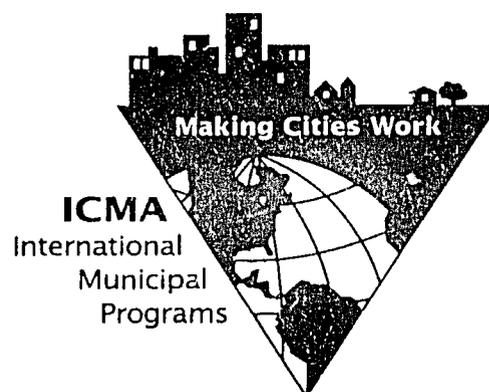


Shelter Sector Reform Project Newly Independent States of the Former Soviet Union

An ICMA Report

Prepared for the Office of Housing and Urban Programs
Agency for International Development



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CONDOMINIUM ASSOCIATION FORMATION
YEREVAN, ARMENIA
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ABSTRACT

With the passage of the condominium law in May 1995, it was agreed that since registration of condominiums will become mandatory, it was therefore time to implement a public awareness campaign and provide additional training for government officials and members of association boards of directors.

The majority of the consultant's work was undertaken in two areas: first, working with Yerevan State University (YSU) personnel revising and finalizing the "Condo Course 201"; and, secondly, assisting Diana Avetian with the development of her public relations campaign for condominium awareness and conversion encouragement.

The public relations campaign is critical to course attendance, because it will increase interest in the two courses created thus far. For this reason, the first area to be addressed in this report will be the campaign. The intent of the "Condo Course 201" is to enhance and advance the understating of condominiums from "Condo Course 101." In addition, the course is intended to be of particular value to those involved in the facilitation of conversion of state-owned housing to condominium associations.

I. INTRODUCTION

In response to the City of Yerevan identifying a need for assistance in implementing housing privatization, a working group was formed to coordinate with Resident Advisor Anlian on a regular basis. This group reports directly to the Mayor. Staff from the Scientific Research Center for City Management (SRCCM) have been providing consulting services to the project. Additional expertise in condominium organization and property management has been provided by visiting American experts.

During the past year, the project has focused on preparing for the passage and implementation of a national condominium law. In anticipation of this law, Yerevan State University (YSU), with assistance from the consultant, developed "Condo Course 101" for condominium management. This course, which is targeted at government officials and members of association boards of directors, has been offered several times in Yerevan and recently in the Earthquake Zone. In addition, some assistance has been provided to the City regarding the structure and organization of an "Office of Condominium Services," which would provide assistance to these resident associations.

In early May 1995, the condominium "law" was issued in the form of an executive Decision. The Decision does make condominium registration mandatory. In conjunction with the passage of the law, LTA Anlian met with the Mayor of Yerevan, who appeared committed to the establishment of the "Office of Condominium Services."

Although the law provides for mandatory registration of resident associations, it is important to encourage and support voluntary efforts to generate successful models of association formation and action. Therefore, the Mayor agreed that it is necessary to move quickly to develop the public awareness campaign and provide additional training. It is anticipated that materials developed in Yerevan will be useful throughout the country.

To support this effort, LTA Anlian and STA Sienkiewicz have recommended a public awareness campaign, targeted at residents of potential condominium associations. The goal of this campaign is to provide residents with enough information about the benefits of condominiums to encourage them to approach their local government for further assistance in forming and registering their association. A team of graduate business students at the American University of Armenia (AUA) has been requested to assist in developing this campaign. The public relations campaign is critical to course attendance, because it will increase interest in the two courses created thus far. For this reason, the first area to be addressed in this report will be the campaign.

In order to provide more advanced training for government staff and community organizers who will be charged with encouraging and supporting the registration and operation of condominium associations, early this year LTA Anlian authorized YSU to begin preparation of a second course, which would cover in greater depth the issues of operation and management of a condominium. The second part of this report focuses on the realization of that course, "Condo

Course 201." The intent of this advanced course is to enhance the understanding of condominiums from "Condo Course 101." In addition, the course is intended to be of particular value to those involved in the facilitation of conversion of state-owned housing to condominium associations.

II. PUBLIC RELATIONS CAMPAIGN

While working with Diana Avetian during the consultant's recent trip to Armenia, there was an evolution in thinking about how condominiums are likely to be developed. The initial thinking was that cities would create "Offices of Condominium Services" which would be instrumental in facilitating the development of condominium associations. This emphasis can be seen in the working paper entitled "Conceptual Marketing Plan/Public Awareness Campaign for Promotion of the Condominium Concept Phase I: Yerevan (Attachment 1).

During the course of discussions and the meetings with city officials regarding both the advanced course and the creation of the Office of Condominium Services, a real concern developed on the part of the consultant that most of the thinking and actions by the office of the Zshek were about retaining the bureaucracy (albeit in a "new, spirit of enterprise"), rather than on how to assist the owners of condominium units with the creation of their condominium associations. It seems that, as in many large government structures, the focus is on self-preservation rather than how best to assist constituent populations. For this reason it appears that the main facilitation will have to come from the public through both entrepreneurial activity, as well as the desire for individual and group improvement.

As the consultant and Avetian continued their meetings and discussions, a more fully developed timeline was created entitled "First Stage Preparation, July to August, 1995" (Attachment 2). This timeline is well thought out and aimed more at educating the public about, and encouraging the general population to become involved in, the development of condominium associations in Armenia. This outline was reviewed with Peter Epstein during the consultant's final day in Yerevan, and there seemed to be general agreement that the outline should be used as a guide.

Immediate steps in the process were also discussed during this meeting. Avetian's next efforts were to be toward identifying, contacting and evaluating the local contractors who would be needed to advance the plan. These included writers who could develop articles and press releases for use in newspapers, graphic designers for brochures, posters, etc., as well as directors and producers for creating radio and television pieces. A budget could then be developed.

Since the consultant's return to the U.S., another TDY, Michael Kucharzak, has been involved in the evolution of this public relations/marketing campaign. Kucharzak brings to Armenia experience from developing a similar campaign in Kazakhstan. The consultant is not aware of

improvements and further evolution in thinking which may have developed during Kucharzak's TDY, so consultant's comments will be limited to the information gained from the meeting with Peter Epstein on 14 July 1995.

Fundamentally, the timeline is presented well. Avetian's American University of Armenia (AUA) degree in marketing enhances ICMA's work in this area. It is important to move aggressively to ensure that the public is well informed regarding condominiums and the formation of condominium associations. The opportunity for entrepreneurs is overwhelming, if they are made to understand the potential for profit in the development and management of the to-be-formed condominium associations. The emphasis must continue to be on educating the people who live in housing and/or those who see the potential for profit in assisting in the conversion of state-owned housing to condominium associations.

One resource which should be carefully considered for its applicability to the current situation in Armenia is "Transition from Developer Control" by Amanda G. Hyatt, (published by the Community Associations Institute (CAI), 1992, Attachment 3). While not perfectly applicable (it addresses the conversion of property to homeowner control from a for-profit developer), there are many similar issues. In many places simply the substitution of the word "state" for the word "developer" is enough to make clear the transition issues. If desired, the consultant can modify the publication to make it applicable to Armenia.

Of course, if the city or state government can be convinced of the need to serve as the leader of the transition, the transition process will progress more smoothly,. However, just as in the U.S., transition will occur in any event. One of the goals of the public relations/marketing campaign must be to assure that the grass-roots leadership is as informed as possible. This is why there must be an emphasis on the training available through the YSU courses throughout the campaign.

In addition, it is not clear from my discussion with various Armenians that television is the ubiquitous presence which we have come to appreciate in the U.S. Due to the inconsistency of the supply of electricity, the people are not as tuned-in as they are in the U.S. For this reason, if resources are scarce, a primary focus on the print media should be undertaken. Radio is more available than television, but print seems to be the primary media for communicating news and information.

III. CONDOMINIUM COURSE 201

The "Condo Course 201" was completed and tested prior to the consultant's departure from Armenia. Unfortunately, the test group had never taken the prerequisite course, "Condo Course 101," so it was impossible to fully judge the effectiveness of the advanced course. Nonetheless, it appeared to be quite useful. Although the participants had not had the required prerequisite course, they were not completely uninformed on privatization and condominiums. Most were employees of the Zshek.

