



# Reducing the Fear

## Simplifying the Turnover Process

by Eric M. Glazer, Esq.

**P**erhaps the most critical time period in the entire existence of either a condominium or homeowner's association is when control of the association passes from the developer to the unit owners. This is commonly referred to as "turnover." The turnover statute governing condominiums is 718.301 and for homeowner associations, 720.307.

### When Triggered

Generally speaking, in both HOAs and condominium associations, the developer is required to turn majority control of the board of directors of

the association over to the unit owners within three months after 90 percent of the units have been sold. In a condominium, turnover is also triggered when a developer files a petition for bankruptcy. There are other trigger points, but these two are by far the most common.

### **Even after Turnover—the Developer is Not Completely out of the Picture**

In an HOA, the developer is still entitled to elect one member of the board of directors as long as it holds for sale, in the ordinary course of business, at least five percent of the parcels in all phases of the community. In a condominium, the developer is still entitled to elect a member of the board if it holds for sale, in the ordinary course of business, at least five percent of all units in condominiums with fewer than five hundred units, or at least two percent of all units in condominiums with over five hundred units.

### **Should the Owners Refuse to Accept Turnover?**

Oftentimes, this firm is told by unit owners that they don't want turnover to occur because of the numerous problems facing the community. It would be incorrect to think that those problems are likely to be solved if the association remains in the hands of the developer who is creating the mess and who remains in control of the association's funds. The important thing to do, however, is to have a plan in place to make the transfer of power less difficult. The plan must start with the hiring of an attorney, a CPA,

and an engineering firm. The attorney can ensure that the developer turns over all documents required to be turned over by statute, resigns from the board, and that the registered agent of the association is changed with the Secretary of State. The CPA can determine if the developer is financially indebted to the association, and the engineer can advise the association as to construction defects. Based upon the conclusions reached by the CPA and engineer, the attorney may then be forced to pursue the association's claims against the developer in a court of law, and as for construction defects, after compliance with the pre-suit requirements of Florida Statute 558.

Remember, the statute of limitations for asserting claims against the developer begins to run from the date of turnover. Construction issues governing the common areas generally have a three year statute of limitations in condominiums that are new construction and only one year in conversion condominiums. Therefore, especially in conversion situations, the board is almost immediately under the gun to learn what claims the association may have against the developer, if any. In a condominium, any claim against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed Florida individual or entity.

### **What Documents Must Be Turned Over by the Developer?**

Generally speaking, in both an HOA and condominium association, the developer must deliver to the association, at the developer's expense:

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