

Illinois Condominium Turnovers – the Owners Rule

Like death and taxes, the turnover of the condominium association to the buyers is inevitable. Turnover occurs when the governance of the condominium moves from the developer to the owners. Section 18.2 of the Illinois Condominium Act ("Act") prescribes the turnover process.

Turnover begins with the calling of the formal turnover meeting. Pursuant to the Act, turnover should occur no later than the time 75% of the units are closed, or 3 years from the date the seller recorded the declaration, whichever is sooner. Either the developer can call the meeting by sending notice to the owners, or the owners can petition for turnover to the developer. If the developer calls the meeting, it cannot be any sooner than 21 days from the notice. If the owners call the meeting, they need to have owners comprising 20% of the ownership interests petition the developer, thereby giving these owners authority to send notice and commence the turnover.

At the turnover meeting called by the developer, the agenda generally consists of an introduction by the developer, a status of the association and the project, election of the board members, and a turnover of the required association documents. The developer has 60 days from the meeting to deliver all the documents, specified in detail below. We recommend that developer deliver the documents to the meeting with a receipt acknowledging delivery.

The board consists of at least 3 members but can be greater depending on the declaration. Usually, in small associations, few owners volunteer, so members are drafted to join the board. In larger associations, voting for the board members is accomplished through nominations, brief self introductions by the nominated owners, and a ballot. The elected board members then select a President, Treasurer and a Secretary amongst themselves. Sometimes the unit owners refuse to meet, or if they meet, they refuse to elect a board. In these instances, the concern of the owners is usually that some issues exist with the developer's work or other critical issue. In that case, the developer can resign with 30 days notice. If nobody is elected, the association will fail due to the inability of the association to govern itself and operate the building. The owners cannot act without a board and this tactic is generally not advisable as it does not move the association forward.

The documents that must be turned over to the board include:

1. All original documents recorded, including the declaration, by-laws, articles of incorporation, other instruments, annual reports, minutes and rules and regulations, contracts, leases, or other agreements entered into by the association.
2. A detailed accounting by the developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the property and copies of all insurance policies and a list of any loans or advances to the association which are outstanding.
3. Association funds, which shall have been at all times segregated from any other funds of the developer.
4. A schedule of all real or personal property, equipment and fixtures belonging to the association, including documents transferring the property, warranties.
5. A list of all litigation, administrative action and arbitrations involving the association, any notices of governmental bodies involving actions taken or which may be taken concerning the association, engineering and architectural drawings and specifications as approved by any governmental authority.

Keep these turnover facts in mind:

1. **Developer Payments.** Part of the funds the developer must contribute to the association includes assessments on the unsold units from the date the seller recorded the declaration until the date the developer closed the unit.
2. **Cancel Unfavorable Contracts.** Any contract or lease made prior to the election of the board which extends beyond 2 years can be subject to cancellation by ownership votes. After turnover, there is limited time to cancel contracts and change vendors.
3. **Time Limitations.** The statute of limitations begins to run at the time of the election of the board. The time limits vary based on the type of legal action. Make warranty and other claims within the warranty period and applicable statute of limitations, which vary, including claims for unpaid seller assessments and reserve accounts.

The board should begin a few key tasks in the days after the election, beyond their normal duties:

1. **NFP.** Make sure that the association has been properly set up as a non-for-profit association with a federal employer identification number.
2. **Advisory.** Work with the present management company for a smooth transition, making sure the books and records are in order. If there is no management company, determine if you need outside management or the services of a real estate attorney, especially if it will be self managed. Consider getting the board certified training in condominium governance.
3. **Inspection.** Get an inspection of the building to make sure the developer has met its obligations, identify future projects and recommend preventative maintenance items and provide a maintenance schedule. These measures will ensure that small issues will not result in unnecessary expenditure later. Amend the budget to account for these ongoing maintenance items to avoid special assessments. Also, if the reserves are below 10% of the total budget amount, a reserve study will need to be presented to justify the low reserves.
4. **Punchlist.** Assemble a common area punch-list and present to the developer with a deadline for completion.
5. **Budget Review.** Review the budget and the declaration to make sure they are in compliance with Freddie Mac, Fannie Mae and FHA / VA guidelines. The condominium will function best when the units are saleable and transferrable without delay. Link to our article http://www.mbflegal.com/real_estate_tips.htm.
6. **Collections.** Analyze collection of assessments, and institute standard procedures to collect past due assessments. High receivables will result in special assessments for the paying owners as well as lenders not approving sales and refinances.
7. **Taxes.** Pull out your closing statements and contracts and prepare to get the real estate taxes paid if the bill for the undivided year is coming due. Make sure the lenders paid the taxes if they are escrowed when they are divided into separate PINs. Request adjustments from the developer if the contract called for reprobations.

Our Turnover Philosophy....

As condominium attorneys that have turned over a hundred or so associations, we believe that that these events can be great opportunities. The turnover should be a business meeting, not a search and destroy mission. An association will get more complete information and better compliance with a spirit of cooperation, rather than coming into the meeting ready for a fight. When and if diplomacy and cooperation fail, time will allow for confrontation with the developer. Lasting relationships, sage advice and expertise can be established with the seller. Furthermore, the developer may have contacts the association may want to pursue for ongoing maintenance. Who better to advocate for sub-contractor warranty work than the developer? Developers always want a smooth transition (who wants a fight) and can usually be relied on to do the right thing.

In the past, when developers failed at the turnover process, it was out of ignorance or failure to get advice from counsel. Today, if a developer fails, it stems from these two reasons plus a lack of funds. Often, we see owners antagonizing developers and making unrealistic demands. Working together, sharing information (and maybe sharing the article) and utilizing a real estate attorney that can moderate these events with an even hand works best for everyone.

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