The instructors for the Course 201 were essentially the same as for Course 101. Each instructor presented one chapter from the draft manual. Suren Koshetsian taught Chapter One which was an overview of the current situation with a focus on economic and infrastructure realities as they relate to housing conversion. It was well presented and well received.

Haik Karapetian taught a section on condominium law. As one of the authors of the draft condominium law, he brought a particularly strong understanding of the purpose and shortcomings of the adopted Decision. Shortcomings he found worthy of note include: government control of associations may continue for some time (which is one of the reasons transition needs to be given more attention); the condominium charter must include technical passport and individual unit information, which when they exist at all is spread all over the bureaucracy and is out-of-date; the law on enterprises does not allow the mandatory formation of non-profits, but the condominium decision requires it; land allocations cannot be done to an unregistered entity, but the association cannot register without defining its land allocation. He noted other minor technical problems, but the aforementioned will cause serious problems in the formation of condominium associations. It is this consultant's understanding that Karapetian, along with others, is working to see that the necessary modifications are made to the Decision to make it more workable. His presentation was well organized and thought-provoking for the participants.

Chapter Three was presented by Shavarsh Makarian. This chapter covers the how-to's of condominium creation. Shavarsh is one of the primary authors and instructors in the Condominium Extension Office at YSU. His presentation brought a great deal of interaction with the participants and was well received. He is very knowledgeable in this area.

Chapter Four was presented by Lavrenti Martarosian. This chapter addresses evaluating deferred maintenance in a building. They are fond of the formula they have developed for determining building condition, and it does, in fact, work. Nonetheless, they are also aware that in most cases the data does not exist for utilizing the formula. Therefore, much of the presentation focusses on the concept of evaluating deferred maintenance needs and how to make determinations in real world situations. Lavrenti also has been working with the condominium program since its inception and is a knowledgeable and effective instructor.

IV. CONCLUSIONS

We did not develop enough information during consultant's TDY for a cost/benefit analysis of the various media available. Based on limited information, it appears that the cost of production and distribution of video presentations over the airwaves is substantial in comparison with radio and newspaper. Furthermore, the access to high-quality equipment, writers and producers seems more limited. Overall, unless costs and benefits have been misunderstood by the consultant, the focus should be on print rather than radio, especially print that is aimed at late teens and young adults looking for change.

It should again be noted that the materials from CAI served as a substantial base of knowledge for the development of materials in the NIS countries. The course manual was not yet available in English and is not included. As usual, the lion's share of the consultant's work product was left behind in Armenia.

ATTACHMENT 1

**Conceptual Marketing Plan/Public Awareness Campaign for
Promotion of the Condominium Concept
Phase 1: Yerevan**

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**CONCEPTUAL MARKETING PLAN / PUBLIC AWARENESS CAMPAIGN
FOR PROMOTION OF THE CONDOMINIUM CONCEPT
PHASE I: YEREVAN**

1. **TV "Public Service Announcements":**
3 to 5 times per week during several months:
 - TV first channel: before and/or during the news program;
 - TV second channel: during "Mairacakhack" (Capital) program:
[A TV "spot" to be developed.]
2. **Special TV programs related to the subject:**
 - City and government officials, involved in the condominium related reforms, promote the concept of condominiums and the "Office of Condominium Services" - OCS ("Hingshabty" - Thursday - program);
 - "Yerankuini" ("Triangle") Executive Board;
 - Other appropriate people

NOTE: Programs or a collection of all ads/interviews, etc. can be consolidated into a public ed/training video for use throughout Armenia.

3. **Radio "Public Service Announcements":**
1 to 3 times a week: 9:40 a.m. and 2:30 p.m. during several months:
[One minute radio text to be developed.]
4. **Newspaper ads/"News Releases"/Articles:**
(NOTE: It is necessary to develop a logo for the OCS and include it into the newspaper ads):
 - "Hayastany Hanrapetutian" - Armenian version - (2 - 3 times a week);
 - "Hayastany Hanrapetutian" - Russian version - (1 - 2 times a week);
 - "Azg" - (1 - 2 times a week);Several months.
[Newspaper announcement to be developed.]
5. **Brochures:**
To be distributed to various people: executive boards of condominiums, residents, etc. The title page of the brochure should include the logo of the OCS. The brochure should promote the advantages of the condominium compared with the traditional method of management and may also be used as a "fact sheet" by politicians speaking publicly on the subject.
6. **Billboards/Posters:**
Artwork with a message to be developed.

NOTE: Based on experiences in Yerevan, the Public Awareness Campaign will be "rolled-out" to all cities and regions of Armenia.

ATTACHMENT 2

Timeline

Radio:

- Radio announcements; end of July, beginning of August
- Series of Radio programs presenting Condo Regulations mid August

Outcome of the second stage?

- Community informed about the concept of condominiums;
- This will push the city to start the process of formation;

**THIRD STAGE - ENCOURAGE CREATION OF
CONDOMINIUMS
(mid September to December, 1995)**

What will appear in mass media?

	Projected start	Projected end
<u>Printed media:</u>		
- Series of articles on the ocs's, on YSU courses, etc.	September	
- Interviews with board members of registered CGmdoa,	October, November	
- News Releases on the registered condos	October, November	
- Question and answer column in newspapers;		
<u>TV:</u>		
- Ads	September	
- Series of programs presenting benefits of condos	September, October	
<u>Radio:</u>		
- Radio announcements and programs;		

Outcome of the third stage:

- Number of condos registered.

ATTACHMENT 3

**Transition from Developer Control
By Amanda G. Hyatt**

TRANSITION FROM DEVELOPER CONTROL

By Amanda G. Hvatt

HRW, Inc.
3815 Barrett Drive
Raleigh, NC 27609

TRANSITION FROM DEVELOPER CONTROL

Transition from developer to owner control in a condominium or master planned community is considered by many association practitioners to be the most critical phase in the community's growth. If conducted properly, it will allow the community association to become independent of the developer's support and control in a time period comfortable for both. The transition also will allow the association to mature into capable, ongoing governance by the unit owners. If conducted improperly, however, it can cause great dissent within the community, many legal problems for the developer and the owners, and possible long-term ineffectiveness and disarray for the association.

The purpose of this Report is to help both developers and unit owners in a community association through a successful transition. It will approach this goal in the following ways:

- Explaining the transition process—what it is, what its goals are, how it can be accomplished, and the typical phases contained within the process
- Delineating the legal framework within which transition must occur—including constraints imposed by federal and local agencies and laws, considerations for association legal documents, and alternative approaches for structuring the process for transfer of control
- Targeting areas in the transition process for developer and owner participation
- Suggesting ways to stimulate and develop leadership in the community association through an active and viable committee process

Although this report is targeted primarily for transition within predominantly residential developments, its premise can be adapted for mixed-use projects as well.

In each new community association, the method by which control of the association is transferred from the developer to the unit owners will largely determine the success of that association. Ideally, that transfer of control should occur through an extended *process of transition* during which the owners are gradually involved in the association's operations and decisions. There is often, however, a reluctance on the part of both the developer and the unit owners to institute and complete the transition. The developer may fear that the unit owners will interfere with building and marketing efforts, thus threatening profitability. The unit owners, on the other hand, may resist accepting responsibility for the association for fear of assuming an unknown financial or legal burden of the developer. By achieving a better understanding of the transition process and the benefits to be gained through successful and effective transition, each

party will be more comfortable working with the other.

One word about *what transition is not*. It is not the act of transfer or acceptance of the common elements or common property. On the contrary, in most developments today the common property is transferred from the developer during a very early stage of the development process. In simple condominium developments, for instance, the common property is made subject to the condominium regime when the condominium is created, and an interest in the common elements is transferred each time a unit is conveyed. In planned communities the common property is frequently deeded to the association prior to the sale of the first units or during early stages of a multi-phase development.

