities were constructed as designed and whether there are deficiencies, violations of industry standards or building codes, if the builder followed the plans and if there are any design deficiencies or material or product failures. A developer will sell units in a conversion "as is", meaning there are no warranties on common facilities or inside the units themselves. In that case, the board may decide that a transition study is not necessary. If a transition study is prepared, the transition study can be converted into a reserve study. If not, the association should engage an engineer to prepare a reserve study.

A reserve study is a long-term financial plan to guide the board to accumulate adequate cash reserves to pay for major expenses that will occur years down the road. A reserve study guides the condo board to make educated financial decisions by projecting major repair and replacement expenses going 30 years or more into the future. A reserve study is an in-depth non-invasive analysis and evaluation of an association's physical assets. The purpose of a reserve study is to identify and analyze the common elements and other components of an association to determine their remaining useful life, that is, how long it will be before these assets will need major repair, rehabilitation or replacement and estimate how much the repair, rehabilitation or replacement will cost at that time. Reserve studies are prepared by licensed engineers and are necessary for the good financial health of any association.

The association should identify an insurance broker that has a substantial base of condominium business, understands the condominium insurance markets, makes sure the association has necessary coverages to minimize exposures and risks, assists with insurable property valuations to make sure the association has adequate coverage to rebuild in event of significant loss and tracks renewal dates for all policies.

As the association is established and begins operation under member control, the Board may determine it needs to establish operating policies and procedures. For example, the Board should establish a comprehensive collection policy outlining due dates, grace periods for payment, late fees, liens, suspension of privileges etc. consistent with the by-laws. Associations may establish user fees for bike tags, parking tags, and rental administration fees by policy or resolution.

The Board may establish rules and regulations that further define use restrictions and set parameters for behavior and use of common elements and limited common elements. Associations establish rules that prohibit activities that cause unreasonably loud sounds or noise to prevent residents from disturbing another resident's peace and right to quiet enjoyment or to alter or damage any part of the common elements. Rules and regulations should apply uniformly to all owners, and to any guests and tenants staying at or visiting the condo. Common rules apply to pets and parking.

A condominium association is a business, almost always a non-profit corporation. It is not a social or civic organization. The members elect the board to make decisions on their behalf and on behalf of the association. Board members have a fiduciary duty to act in the best interests of the association.

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