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COMMUNITY ASSOCIATION

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**BEST PRACTICES**

# Transition from Developer Control

Transition is a multistage process that gradually transfers a developer's control of a community association to the homeowner members. This report highlights:

Roles & Responsibilities of the Developer and Homeowners

Building the Transition Team

Transition Checklist and Agreement

Establishing a Safety Plan

**BEST PRACTICES**

# Transition

## from Developer Control

Developed in partnership with the Foundation for Community Association Research and the National Association of Home Builders

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## WHAT ARE BEST PRACTICES?

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The Foundation for Community Association Research is proud to offer function-specific Best Practices Reports in the community association industry. The Foundation has developed best practices in select topic areas using a variety of sources, including, but not limited to, recommendations from industry experts and various industry-related publications.

The outcomes of the Best Practices project include:

- Documented criteria for function-specific best practices.
- Case studies of community associations that have demonstrated success.
- The development of a showcase on community excellence.

The benefits of benchmarking and best practices include: improving quality; setting high performance targets; helping to overcome the disbelief that stretched goals are possible; strengthening cost positions; developing innovative approaches to operating and managing practices; accelerating culture change by making an organization look outward rather than inward; and bringing accountability to the organization because it is an ongoing process for measuring performance and ensuring improvement relative to the leaders in the field.

The Foundation's entire catalog of Best Practices Reports is available at [foundation.caionline.org](http://foundation.caionline.org) as free downloads. Some printed versions are for sale at cost in Community Associations Institute's bookstore at [www.caionline.org/shop](http://www.caionline.org/shop).

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# INTRODUCTION

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Since the early 1970s, community associations—condominium associations, cooperatives, and homeowners associations—in the United States have become ubiquitous because they answer the need for a housing alternative that offers not only a wide range of pricing options but also an array of services and activities not generally available with a single-family home purchase.

When making a major purchase such as a home in a community association, one of the key concerns of all involved has to do with the expectations associated with what will be received. Whether the expectations are presented as part of the governing documents, as part of the promotional literature used to sell the units, or by the builder's representative on the original board, if the actual purchase does not match the expectations created, disappointment and disillusionment may occur. This can translate into all parties spending a great deal of money and energy to resolve both perceived and real problems. For this reason, thought must be given to the design and development of any community association so that expectations are both realistic and realized.

The purpose of this report is to provide associations (and, to some extent, developers/builders) with guidelines they can use to turn over a community association successfully and smoothly. The ultimate goal of transition from developer control is for the owners to be adequately prepared to take over association governance and operations effectively.

## 1. WHAT IS TRANSITION?

Transition is a multistage process that gradually transfers a developer's control of a community association to the homeowner members.

Transition takes place over months and, sometimes, years. It is not defined by any specific action or event and is implemented somewhat differently in each community.

Transition begins when a developer makes the decision to build a housing development and culminates when ownership, governance, and responsibility lie completely with the homeowners association members.

The requirement for a formal transition process is a legal one, established by state law and the community association's governing documents.

After turnover, the developer's role is primarily related to construction, prior financial operations, and warranty issues. Transition does not end developer exposure to liability, as state law may continue to provide recourse for construction defects and warranties.

## 2. TRANSITION BASICS

### Association Governance

A primary component of the transition process is the transfer of governance responsibility from the developer to the homeowners. Initially, the developer appoints the board members; these are typically his or her employees. At turnover, the owners elect volunteer residents to represent them on the board.

In some states, statutes or regulatory mandates, as well as each association's governing documents, determine exactly how the transition process will occur and set specific benchmarks that must be reached.

Board transition is a gradual process that allows homeowner members to receive training and gain experience prior to turnover. A progressive transfer of control helps reduce conflict and avoid legal action while the developer retains a substantial interest in the project.

### Governing Documents

Community association governance is based on documents prepared and registered by legal counsel on behalf of the developer. The association is created by recording policies, procedures, and restrictions in instruments typically called trust deeds; declarations; covenants, conditions and restrictions (CC&Rs); or charters.

Other documents that the developer prepared must also be transferred to the homeowner-controlled board. This documentation includes the articles of incorporation, association bylaws, and community rules and regulations. It may also include deeds, surveys, utility plans, service contracts, inventories, inspection reports, operations manual, and a preliminary reserve study.

**BEST PRACTICE:** The developer compiles all association governing documents, policies, and procedures in a manual for the new board, the association, and the management company. This document provides details on established policies and procedures and how to enforce architectural policies and community rules and regulations.