Transition is also not the "turnover" of the common elements to owners who then have no further recourse to the developer for defects in

Guideposts

- Transition is the process by which control of the association shifts from the developer to the owners, and it begins with the development's planning. It is an evolutionary process rather than a single event that occurs suddenly after most of the units are sold and conveyed to unit owners.

- There is a mutual interest between the developer and the owners to achieve a smooth and successful transition. Their cooperative efforts can result in an association that is well run and smoothly operated and which is a credit to everyone involved in its development. A poorly planned transition with uncooperative developer-owner relations can result in angry unit owners, lawsuits, bad reputations for those involved in the development, and an ineffective or possibly bankrupt association.

- The developer should strive for early and continuing owner involvement and education in the operation of the association as the basis for a successful transition program.

- Cooperation and communication between developer and owners during the transition period must be encouraged and maintained and mutual interests must be recognized.

An interim set of committees, staffed primarily by owners, facilitates work to be done during the transition

period and provides the training ground and the foundation for future leaders and permanent ongoing association committees.

- The following are several approaches to transferring control of the association to the owners:

1. Addition of one or more nondeveloper unit owners to the board of directors at specified levels of sales.

2. A weighted voting approach, in which the membership voting ratio is arranged so that the developer will lose control over the association not later than a conveyance of a specific percentage of homes.

3. Use of an interim committee or advisory board to consider and recommend or make most association related decisions.

4. Transfer of substantial control to owners with retention by the developer of a veto of certain types of actions that would result in a basic change in character of the development plan or which would adversely impact the marketing of the project.

5. A combination of two or more of these methods.

- In the absence of an effective transition process, which includes a program of owner involvement, education, and interim committees, it may be necessary for the owners to assume the responsibility for developing effective leaders who are adequately prepared to assume control of the association board.

the common elements. Furthermore, transfer of control from the developer to the owners is not an act which affirms that developer construction warranties have been met.

The most important point is that transition is not a single event in time at which formal control of the association is turned over to the owners; it is a process—a series of events—by which the transfer of control occurs. In a well-planned and implemented transition program, "turnover" is a mere formality that marks one event near the conclusion of an extended process.

WHY WORRY ABOUT TRANSITION?

Experience has shown that a well-planned transition, which combines a thorough owner education program with the gradual transfer of control and responsibility for association affairs to the owners, will result in a smoothly-run association without the disorder and ill feelings that often accompany a sudden turnover to unprepared owners. By working together during the transition period, the developer and the unit owners can understand each other's concerns and are more able to protect their own individual interests through cooperation.

Both parties have much to gain from a successful transition. Good relationships and a well-run association will pay off for the developer. As a result of the mutual rapport and the confidence gained by owners as commitments are met, the developer will benefit directly from this reputation through increased referral sales in future development activities. Of equal importance is an early owner involvement that will provide owners with an understanding of all facets of association operations and will give them an opportunity to be involved with decisions that shape policies and procedures affecting them and the association long after the developer is gone. Early participation will also provide owners with a training period wherein they can gradually learn to manage the association and ensure that association services reflect the community's needs and financial capabilities. The result will be a successfully-operated community association, a credit to the developer, and a sound investment and pleasant environment for the unit owners.

It is important to realize that the level of owner involvement that reasonably can be expected will vary, depending on the association's character. For example, an owner-occupied residential development can expect a much higher level of participation than a second home resort

development. Also, the complexity of association operations and the size of the common elements can have an effect on involvement—a development whose common elements include a large recreational package and building exteriors to maintain will tend to involve more owners than one with only a small playground for common area.

Transition, then, is a process—a process that should be carefully conceived and well planned. Preparing for transition begins with the initial planning of the project and carries through until unit owners are in complete control of the association and its operation. It involves all phases of the developmental process and, when properly planned and implemented, may be time-consuming. However, the investment in time will return dividends to all parties involved.

IDEAL TRANSITION SCENARIO OR "ONCE UPON A TIME..."

In an ideal scenario, the beginning of the development of a community association—whether it is a condominium or master planned community—starts when the developer meets with the attorneys, architects, lenders, accountants, marketing and management consultants, and others who need to be involved in planning the development. In addition to the details of the physical development and the financing and marketing plan for the project, they should discuss the association's structure, new owner programs for involvement and education, and a time-table for the shift of association control to the unit owners. After the planning is completed and the actual physical development is underway, the association's legal documents will be drafted before sales efforts begin. A comprehensive maintenance manual will also be developed as the project is completed to provide a concrete guide for the association, regardless of who controls the board of directors.

Education of new owners begins with materials and explanations provided during the sales process and with a new owner orientation program given shortly after conveyance. This material should include explanations of the community association concept; particular aspects of the documents, rules and regulations; the association's operation and management; and the transition process from developer to owner control. Activities in which owners can become immediately involved should be identified and participation should be solicited. As owners increase in number, the developer or its representative should hold periodic owner meetings to

Perhaps the most important consideration in the association transition is the legal framework within which the transition process occurs.

discuss development progress and association operations and to receive input from owners and committees. Owners also should receive regular newsletters containing similar information and other articles of interest.

As the number of owners permits, there should be increasing participation on such functioning committees as maintenance, insurance, orientation, communications, and architectural review and finance. Their recommendations should have increasing weight in the board's deliberations. When the number of units sold reaches a predesignated percentage, owners should begin more formal involvement in the association's governance. At this stage, the owners elect representatives to an interim committee, an advisory board, or directly to the board of directors, with the percentage and form of representation depending on state statute, association documents, and/or the developer's stated transition plan. These owner representatives now have an opportunity to present the views of the unit owners formally to the developer-controlled board. As additional sale levels are achieved, unit owners are generally entitled to additional representation until, eventually, they hold a majority of seats on the board. They have complete control of association decisions at this point, unless the developer has retained a veto over certain types of board decisions until the development is largely complete; in this case, complete control will belong to the unit owners when the developer's veto right expires.

In this ideal scenario, the "turnover" is a mere formality. Instead of calling a meeting on a specific date at which the new board of directors is elected and all responsibility is "turned over" to the unit owners, there is a gradual phase-in of owner control. The normal review of contracts and other functions, such as insurance coverage, books and records, budgets, and enforcement, is accomplished through the activities of the owner-dominated association committees.

Operation of the association does not skip a beat. Any disputes between the association and the developer over such items as common area deficiencies will still need to be adjusted, but the board will be better able to represent the owners' interests from the experience they gained during transition. Furthermore, many problems regarding assessment collection, contract awards, and maintenance quality are identified earlier in the process and dealt with or forestalled by the early and continued involvement of the unit owners.

This ideal scenario seems straight forward enough but, to be fully achieved, the developer must undertake a careful, well-conceived and

multi-faceted plan. The following section will look at steps that need to be taken, with particular attention to the legal framework for transition and the process for achieving owner involvement.

LEGAL FRAMEWORK

Perhaps the most important consideration in the association transition is the legal framework within which the transition process occurs. If properly conceived and structured at the outset, this framework can speed the process along to a successful conclusion for both the developer and the homeowners, and it can help limit misunderstandings and possible court actions between both parties.

The legal framework for transition in association communities is typically set forth for condominiums, and increasingly for planned communities, in broad terms in state statutes that may set minimum standards for the process. Understanding the nature and form of such requirements will guide the developer's efforts in further defining the process by providing appropriate language in the association's legal documents.

Statutory Considerations: Condominiums

State legislation and regulation dealing with the community association process has focused predominately on the condominium form. The first generation of condominium statutes enacted in the early 1960s tended to be basic enabling statutes, and they were typically silent on transition of control. Over half of the states that have enacted second generation condominium statutes include provisions requiring transfer of control to the unit owners based on the conveyance of a set percentage of units and, typically, not later than a set number of years following the sale of the initial unit. While the developer is free to provide for earlier transfer, the statute establishes the outside limits as a protection for the unit purchasers. However, such provisions also benefit the developer since specific procedures are established by law that force the transition process to take place and the unit owners to assume control.

