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# Turnover From Developer Control

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Anxieties amongst homeowners can run high at learning that their homeowners or condominium association will soon be going through turnover from developer-control. What is turnover, and what are its consequences?



Referred to as “turnover,” “transition” and “transfer of control” in the Florida HOA and Condominium Acts, this event is, essentially, an election with important consequences. Homeowners and condominium associations are governed by a board of directors which can vary in number. From the creation of an association until turnover, the developer of the association is entitled to appoint at least a majority of those directors, and thereby control the association. At turnover, the non-developer members are now entitled to elect a majority of the directors, and thereby the non-developer members acquire control of the association.

There are different events that trigger the requirement to hold a turnover election for HOAs and condominiums. Under the Condominium Act, the requirement to hold a turnover election is generally triggered upon the earlier of 3 years after 50% of the units have been conveyed to purchasers, 3 months after 90% of the units have been conveyed to purchasers, or 7 years after certain events that are generally associated with the initial creation of the condominium. In addition, under the right circumstances a turnover election can be triggered if the developer stops constructing or offering units for sale, the developer files a bankruptcy petition, or a receiver is appointed for the developer.

Under the HOA Act, the requirement to conduct a turnover election is generally triggered 3 months after 90% of the parcels have been conveyed, or earlier if an earlier date or event is provided in the governing documents. In addition, an HOA turnover election can, under

certain circumstances, be triggered by a developer's "abandonment" of its responsibility to maintain and complete the amenities or infrastructure, bankruptcy, receivership, and foreclosure. Notably absent from the HOA Act's list of triggering events are events that involve the developer ceasing the sale of parcels (in the absence of some other triggering event) or an outside date (such as the 7-year period for condominiums) from the creation of the community. For that reason, the developer of an HOA can generally hold on to its control of the association for a much longer period than a condominium developer.

When turnover is triggered, a special election for a majority of the directors on the board is held in which only non-developer directors are entitled to run as candidates, and only non-developer members are entitled to vote, and the developer-appointed directors that previously filled those majority seats tender their resignations. The date of that election is the date of "turnover."

The significance of turnover for both HOAs and condominiums is substantial. Within 90 days of turnover, the developer is required to deliver to the non-developer-controlled board of directors a host of items including all of the association's funds and control thereof, personal property, contractor information, deeds to common area owned by the association, and all of the association's official records.

For HOAs incorporated after December 31, 2007 and for condominiums, the developer is required to provide an audit of the financial records of the association from the date of incorporation of the association through the date of turnover. Further, for condominiums, the developer is required to provide a "turnover inspection report" under seal of an architect or engineer, that outlines the required maintenance, useful life, and replacement costs of certain common elements of the condominium.

Importantly, turnover is not an event which signals the end of an association's opportunity to hold the developer liable for any failed obligations. Rather, turnover enables the non-developer-controlled board the opportunity to review the history of the operation of the community by the developer, determine whether the developer met its obligations with respect to such items as construction and financial funding, and pursue any claims the association may have against the developer.

A post-turnover board of directors should therefore review the items provided to it by the developer, determine whether any required items are missing, and evaluate, with the assistance of experts such as accountants, engineers and attorneys, whether there are any claims against the developer that should be pursued. Investigation of claims may require that the board conduct an audit of the financials or retain an engineer to investigate potential construction defects. Because there are varying warranties, construction requirements, and developer financial obligations that may apply to any particular community, and varying statutes of limitations that may apply to each, it is important for a board to consult with its legal counsel and experts on these issues as early in the process as possible.

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