## 3. THE COMMUNITY DEVELOPMENT PROCESS

When starting a new community, the developer acquires a tract of land, prepares plans, and seeks approval to build a community of defined size and facilities on the site. The developer determines what shared facilities, common areas, and basic services will be necessary to make the community functional and attractive to buyers. Working with engineers, architects, planners, and county or municipal agencies, the developer obtains necessary approvals, zoning reviews, building permits, and utility service contracts to create the community and make it operational.

While the planning, permitting, and financing activity is underway, the developer also must determine how the community will be operated and managed. The governing entity, the community association, is legally chartered and registered, usually as a nonprofit corporation, with the developer identified as the responsible party and primary agent for the association.

Most developers build model homes and present a schematic model of how the community will look when it is fully built and occupied. Potential buyers receive information packets explaining that ownership comes with defined responsibilities for association governance and management, which the buyer must understand and accept.

During the initial build-out phase, the developer appoints people to serve on the association board, and they are responsible for initial governance, financial operations, creating and enforcing community rules, and providing basic services. Association activity at this stage includes paying taxes, enforcing community rules, and arranging for snow removal, landscaping, trash removal, pool maintenance, and other essential services. The developer may choose to involve homeowners in some aspects of association activity early on, but this is not required or typical. The developer's employees usually serve on the board before turnover.

As the build-out process moves forward, the association may become legal owner of certain shared physical assets, known as common elements, and the developer may invite several homeowners to join the association board to begin learning about governance and community management.

**BEST PRACTICE:** Early in the transition process, the developer adds a minority of homeowners to the board or creates a homeowner advisory board to ensure that homeowners are prepared to assume leadership of the community after turnover.

In most states, the developer must relinquish control of the association when community build out or home sales reach a certain level, usually around 75 percent completion or at a certain time if the development will be under construction for a long time. At this point, the homeowners become increasingly responsible for community governance, management, and operations. This phase of the transition process is when most community associations make decisions about engaging professional management. Some associations start with "self-management" where volunteers who serve on the board take responsibility for basic community operations. Most boards quickly discover the need for professional management services as the transition process becomes active.

## 4. ESTABLISHING A LEGAL FRAMEWORK

A legal framework is a broad system of rules that governs and regulates decision making, agreements, and laws that are recognized and enforceable. For community associations that legal framework is established in state statutes and the association's governing documents. Therefore, establishing the legal framework for transition is one of the most important parts of the transition process.

The legal framework for transition, especially for condominiums, typically is established in broad terms in state statutes, which set minimum standards for the process. Nevertheless, developers have substantial latitude in determining the legal framework for transition when drafting a community association's governing documents.

**BEST PRACTICE:** Developers thoroughly understand the requirements established in state statutes to draft the association's legal documents appropriately.

**BEST PRACTICE:** Developers make a conscious effort to balance their interests with the owners' interests during the planning process. Developers provide protection for the owners and flexibility for themselves.

## **BEST PRACTICES FOR ADDRESSING TRANSITION IN GOVERNING DOCUMENTS**

- Governing documents address the developer’s right to control architecture, design, development, and sales, rather than controlling the board.
- Governing documents enable rather than impede the association’s business and financial management. No provision should be considered boilerplate; even the most standard provisions should be drafted to aid in a successful transition.
- Governing documents specify procedures that encourage owner and resident involvement.
- Governing documents establish a transition team that includes not only developer-appointed directors, but homeowners as well.
- Governing documents include provisions for alternative dispute resolution.
- Governing documents establish reasonable schedules for turnover that follow state law or lending agency guidelines and provide for a phased, increased number of owners on the board.

## **5. PROFESSIONAL PARTNERS**

Optimally, the developer hires a team of professionals who are knowledgeable in all aspects of community association operations to guide homeowners through the transition process. By creating a professional team, the developer encourages the best designed and operated community association possible and reduces the potential for litigation after turnover.

Specialists are available to help owner boards and developers navigate the transition to owner control. These professionals include managers, attorneys, engineers, and accountants who can provide constructive assistance in achieving a successful transition.

### **Community Association Manager**

In many cases, the first manager retained to represent the community is hired by the developer. Hiring the manager initially retained by the developer has its advantages and disadvantages.