The Uniform Condominium Act (UCA) was developed by the National Conference of Commissioners on Uniform State Laws and endorsed by the American Bar Association in 1977. As of 1992, a number of states, including West Virginia, Pennsylvania, Minnesota, New Hampshire, Maine, Missouri, New Mexico, Rhode Island, Nebraska, North Carolina, Washington, and Oregon, have adopted the UCA while such

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states as Louisiana, Arizona, Michigan, and Wisconsin have adopted portions of the UCA. The UCA contains very specific language in the area of transition. It provides that unit owners (excluding the developer) elect not less than 25 percent of the board members following the conveyance of 25 percent of the units and not less than one-third of the board following 50 percent conveyance; developer control terminates following conveyance of 75 percent of the units or at the end of a set number of years, whichever occurs first.

In another approach, the Georgia Condominium Act provides that developer control cease not later than the conveyance of 80 percent of the undivided interests in the common elements to unit owners other than the developer or three years from the recording of the declaration in a nonexpandable condominium, seven years for an expandable one.

Statutory Considerations: Master Planned Associations

Subsequent to the UCA's development, the National Conference of Commissioners on Uniform State Laws developed the Uniform Planned Communities Act (UPCA). The Conference then developed the Uniform Common Interest Ownership Act (UCIOA) in 1982 that addressed both condominium and planned community forms of development. As of 1992, UCIOA had been adopted by Connecticut, West Virginia, Alaska, Colorado, and Nevada.

UCIOA provides that the developer's right to appoint and remove board members ends at the earlier of:

1. Sixty days after conveyance of 75 percent of the units that may be created in the development
2. Two years after all developers stop offering units for sale in the ordinary course of business
3. Two years after the developer's right to annex property was last exercised

If the developer voluntarily relinquishes the right to appoint and remove board members earlier than required by UCIOA, it may retain the right to approve certain board actions during the remainder of the period specified for developer control.

UCIOA provides a phasing-in process for relinquishing control of the board of directors: unit owners other than the developer must be permitted to elect at least one director or 25 percent of the board within 60 days after the sale of 25 percent of the total number of units that may be created in the development and one-third of the board within 60 days after conveyance of 50 percent of the units.

Other Considerations

To date few states have statutes dealing directly with the transfer of control in homeowner associations that are not a part of a condominium project; Florida enacted such legislation in 1992. The principal constraints placed on the developer in structuring the transition process in a homeowner association are brought about by the lenders' requirements and the requirements to meet the various federal lending-related agency guidelines. Typically, the lending-related requirements for turnover in a homeowner association seek to complete the transfer of control no later than after 75 percent of the units are sold or within a minimum number of years following the first conveyance.

Certain states, most notably California, Florida, and New York, have real estate departments that oversee the creation and operation of community associations. In California, for instance, the Department of Real Estate (DRE) provides that the developer may elect a bare majority of the board of directors for an extended period of time, although at least 20 percent of the board members must be nondeveloper unit owners. Termination of developer control typically occurs upon the earlier of two years or 75 percent of the total project being sold. Upon rare occasions, DRE will approve a maximum of three years or longer for more complex projects.

The Federal Housing Administration (FHA) and the Veteran's Administration (VA) require for projects approved for FHA and VA financing that association control be turned over to the unit owners once 75 percent of the units have been conveyed to owners other than the developer. The suggested legal documents of both HUD and VA contain the weighted vote concept, which is described in this report.

It is clear, then, that in drafting the original legal documents for a condominium or master planned community with respect to the process of transfer of association control, the developer must consider the impact of the following factors:

- Constraints of state statutes or regulatory bodies
- Local governmental policy or practice
- Requirements of federal lending related agencies

Drafting the Legal Documents

While statutory and other factors may come into play, it is apparent that the developer has substantial latitude in meeting the responsibility to set forth the legal framework for transition in the drafting of the association's legal documents. The developer should make a conscious determination in the project's planning stages that a

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encouraged.

proper balance will be maintained between the interests of the unit owners and the developer in establishing and implementing a transition program. This balance should include adequate protection for the unit owners and suitable flexibility for the developer. The legal documents should provide the procedures and steps needed to accomplish this goal.

A word of caution to the developer and the drafting attorney: maintaining suitable flexibility for the developer to be able to adapt to changing market conditions is a significant and legitimate concern when drafting the documents. It is, therefore, important to avoid including language and an approach to transition that would be so rigid that the project's future success may be impaired. For example, providing a date by which control will transfer to the unit owners instead of a flexible guide based on actions at various specified levels of sales may result in complete owner control with only a very small percentage of units sold. The developer always has the option to accelerate the transfer; if sales are progressing and if the owners are properly prepared to assume control, early transfer is encouraged. Premature transfer of control to owners who are not ready to assume control could cause real problems.

On the other hand, the developer who actively controls the board is in a very awkward position. When developer representatives sit as members of the association's board of directors, they have a fiduciary duty to take action that is in the association's best interest, even if the action is detrimental to the developer. Acting as a developer/board member requires informed, conscientious effort to avoid any real or apparent conflict of interest. Why would a developer want to maintain such a potentially difficult position? Primarily, the developer is concerned that the association is operated in a manner that will maximize the development's marketability; unless the developer has the confidence that the owners can maintain the association and its property to that standard, the developer will be reluctant to release its control over the board.

There are five basic approaches to handling the transfer of control within the legal documents:

1. The addition of one or more owners to the board of directors at specified levels of sales.
2. The use of an interim board of directors, an advisory board or committee, or a "shadow board" consisting of owner representatives that work with the developer-controlled board of directors to make decisions.
3. The early transfer of full board control to the unit owners with the developer retaining a re-

view and approval power over board actions.

4. The use of a weighted voting approach in which the developer has a weighted vote for each unsold unit; as units are sold the developer automatically loses control when the owner votes outnumber the weighted vote.

5. The use of a combination of these methods.

Specified Levels of Sales

This first approach is perhaps the most common method, that is, adding one or more owners to the board as specified levels of sales are achieved. This is also the approach taken in the UCA and the UCIOA. Although the actual percentages may be a topic of debate—should the first owner/director be elected at 25, 33^{1/3}, or 50 percent, or should final control occur at 51, 75, or 80 percent—the idea behind the procedure is a sound one. The speed with which owners are added to the board is tied directly to the sell-out pace. Direct involvement on the board by a nondeveloper-related unit owner at an early stage in the project's life is one of the best ways to assure unit owners of the developer's good faith, of their ability to impact and influence decisions affecting the association's operation, and of the community of interest existing between the developer and the owners.

The association's board of directors must conduct itself with all the formality and dignity of any business organization, regardless of whose representatives control the majority votes. Thus, the developer-controlled board should be having formal meetings, maintaining meeting minutes, and, in all other ways, conducting the association's business as a business. The addition of nondeveloper board members should have little impact on the way the board operates.

Advisory Board

Frequently used by default as much as by design, the advisory board, "shadow board," ad hoc committee of unit owners, or interim board approach provides a body composed of unit owners who have been elected by the other owners or who have emerged by consensus. The body acts to represent the unit owners to the developer-controlled board of directors. Depending on whether it was created by the developer or it arose spontaneously, this body may make substantive recommendations to the developer-controlled board or it may simply act to monitor board activities and association operations. The preferred role for the advisory committee, of course, is the former, acting at the request of the board of directors to investigate, evaluate, recommend, and, in many respects, run the day-to-

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day life of the association when developer sanctioned. The developer may have members of the advisory board elected by the unit owners or it may provide that chairmen of various committees act as a body as the advisory committee. (See Committee Structure)

A variation on the advisory board approach would be for the developer to use focus groups for owner input. This can result in broader based involvement from owners and can avoid limiting interaction to a few individuals. Focus groups involving unit owners is also an approach that can be useful to maintaining open communication between the developer and unit purchasers, regardless of the transition approach chosen for transfer of control of the association.

The advantage to the developer of the advisory board approach is its flexibility. It allows meaningful owner involvement without losing control or unnecessarily impeding efficiency of board operations. How the advisory committee is established, how its numbers are chosen, and how much real authority it is given are all variables that can be modified to fit the characteristics of the individual development. The major disadvantage is the uncertainty on the part of the unit owners of how much effect they will really have on association operations and the concern of when and how they will obtain full control. If they are capable of staffing an advisory board and making substantive recommendations that are typically adopted, why can't they have *real* control? If the developer decides to use the advisory board approach, as much certainty as possible regarding the maximum period of developer control should be introduced through general provisions in the legal documents and through a supplemental description of the process that may not be a part of the recorded documents, but which is provided to all owners. One of the easiest ways for a developer to alienate owners is to provide for advisory committees and then ignore their recommendations. Adopting this approach brings an implied commitment to listen seriously to recommendations.

