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GENERAL TRANSITION CHECKLIST

This list should not be considered as legal advice to any particular board or association. Each situation is different - there may be other important issues for an association that are not included here and some of these issues may not be relevant to others. Your governing documents are your guide and may contradict some of the information listed here. It is just a general checklist that is not intended to be used by particular boards as their guide to transition.

- 1. IT IS VITAL THAT DATES OF SUBSTANTIAL COMPLETION BE DETERMINED FOR THE PURPOSE OF CALCULATING THE STATUTE OF REPOSE.**
- 2. STATUTE OF LIMITATIONS – Palisades Case.**
- 3. NEW BOND LAW – Bad news.**
- 4. TRANSITION COMMITTEE - The Board should appoint a Transition Committee consisting of either exclusively board members or a combination of board members and other association members with construction/business experience who can assist and advise the board with the transition issues. The committee will meet with the developer from time to time, will inspect and evaluate the condition of all common property or other improvements and will consult with the Association engineer at the time that a transition study is conducted. This is an ADVISORY committee with no power to make decisions-those decisions are all ultimately made by the board. However, the earlier you can get such a committee working, the better (even while the developer is still in control if they are amenable).**

5. **EARLY MEETING WITH DEVELOPER** - As soon as possible after control of the Association is turned over to the membership, it is advisable for the new board, the Transition Committee and the Association counsel to meet with the developer to discuss the plans for finishing the development and also discuss the responsibilities of each party until the project is 100% complete. Such a meeting will promote an open and productive relationship going forward and insure that the roles and responsibilities are clearly established from the outset. Examples of issues to be discussed include the maintenance of unfinished roads and sidewalks, the maintenance of undeveloped lots and the completion of any of the common elements.
6. **DOCUMENT COLLECTION** - A demand letter should be sent to the developer seeking the turnover of the following:

[It should be noted that 1-18 are mandated in condominiums pursuant to N.J.S.A. 46: 8B-12.1. PREDFDA NJSA 45:22A-47 (which applies to other common interest communities) simply states that the “*developer shall forthwith deliver to the Association all items and documents pertinent to the Association, such as, but not limited to, a copy of the master deed, declaration of covenants and restrictions, documents of creation of the Association, bylaws, minute book including all minutes, any rules and regulations, Association funds and an accounting therefore, all personal property, insurance policies, government permits, the membership roster and all contracts and agreements relative to the Association*”. It is recommended that a demand for the following items be made to the developer by the board.]

- (1) *A photocopy of the master deed and all amendments thereto, certified by affidavit of the developer, or an officer or agent of the developer, as being a complete copy of the actual master deed.*
- (2) *A certified copy of the association's articles of incorporation, or if not incorporated, then copies of the documents creating the association.*
- (3) *A copy of the bylaws.*
- (4) *The minute books, including all minutes, and other books and records of the association, if any.*
- (5) *Any house rules and regulations which have been promulgated.*
- (6) *Resignations of officers and members of the governing board or other form of administration who are required to resign because the developer is required to relinquish control of the association.*
- (7) *An accounting for all association funds, including capital accounts and contributions.*
- (8) *Association funds or control thereof.*

(9) All tangible personal property that is property of the association, represented by the developer to be part of the common elements or ostensibly part of the common elements, and an inventory of that property.

(10) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the common property and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, his agent, or an architect or engineer authorized to practice in this State that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the common property and for the construction and installation of the mechanical components serving the improvements

(11) Insurance policies.

(12) Copies of any certificates of occupancy which may have been issued for the common property.

(13) Any other permits issued by governmental bodies applicable to the common property in force or issued within 1 year prior to the date the unit owners other than the developer take control of the association.

(14) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(15) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(16) Leases of the common elements and other leases to which the association is a party.

(17) Employment contracts, management contracts, maintenance contracts, contracts for the supply of equipment or materials, and service contracts in which the association is one of the contracting parties and maintenance contracts and service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly to pay some or all of the fee or charge of the person or persons performing the service.

(18) All other contracts to which the association is a party.

(19) The "as built" plans and specifications not elsewhere addressed.

If there is a management company in place, they may/should have some of these documents but do not assume that they do.

7. **ENGINEERING SURVEY** - at some point after the unit owners take control of the board (depending on the percentage of completion), a transition study should be done by a qualified engineering firm. This study will address all of the common property (not any of the individual units) and make recommendations as to those items that the board should seek to have remedied by the developer. The common property should be close to completion before this is undertaken, however, the statute of limitations may move that timing up.
8. **RESERVE STUDY** - A reserve study should be conducted by an accountant retained by the board and shall include a determination of whether or not the developer provided an adequate reserve during the period of time that the developer controlled the board. That study will be based on both the engineer's study and the original reserve estimates that the developer had to file with the State. It may also be necessary to have the accountant determine if the developer made other required contributions to the Association during its control of the board. This will depend on your governing documents.
9. **COMMON PROPERTY DEEDS** - It is recommended that a letter be sent to the developer demanding that it not deed over any common property to the Association without prior written notice and the written consent of the Association. Developers often simply deed over the property without the knowledge of the Association and there are any number of reasons why the Association may not wish to take ownership of the property until certain transition issues are resolved. Sending this letter may not prevent a developer from proceeding without notice to the Association however it will put the Association in a much better position should there be litigation later.
10. **REVIEW AND UPDATE GOVERNING DOCUMENTS** - We recommend that the board authorize the Association's attorney to conduct a thorough review of the governing documents and provide a list of suggested resolutions to be adopted such as collections procedures, fining schedules, rental policies etc.
11. **BOARD TRAINING** - Board members are protected from claims by the governing documents and the officers & directors insurance policy against personal liability *so long as they are acting within the scope of their duties*. It is critical that board members understand what their duties are, what their fiduciary responsibility to the Association is and how to make

sure that they protect themselves from personal liability. It is strongly recommended that the board adopt a resolution mandating that all new board members undergo training with the Association attorney and/or the management company. This training should also cover the importance of consulting professionals (lawyer, accountant, insurance broker, engineer, etc.) in regard to protecting the board members against personal liability.

12. **BOND INFORMATION** - A letter should be sent to the Township solicitor and Township engineer requesting information with regard to all performance bonds and requesting that no bonds be released without input from the Association and its engineer. Townships have no legal obligation to the Association in this regard but usually do cooperate since the association is full of voters.
13. **REVIEW CONTRACTS** - The board should review the contracts that have been entered into on behalf of the Association including the management contract and either ratify or withdraw from the continuation of any long-term contracts that have been entered into by the developer controlled board.
14. **INSURANCE REVIEW** - Meet with an insurance professional to insure that all of the Association's insurance needs are met including officers & directors insurance to protect the board members. Consideration should be given to addressing the use of alcohol in the clubhouse or on other common property.
15. **KEEP MEMBERS INFORMED** - A letter should be sent to the members explaining the transition process and the steps that the board will be taking in the ensuing months and years. The purpose of this letter is not only to maintain transparency and open communication with the members but also to insure that the members are aware that the Association is not responsible for dealing with any construction defects or other problems with the developer that only relate to the individual units which are not common property and are solely owned by the unit members.

It is important that you work closely with your attorney, engineer and accountant to stay on top of these issues. Doing so often results in a satisfactory resolution and the avoidance of expensive litigation.

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