The developer’s manager is familiar with the property, however, that affiliation may cause the perception of a conflict of interest. Furthermore, the developer’s manager may not specialize in community association management. Knowledge of, and particularly certification in, community association management outweighs whatever familiarity a manager may have with a specific property.

**BEST PRACTICE:** Once the community has been turned over to the homeowners, the board’s first action is to hire a professional community association manager who will help identify and hire other professional partners. The new manager has professional credentials or designations such as Certified Manager of Community Associations (CMCA), Association Management Specialist (AMS), Large-Scale Manager (LSM), and Professional Community Association Manager (PCAM). Homeowner majority boards consider hiring the developer’s manager only if that person has these qualifications.

**Engineer/Reserve Specialist**

An engineer’s role during transition is to prepare a transition study and a reserve study.

The reserve study is a budgeting tool with recommendations for projecting when and how much to allocate for future repairs and replacement of common assets.

The transition study will determine whether the common elements have been constructed in general conformance with the design documents and that no defects exist and whether the preliminary reserve study is adequate.

**Attorney**

Attorneys, more than any other professionals, determine a community’s success or failure. Because they draft the governing documents, they provide the foundation upon which homeowners will build an association.

**BEST PRACTICE:** The association engineer conducts a formal transition study that includes an analysis of all common elements and a reserve study for future budgeting.

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**BEST PRACTICE:** The association’s engineer recognizes the definition of *adequate*, which is that sufficient funds are available when replacements are required.

**BEST PRACTICE:** Developers retain attorneys who specialize in community association law to draft association governing documents.

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**BEST PRACTICE:** The association board retains an association attorney as soon as the transition process begins. In most states, it is a violation of legal ethics for the attorney who represented the developer or builder to represent the association also during the transition process.

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**BEST PRACTICE:** The developer is represented by one attorney and the association by another.

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**BEST PRACTICE:** Rather than unilaterally selecting an association attorney without homeowner board member input, the developer compiles a list of attorneys for homeowner board members to consider, interview, and select.

**Certified Public Accountant**

Community associations have unique financial circumstances that make it imperative that the board hire an accountant who is familiar with community association finances and has experience working with them.

**BEST PRACTICE:** The transition board retains its own accountant to represent the association. This person specializes in and has experience with providing financial, auditing, and tax services for community associations.

## 6. INSURANCE

Insurance provides protection for losses throughout the transition process, so those involved do not suffer financial losses or pass on a loss to someone else. Responsibility for insurance coverage transitions from developer to homeowners based on several factors.

### Flood Insurance

Under the National Flood Insurance Program, the Standard Flood Insurance Policy has three forms: the general property form, the dwelling form, and the residential condominium building association policy form. A building's ownership type and occupancy will determine which form should be used and how much the policy premium will be. Only eligible properties located in participating communities qualify for NFIP coverage.

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**BEST PRACTICE:** Developers remain knowledgeable of National Flood Insurance Program requirements and insure the association accordingly.

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**BEST PRACTICE:** Developers educate homeowner board members about flood insurance coverages and prepare them to take over insurance responsibilities.

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**BEST PRACTICE:** The association board reviews policy limits annually or when improvements have been made to ensure the association meets all requirements for the NFIP coverage.

### Other Property Insurance

The broad term *property insurance* includes, but is not limited to, special form buildings and contents, equipment and machinery, earthquake, building law/ordinance, and sewer and drain backup.

Developers must provide property insurance on all completed common area buildings, structures, and contents until a master policy can be written in the association's name.

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**Best Practice:** The developer maintains property insurance on residential buildings until the first title is conveyed to an owner in a building under construction. At that time, the building will be added to the association's policy.

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**Best Practice:** Association boards ensure that all coverages meet the minimum standards set by statutory law and the association's governing documents.

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**Best Practice:** Until all residential building is completed, the developer carries a builders' risk or installation floater, which would also cover common area buildings until their completion.

Once an association master policy can be written, the association should cover the completed common area buildings, structures, and contents. Coverage for the completed residential buildings' value should be added to the association's master policy when the first unit in that building is conveyed to an owner.

Coverage is usually written on a single-entity basis, which means the units will be insured to replace or repair them to the same kind and quality originally offered or built by the developer. Alterations, additions, improvements, betterments, and upgrades made by owners would not be insured by the association.

**BEST PRACTICE:** Developers keep owners informed about individual insurance policies they might need for their units and which personal items in the unit are not covered by the association policy.