Retained Veto

The third approach is the retained veto, which is probably at the other extreme of the advisory board approach. The retained veto approach was originally developed when directors and officers liability insurance was not available to mixed boards—those that had both owner and developer representative directors. It provided a means to turn over complete control of the board of directors to the nondeveloper unit owners in order to enable the association to

purchase insurance while protecting the developer's ability to complete and market the project. This technique provides, in the legal documents, a right for the developer to review and to veto board decisions, even after the board is elected by the owners. This technique is only possible if it is not prohibited by statute or regulatory requirements and is intended to encourage the developer to transfer control of the board to the owners much earlier, with the knowledge that certain actions that would adversely affect the developer's interests may be prevented.

The types of issues that might be covered by such a veto provision would be proposed changes to the scheme of development, changes to the basic architectural covenants and guidelines, or other matters that might unfairly and unreasonably impede efforts to complete and market the project successfully. Developers using this approach have indicated that they have seldom, if ever, had an occasion to exercise the veto. Of course, it is necessary that the documents establish a date or certain point in time when the developer's review authority would terminate.

From the developer's perspective the retained veto approach has several advantages. First, as the owners are able to take responsibility for running the association, the developer can relinquish that control without endangering the basic developmental or sales effort since the developer can review and, if necessary, veto any adverse board decisions. By moving off the board, the developer's liability and exposure to lawsuits for conflict of interest or mismanagement are reduced. The burden of running the association is removed from the developer's shoulders and transferred to the owners, who typically have a greater interest and stake in such matters.

For the owners, the principal advantage of this approach is that it permits a much earlier transfer of control than most other approaches. While a disadvantage might be the negative implications of the right of veto, there is the positive aspect that the developer has no greater power to initiate any action than does any other owner.

Weighted Vote

The fourth alternative is the weighted vote approach, which is frequently seen in the master planned community. Originally promulgated in VA and HUD form documents, this approach is not so much a transition device as a method of quantifying votes; it provides that turnover of control is an *event* rather than a *process*, and it does not provide for any phase-in of owner involvement. Developer-owned units are assigned a weighted vote while the balance of the units are

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Table 1: Sample Transition Process for a Single-Phase Community Association

Point of Closings	Committee Activity	Committee Control	Association Governance
No later than 25 percent of closings	Orientation Communication	Developer controls, owners chair or staff	Developer controls all or most of the seats on the board (five to nine seats); one or two members may be elected by the owners
	Covenants & Enforcement Finance Insurance	Developer controls through board, owners staff	
No later than 50 percent of closings	Maintenance Orientation Communications Insurance	Developer controls, owners chair	Transition board with developer controlling majority, but additional owners members may be elected
	Covenants & Enforcement Management Finance	Developer controls through board, owners staff	
No later than 75 percent of closings	Maintenance Orientation Communications Insurance	Owners control	A transition board and, depending on the legal documents and statutes, the developer should shift to a minority position; a membership meeting is held to elect board members and to effect the transfer of control
	Covenants & Enforcement Management Finance	Owners control with developer involved	
	Transition	Joint committee of developer and owners	
By completion of closings	Maintenance Orientation Communication Insurance Covenants & Enforcement Management Finance	Owners control	Complete owner control of board

This structure follows that of the procedures suggested in the Uniform Condominium Act. Percentages can be adjusted, as can the nature and type of committees, to better suit the size, location, and unique characteristics of specific associations.

—Adapted from *Creating a Community Association: The Developer's Role in Condominium and Homeowners Associations*, CAI and ULI, 1986 (Revised).

each assigned a single vote. Once the total nondeveloper unit owner votes exceeds the total developer weighted votes, the owners assume control of the association and elect an owner-dominated board. For example, the developer-owned units may be assigned three votes each. When 75 percent of all units are sold, the total developer's weighted vote will equal the unit owners' total vote. At that point the developer typically loses the weighted vote advantage with each remaining unsold unit assigned one separate vote. The owners, then, are in effective control and can elect their own board.

In most respects this approach is simply a variation of the first alternative, but it is set forth through a more complex procedure that has a rigid application. Control is still transferred following a fixed percentage of conveyances through a procedure that is automatic. However, until that level is achieved, actual voting control cannot be shifted. As a consequence, to affect earlier owner involvement, the developer must voluntarily elect to cast votes for owners or rely on the "interim board" approach.

Combined Approach

The fifth alternative is to use a combination of these approaches: combining the addition of unit owners to the board at set levels of sales with a transition at a lower percentage than usual due to the retention of a limited veto, or combining the advisory board with the addition of unit owners to the board at higher percentages of sales. Most often, combinations occur where the developer finds it necessary to overcome inflexible documents or desires to facilitate greater and earlier owner involvement that is contemplated in the legal documents.

At the beginning of the planning process and early development phase, the developer must carefully consider the approach to transfer of control that will be set forth in the legal documents. Each approach has advantages and disadvantages depending upon the specific nature of the development and the transition the developer wants to achieve. Whatever approach or combination of approaches are selected, the developer should carefully consider the steps necessary to implement it, fully explain the process to the owners from the outset, and then adhere to it as much as possible.

All associations have a "moment in time" when actual transfer of control occurs, but preparation for that moment should occur from the planning stages. The committee structure is the backbone for establishing the basis for preparedness.

COMMITTEE STRUCTURE

As the transition process advances, more owners and committees will be involved. During this time, two major efforts should be underway simultaneously: the operation of the association by the board (with or without developer controlled members) and the training and education program for unit owners that will prepare them for assuming control. At times the two activities may be indistinguishable, but they should be separate functions operating along parallel tracks.

Table 1 (See page 8) contains a sample committee structure for a single-phase association that uses a procedure similar to the transfer for control procedure proposed by UCA and UCIOA. In the early period of sales, unit owners are involved primarily in the association's orientation and social aspects in order to make new owners feel welcome and a part of the community. There may be committee activity in more substantive areas, but at this stage it generally will not be very pronounced.

By the time half of the units are conveyed, however, a fairly basic set of owner-dominated committees will be established, which are answerable to the board of directors. This will be the time for committee members to learn about the particular aspects of association operation that directly concern their committee and, in the process, to review existing practices and develop recommendations for future operations.

No later than the time when 75 percent of the units have been sold, all committees should be functioning. However, the degree of developer involvement in committee functions depends on the method chosen for adding owners to the board; as long as the developer holds the majority of seats on the board, it basically controls the committees through appointment power. Also, at this stage of unit sales, all familiarization and review programs should be completed, recommendations for changes defined, committee responsibilities under owner control defined, and some activity and action begun.

At this point, the transition committee, or the board acting in that capacity, is very active. This is when common area deficiencies and operating defects, if any, should be identified and solutions worked out. Ideally, there will be no major remaining points of contention with the developer since the committees will have identified these problem areas earlier and brought them to the board's attention with recommendations. Regardless of what the committees are called, each committee should have a statement of responsibilities and purposes to guide its members. Although the statement of purposes can be

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modified, a clear delineation of what will be expected provides guidance for committee members. In the following discussion, each basic committee is examined from the standpoint of what the developer and the developer-controlled board should do in planning and initiating the operations of each function and then from the point of view of that owner-staffed committee. Depending on the development's size, some functions may be combined to produce fewer committees, or they may be subdivided to provide more committees.

Communication

Probably the most important element in any community association is effective communication of what is happening by the board and among the unit owners. A good communication system can forestall the development of cliques and factions, can enable the association to provide services that owners want, and can help owners develop a sense of trust in the board members.

By using various communication techniques—including meetings, newsletters, flyers, and building or block captains—the developer must inform the owner of what is going on and why. The developer will find the unit owners more cooperative during its marketing period if it regularly apprises them of how construction and sales are going and what, if any, problems are being encountered with the development. Likewise, the board of directors, whether or not it is developer-controlled, should communicate on a regular basis about the association's operations, actions, plans, and committee activities.

The developer, as part of the sales process, should design and implement a new-owner education program. It may use group closings, an owner orientation program, or a welcome committee—all of which are designed to educate and involve the owners from the outset. The developer may then use general association meetings, social events, or a newsletter to continue to develop the sense of community that forms the basis for the association. These same approaches to new owner education and involvement should be continued after the developer is out of the picture.

The committee of unit owners involved in this area will probably be one of the first organized and may evolve into two or more committees dealing with hospitality and welcome, communication (newsletter and building or block captains), social activities, and recreation. In the early transition stages, however, the committee will help communicate what is happen-

ing through appropriate methods.

The committee will develop a communication system within the community to help get information to the unit owners and to transmit questions and concerns from the unit owners to the board of directors. It can develop, evaluate, or revise the welcome package for new owners. It can develop information on owner skills that may be helpful to the association. Finally, the committee can provide input for a newsletter and help set up general association meetings, as well as sponsor social and recreational activities that encourage owners to join in community efforts.

Maintenance

The maintenance committee should familiarize itself with the common elements by reviewing the association's documents and any available maintenance manual—to determine exactly what the common elements are and what the association's maintenance responsibilities are—and by making a physical inspection of the property to determine repairs needed and construction defects, if any.

A complete inventory of everything to be maintained is necessary. In some states the builder is required to provide "as built" drawings, which will help in this inspection and maintenance activity. The maintenance inspection will also enable the committee to evaluate long-term replacement requirements for input into the budgeting process and to begin familiarizing itself with the common facilities and the necessary maintenance procedures. The committee may want to use the services of a qualified engineer to assist with this assessment. As part of this activity, the maintenance committee should review the following items with the developer:

- All plats, plans, and engineering drawings for the common elements
- All guarantees, warranties, and bonds provided by the developer and its contractors
- Any operational policies or schedules that the developer has formulated for maintaining the common elements, including any landscaping plan

Copies of these materials should be provided by the developer and included in the association's permanent records so they will be available for any future reference needs. The committee's inspection reports and any recommendations it makes should also be kept in the permanent association records.

If the developer has not provided a maintenance manual, the committee will find it useful to list maintenance responsibilities for specific

items, based on the review of the legal documents, so that board members and unit owners will know their various responsibilities. Such questions as who must repair various types of plumbing leaks and who must maintain owner-added landscaping on the common areas are ones that may cause disputes and should be answered before the situation arises.

The maintenance committee will also need to review all existing maintenance contracts to become familiar with current arrangements. It may be asked to provide assistance to the developer-controlled board, and later to the transition board, in developing detailed contract specifications, bidding and reviewing new contracts, and developing a contracting procedure and maintenance specifications. This committee can benefit the owners by reviewing existing maintenance procedures, and it can be very useful to the developer board by doing some of the "spade work" for new maintenance contracts and by evaluating current contracts or performance.

Insurance

Depending on the association's size and resources, this committee function may be carried out through a separate committee, by a special ad hoc committee, or as a separate function under another standing committee, such as finance or management. Although the board will make the final decision on any renewal or replacement of insurance coverage, the committee can perform investigative work.

The committee will review the documents to determine what coverage is required and then review the existing coverage to determine if it meets those requirements. In addition, it will investigate any other coverage that may be advisable and then draft specifications for securing competitive bids.

In addition, the insurance committee can investigate various ways to minimize insurance premiums—whether by increasing deductibles, installing a fire hydrant, or adjusting coverage for association employees. Finally, this committee can inform unit owners of what coverage the association carries and what coverage the unit owners are responsible for.

Covenants, Enforcement, and Design Review

During the development's planning phase, the developer determines the initial areas in which standards for unit owner behavior are to be regulated. It is to the developer's benefit that those standards be maintained and enforced, especially during the sales period. From archi-

tectural modifications to pets and parking, if the association has a need for a covenant, restriction, or rule, then it also has a need for enforcement of that regulation. Lax enforcement is not a good sales technique: it results in unhappy unit owners who thought rules would be enforced and unhappy buyers who thought they would not be. This undermines the sense of confidence and cooperation that forms the basis for the community.

When planning the operational aspects of the association, the developer should establish a minimum of restrictions and rules, adopting only those that are necessary to sustain the project design and type of community desired. Moreover, only those that the developer is prepared to have enforced consistently during the development phase should be adopted and the developer should take steps to ensure that enforcement takes place. The importance of this aspect of association operation must be stressed to the sales force involved in the sales and marketing program as well as to any association management personnel involved with the project.

The committee's scope of activities on covenants and rules will be dictated, in part, by the nature of the community, the form of ownership, and the complexity of the restrictions imposed within the legal documents. For many condominium associations, the scope of enforcement is limited to certain "house rules" that cover pet control, parking, and noise. There is not likely to be extensive demand for architectural review activities in a condominium unless the development consists predominantly of horizontal or townhouse units. For homeowner associations in planned communities, review of architectural rules compliance is a more dominant activity, entails more sophistication in approach, and results in greater levels of activity. Because the architectural review function involves a more elaborate regulatory process, including standards and guidelines development, receipt, review and evaluation of proposed alterations, and enforcement, a separate design review committee may be desirable for those associations where this activity will be a major function. (For an extensive discussion of the architectural review and enforcement process through a committee created for that purpose alone, see *GAP Report 2, Architectural Control—Design Review*.)

The covenants and rules enforcement committee should review the documents for any requirements for particular regulations and procedures (i.e., age or pet restrictions and architectural standards). Next it should review existing procedures, rules, and regulations to determine if they are adequate and to see if revisions are

For homeowner associations in planned communities, review of architectural rules compliance is a more dominant activity, entails more sophistication in approach, and results in greater levels of activity.

Once the initial budget and assessment fee levels are set, the budget can be a useful tool to educate owners on association operations.

needed. Once the survey and evaluation of existing standards and procedures is complete, the committee can investigate other areas in which new procedures or regulations are needed and begin to develop them. Some areas the committee will want to consider are a notice and hearing procedure to follow when infractions occur, an appeals process, and a procedure for developing new or revised rules that allow adequate owner input.

The committee should see that all rules, regulations, and procedures are disseminated and periodic reminders are provided to owners. The committee should also conduct periodic inspections of the project to ensure compliance with architectural standards and other visible restrictions, such as antenna restrictions, policing of recreational vehicles, and leash laws.

Finance

In its planning, the development team should, to the best of its ability, formulate a budget—including adequate capital reserves—that accurately reflects the estimated costs of all services to be provided by the association and which results in a realistic level of assessments for the development's needs at any given time. In operating the association during the period of developer control, the board must be diligent in assessment collection to ensure financial stability. The budget should reflect the procedure and formula to be used by the developer in the payment of assessments on unsold units. While in most condominium situations the developer will be obligated, by statute, to pay 100 percent of the assessment on unsold units, a lesser percentage payment is possible with homeowner associations. An affirmative statement of the procedure to be used for the developer's units—prepared and available from the first sale—will eliminate much confusion and distrust that might occur later.

Once the initial budget and assessment fee levels are set, the budget can be a useful tool to educate owners on association operations. Copies of the budget and appropriate explanatory material should be provided to each new owner as part of the orientation or welcome package. (In some states, the budget must be provided in advance of the sale as part of the disclosure package.) The developer's sales personnel, the welcome committee, and the finance committee should be prepared to explain the budget and to answer questions. The developer should also be sure that the association's financial records and books are maintained in a business-like manner and that all appropriate governmental

reports and tax returns are promptly submitted, with permanent copies maintained on file.

The finance committee should be established as soon as there are sufficient owner volunteers to staff it. The finance committee will be concerned with the complete financial affairs of the association, including budgeting, assessment collection, financial procedures, books and records, and audits. The committee should review the association's financial records and procedures used in order to understand the financial operation.

The committee should review the procedure for assessment collection, with particular attention to the method for collecting delinquent assessments. If this procedure does not exist, the committee should develop and recommend a firm delinquent collection policy that is widely publicized in the community and enforced against all owners. As owner control approaches, it will be good for this committee to review procedures for expense approval and check-writing so that a workable system will be available for the owners. It is also advisable to arrange for a certified audit of the books at the time that majority control shifts to the owners, for the benefit and protection of both the developer and the unit owners. Such an independent report will provide an undisputed basis on which association operations can proceed. The finance committee can assist in interviewing and recommending the independent personnel to do the audit. In states with statutes modeled after UCIOA, the audit must be paid for by the developer; otherwise, the association may pay for it if the developer is paying full assessments on unsold units.

During the record review, the finance committee should become familiar with how the budget is developed and determine what information is available—from association records and from other sources—to assist in determining the budget. The management company or agent, if applicable, can be of great help here in familiarizing the committee members with procedures and resources. Prior to owner control the finance committee can serve as a resource to the developer-controlled board when the budget is revised. Subsequent to owner control the committee may actually prepare a proposed budget for board action or work with the management company to prepare it.

Association Management

It is important that the association is run as a separate business entity from the day the association is created. The developer, during its period

of control, will be less likely to confuse association operation with development activities if the following actions are taken:

- Separate books and records are begun and maintained.
- A separate board of directors is actually appointed and their meetings are recorded in minutes.
- Payments for maintenance items come from a separate distinct entity—the association.

Part of an association's success will result from an adequate and responsive warranty program for unit owners. Keeping this activity separate from other association activities is important because the developer, not the association, is responsible for warranty repairs. Too often, the "developer-as-project-developer" and the "developer-as-controller-of-the-board-of-directors" are confused in the owners' minds, and warranty repairs is an area in which confusion

frequently arises. A well-planned and separate warranty program will reduce this potential confusion.

A developer can also minimize owner concern of long-term contracts, wherever possible, by signing contracts on behalf of the association that can be canceled within a certain period after the owners assume formal control. If some of the contracts are with a developer subsidiary or related companies, owner objections can be minimized by disclosing the relationship and by providing a cancellation clause.

The management committee will review management procedures and may want to evaluate alternate forms of management (contract, on-site, or volunteer management) to make recommendations to the board of directors. It may wish to study the overall committee structure and the committees' relationships with the board or deal with establishing nominations and election pro-

MAJOR COMMITTEE TASKS DURING TRANSITION

Covenants, Rules, and Design Review Enforcement

- Review documents for covenant restrictions and authority for rules promulgation
- Review existing policies, procedures, rules, and regulations for need, adequacy, and enforceability
- Develop new standards where needed and revise those in need of revision
- Develop method for regular dissemination of regulations and procedures and for ensuring compliance
- Develop procedures for notice of violation, hearing, and appeal

Finance Committee

- Review and monitor assessment collection and enforcement
- Review budget and assist in developing new and revised budget
- Review financial records and establish regular financial procedures
- Recommend action on any deficiencies found
- Assist in audit

Insurance Committee

- Review documents to determine what coverage is required
- Review existing coverage to determine if it is adequate and competitive
- Investigate various ways to minimize risks and premiums

- Inform owners of coverage carried by the association and coverage owners should carry

Maintenance Committee

- Familiarize itself with what are the common elements and the association's maintenance responsibilities
- Inspect all common elements and note deficiencies that are warranty items, common construction defects, potential hazards and claims, and maintenance items
- Review all plats, plans, engineering drawings, warranties, bonds, and contracts that involve common elements and maintenance, and obtain permanent copies for the association files
- Delineate those items that are the association's maintenance responsibility and those that are the individual unit owner's responsibility and provide that information to all owners
- Develop procedure for letting maintenance contracts
- Recommend action where indicated

Management Committee

- Review all association files and management contracts
- Investigate alternative methods of management
- Review all contracts and contractor performance
- Establish nomination and election procedures

Transition Coordinating Committee

- Coordinate final phase of transition activities between unit owners and developer.

cedures. During transition, the management committee should review and evaluate all current contracts and evaluate performance in order to advise the owner-controlled board on changes necessary upon renegotiation.

Transition

The transition committee is a joint committee of owners and developer representatives that coordinate the transition process. The committee's nature and composition will depend to a great extent on the structure the developer has chosen for phasing unit owners onto the board of directors. If unit owners are elected or appointed to the board as certain levels of sales are reached, then the board itself may constitute the basis for and serve as the transition committee. For example, if there are five board members (two of which are unit owners and three are developer representatives), then these five may be the kernel of the committee, with perhaps the involvement of certain committee chairmen, such as finance and maintenance. If the interim board or committee approach is used, this group plus one or two developer representatives could compose the transition coordinating committee. However it is structured, it should be composed of a relatively small number of unit owners and developer representatives.

The purpose of this committee is to coordinate transition activities, to ensure that all committees complete their review activities and develop needed recommendations and to help resolve any remaining disputes or discrepancies between the developer and the association. The committee should be sure that all records, books, and files are current and complete and that the association is in good standing with all appropriate governmental bodies. In short, this committee is the coordinating and facilitating body for the transfer of control.

During the transition period, and certainly during the work of the transition committee, it will be appropriate to review the association's declaration and bylaws for operational soundness, clarity, and relevance. There may be areas of inconsistency, vagueness, and over-regulation that can be modified to improve the governance of the association. The earlier these problems are identified, the more easily they can be corrected since there will be fewer owners involved in the amendment process. One word of caution, however: amendments to "clean up the documents" are one thing, but changes that go to the basic plan of the development may have legal ramifications for the developer since own-

ers have purchased in reliance on that plan. Of course, any amendments must be made in accordance with the procedures set forth in the documents, and the more nondeveloper owners there are, the more their involvement and concurrence will be needed to effect the changes desired.

Impact of Sales Pace

In the event of a slow-down in sales, the developer, through the transition committee, may want to adjust the transition timetable to accommodate the pace of education and the specific interests and abilities of existing unit owners. Owners should become involved in association activities as soon as they move in, but early enthusiasm is easily lost if they feel their participation does not have an impact on the association's operation. This can be especially true when sales fall off and progress toward owner control is arrested. If owners do not feel that they can participate in and have an effect on decisions regarding association operation, they may sit back and become accustomed to someone else running the association for them. When sales eventually pick up and transition becomes a reality, there is the danger that these early unit owners will not want to accept association responsibility and will become a permanently apathetic and resistant group. This will hurt the association after the developer is gone and, thus, the association's subsequent success will reflect on the developer. In the instance of a slower marketing period than anticipated, the developer should consider allowing greater owner participation than the sales level might warrant, based on the original scheme. Flexibility is very important in this instance.

If sell-out occurs more rapidly than anticipated and there is not sufficient time to train and work with unit owners adequately, the developer and the transition committee should make good sources of association advice accessible to unit owners. This can be done by providing membership in organizations such as CAI, through a good management program with an experienced company or on-site manager, or even through consulting services by developer personnel or others that can be made available to the association on a limited basis. Some provision is generally made in the developer's project budget for staff time—that is, consultant or management fees that arise during the marketing period and are specifically intended for association operations and owner involvement—so that adaptation to a rapid sellout should not cost any more than would have been spent under normal circumstances.

Owners should become involved in association activities as soon as they move in, but early enthusiasm is easily lost if they feel their participation does not have an impact on the association's operations.

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DEVELOPING LEADERSHIP AND INVOLVEMENT

All the planning efforts the developer undertakes for transferring control will accomplish little if new owners do not become involved. Unfortunately, owner apathy is a recurring lament of developers and associations, and the question of how to deal with it is often asked. Although there is no guaranteed way to prevent or to cure apathy, some steps can be taken to minimize its effects on the association during the development and sell-out phases. It must be recognized that, for a majority of owners, possibly the highest level of involvement that can be expected will be paying assessments regularly, obeying rules and regulations, and signing voting proxies.

The prevailing consideration, then, is how to identify and utilize the available talent and persons who are willing to work to fill those positions. A good transition plan can succeed here.

When new owners first buy into an association and have gone through the basic orientation program to acquaint them with the various aspects of association operation, it is important to accomplish two goals quickly. First, identify what particular skills and interests each owner has; this can be done by interview or by questionnaire. Second, introduce owners to each other so they can begin to develop their common identity in the community. Thus, one of the first functions of committee activity is to facilitate these introductions. Whatever name the group chooses for itself—social committee, hospitality committee, communications committee, or orientation committee—its purpose is to provide activities and methods for owners to become acquainted with each other and the association. In a residential or resort community, this committee can be very busy and may, in larger communities, even have the assistance of a social or recreation director. In smaller associations, this committee will be less active, but its goal of acquainting owners with one another will still be important. For those associations using an orientation committee, the developer can provide or assist the committee members in developing a welcome packet. The welcome packet should contain basic information about the association—including the legal documents, rules, persons to contact regarding warranty work, basic questions about the association, emergency numbers, a directory of owners, back issues of the newsletter, and an information form for the new owner to complete to determine areas of interest.

Committee members can welcome the new owners with a personal visit or phone call, by providing a welcome packet, and by being available to answer questions. For larger associations with more needs, this committee can help the developer provide various social or recreational activities in order to bring owners together and provide information for the association's newsletter about new owners and organized activities. It can also provide study sessions to familiarize both new and older owners about evolving association operations.

Some tested principles of leadership and organization apply in the transition process. Recognition among peers is a primary stimulant to leadership. Socialization is a stimulant to participation. The developer can help by giving recognition to the committee members, and committees can help by giving recognition to other leaders and by participating in their activities. A newsletter that stresses names is one way to recognize people as are active bulletin boards situated in visible locations. ("Active" means frequently changed; nothing is so boring as yesterday's news.)

The information gathered by the orientation committee from the information forms will identify the abilities and interests of each owner so that, as numbers of units sold and other factors allow, new committees can be developed with the most qualified and interested owners. In those developments in which owners are directly elected to the board at an early stage of sell-out, the developer and other leaders will be able to encourage owners to consider the opportunity to participate based on better knowledge of their background and interests.

The first thing that will motivate owners to become involved in their association is education—in other words, understanding what the association is and what it takes to make it work. The second is the sense of being involved in a meaningful way, that the effort an owner has invested in an activity will be recognized and will be productive. If owners are involved in decision-making that has a recognized effect, then they will be rewarded by knowing their effort was worthwhile. For example, allowing owners to develop rules for using the pool, clubhouse or other common facilities will involve them in their community. On the other hand, asking them to draw up a complaint procedure that will not be supported or implemented by the board is a futile and defeating process.

A third means for encouraging involvement and leadership is through providing opportunities for owners to visit other associations and talk

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to their board or committee members about areas of particular interest in order to get an idea of how other associations operate. Exposure to local and national organizations that provide educational materials and programs for association members will help make owners more confident about what they are learning about successful association operations.

Finally, ask individuals to become involved on a realistic level at the beginning; this will help to ensure that, as additional complexity and responsibility occurs, they are able to develop the capacity to respond. Providing a structure from the beginning through which owners can become involved and move into increasing levels of responsibility is a desirable goal for the transition process.

IF NO TRANSITION PROGRAM EXISTS, WHAT CAN OWNERS DO?

Although the educational programs and committee structure established in the development plan will usually be the motivating force for owners to become involved in association activities, there are instances in which there is no transition program and in which the developer, for one reason or another, does not prepare owners to operate the association. This may be the case if the developer is bankrupt or if a lender takes back the property. In these cases, there will often be a few owners who become concerned about the way the association is being run, their lack of expertise in how to run an association, or becoming involved before it is their responsibility. In some associations, there will be no such concern until the development is sold out and the owners are in control. When this concern does exist, however, the question then becomes: "What can we homeowners do to become involved in association operations and to gain some measure of control over the situation?"

An expression of concern to the developer may be all that is needed, and the owners and the developer can then work out a mutually agreeable program. It may also be that the developer does not understand or accept the value of early owner involvement and will not respond to owner initiatives.

Regardless of the response the owners receive, there are certain actions they can take to help themselves. First, concerned owners should meet to determine what concerns and problems affect all of them and which ones are individual warranty problems that should be handled on a case-by-case basis between the developer and the individual unit owner. This meeting can be

held at the association's clubhouse, at someone's home, or at any nearby public meeting room. There should be an agenda distributed in advance and someone should be responsible for taking notes. Unless it is well run, this first meeting can develop into a gripe session and no constructive course of action will emerge. Therefore, some preliminary planning must be done. The concerns voiced at this meeting should be compiled and synthesized into a summary from which the next step can be taken.

At a second meeting, those owners who are interested in particular problems or areas of operations can organize into action committees to investigate their subjects more thoroughly. At this point, two things are happening: early association leaders are beginning to emerge and the owners are becoming more familiar with the scope of association operations.

Before a formal meeting with the developer, a representative of the owners should contact the developer with a general indication of the owners' concerns and activities. This will give the owners a feel for the developer's attitude and may also elicit from the developer suggestions as to other owners who may be interested or especially skilled in some area of concern. Of course, it is to the developer's advantage to respond to such owner initiatives in a positive way, both to prevent the appearance of mistrust and to continue to work with owners cooperatively for the success of the association. The owner initiative may happen sooner than the developer had originally anticipated, but the developer should be flexible enough to adapt the transition plan to this circumstance.

A meeting with the developer will be appropriate as soon as the owners have sufficiently investigated the various areas of concerns, summarized them in writing, and developed specific suggestions for actions that both the developer and the owners can take to involve owners and to improve association activities. Suggestions may include a committee structure (See box on page 13) that can advise the board in various areas and that can relieve the board of some of the investigative and developmental work required in bidding contracts and insurance, establishing rules and regulations, and determining owner opinions. It may include a communication network of block or building captains to provide information for a newsletter and to distribute information to owners. Or it may include a recommendation for a more responsive method for warranty problems to be handled.

At the outset, it should not be assumed that the developer does not want to cooperate with

An unresponsive developer is no excuse for owner inaction.

the owners. If the developer has not planned a program for owner involvement and gradual transfer of control, it simply may have overlooked programs in these areas. Implementation of the suggested program, if realistically developed, will benefit the developer by removing some of the burden of day-to-day decisions that affect association life, but that do not adversely affect the sales efforts or the developer's efforts to complete the development. By allowing owners to implement their own methods of communication or decision making, within limits, the developer will be relieved of unnecessary or undesired involvement with the association. Furthermore, since those persons assuming tasks are the ones who will benefit the most in the long run, the developer should feel confident simply to monitor their activities.

The owners should not go to the developer with a long list of complaints. Instead, they should have a well-developed list of concerns and some realistic suggestions of how they can be handled. Owners will gain little if they start off on the wrong foot in this process. However, if reasonable attempts to work out differences fail—this does not mean that the owners must win on every point—and the developer does not show a willingness to work out differences, owners should not hesitate to hire a lawyer to represent their interests.

In addition, the owners should establish committees to monitor the developer-controlled board's activities to review the disbursements of funds and the collection of assessments, to monitor the board's enforcement of rules and archi-

tectural standards and register complaints where enforcement is lax, and to keep an eye on buildings and ground maintenance to see that it is adequate and meets required standards. Even though the owner's activities are not officially recognized by the developer and the developer-controlled board, these activities will provide many benefits to the owners. These benefits include the following:

1. Involved owners will be exposed to many aspects of association operations and will learn what is involved in running the association, even if they can make no decisions at this stage.
2. The developer will know that its actions are being monitored and, thus, may be encouraged to be more responsive. If not, the owners are more aware of what is being done, appropriate protests are formally filed, and material has been developed that may be useful if legal proceedings become necessary.
3. As owners begin to understand more about association operations, the developer-controlled board may realize that there are areas in which owners can contribute, and perhaps the board will allow the committees to perform some official duties.

An unresponsive developer is no excuse for owner inaction. Increasingly, the problem of unresponsive developers or developers who are insensitive to the need for owner involvement appears to be diminishing. However, whenever unit owners encounter such situations, they must be ready to assume the responsibility in order to protect their investments.