**BEST PRACTICE:** Owners purchase property insurance through a homeowner's policy (HO6) or equivalent that includes personal contents, improvements, betterments, alterations, additions, upgrades, property loss assessment, and enough to cover the association's master policy deductible.

### Fidelity Insurance and Directors and Officers Liability

Fidelity insurance protects an association from employee theft, and directors and officers liability insurance (D&O) protects against lawsuits for breach of fiduciary duty. When an association becomes a legal entity, it should purchase both fidelity insurance and D&O liability coverage. Fidelity insurance may be subject to Federal National Mortgage Association guidelines that require a limit equal to three months operating budget plus the entire reserve account.

### Workers' Compensation

Workers' compensation insurance protects the association if an employee suffers a work-related injury or illness. Even if the association does not have its own employees, it needs workers' compensation coverage since it could become responsible to someone it does not consider an employee.

**BEST PRACTICE:** Fidelity and directors and officers liability coverages are in force from the time the association board is totally developer-controlled until it is totally owner controlled.

**BEST PRACTICE:** Insurance coverages meet the minimum standards set by law and the association governing documents.

**BEST PRACTICE:** The developer has workers' compensation coverage for all employees involved in the association's development.

**BEST PRACTICE:** The association obtains separate and distinct workers' compensation coverage when it becomes a legal entity.

## 7. HOMEOWNER COMMITTEES

Homeowner committees provide the developer with valuable information about homeowners, an opportunity to cultivate homeowner board members, and a cadre of volunteers to help with numerous tasks. Also, homeowner committees allow new residents to become familiar with association living and to have a voice in their community.

Homeowner committees are advisory, especially in the early stages of development, when the developer makes the final decisions. Subsequently, committees will remain advisory and report to the board regardless of who controls it.

In the early sales period, homeowner committees primarily address the community's social needs. They help new owners become familiar with association living and make them feel welcome. Committee activity in more substantive areas may occur at this stage, but it will be minimal.

The more common homeowner committees include:

### Communication and Education Committee

Probably the most important element in any community association is effective communication between the board and the owners. A good communication system will hinder cliques and factions and can help the association provide services that owners want. It also can help owners develop trust in the board members.

### Maintenance Committee

Maintenance committee members inspect the common area's physical elements and identify needed repairs. Members need to be familiar with the common elements and the association's responsibilities for maintaining them.

**BEST PRACTICE:** By the time half the homes are sold, the association has several majority homeowner committees that report to the board; and, before turnover is completed, all committees are functioning.

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**BEST PRACTICE:** Each committee has a statement of responsibilities and clear goals.

**BEST PRACTICE:** Maintenance committee members educate themselves by reviewing association documents and studying maintenance manuals.

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**BEST PRACTICE:** The developer provides the maintenance committee with copies of pertinent documents and includes them in the association's permanent records along with the committee's inspection reports and recommendations.

### Insurance Committee

The insurance committee provides information and makes recommendations to the board for final decision. In small associations, insurance will be handled by the finance or management committee. In larger associations or those with extensive amenities, a separate or ad hoc committee may be needed to focus on insurance matters.

**BEST PRACTICE:** The insurance committee reviews the association's documents to determine what coverage is required and examines existing coverage to determine if it meets those requirements. In addition, it investigates any other coverage that is needed and drafts specifications for securing competitive bids.

**BEST PRACTICE:** The insurance committee investigates various ways to minimize insurance premiums—whether by increasing deductibles, decreasing risks, or adjusting coverage for association employees.

**BEST PRACTICE:** The insurance committee informs owners of what coverage the association carries and what coverage they should carry.

### Rules Committee

During the planning phase, the developer establishes the community's standards and sets minimum rules and regulations necessary to sustain the community design and culture.

Rules committee activity depends on the restrictions stated in the governing documents.

**BEST PRACTICE:** The covenants and rules enforcement committee reviews the governing documents to identify restrictions and develop policies and rules accordingly.

## Finance Committee

The finance committee handles all association financial affairs, including budgeting, collecting assessments, developing financial procedures, reviewing books and records, and initiating audits.

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**BEST PRACTICE:** Boards establish an association finance committee as soon as feasible.

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**BEST PRACTICE:** The finance committee reviews the association's financial records and procedures to understand the financial operation.

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**BEST PRACTICE:** During the record review, the finance committee learns how the budget is developed. It determines what information is available—from association records and other sources—to set the budget. The manager can teach committee members about procedures and resources.

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**BEST PRACTICE:** Before the board is majority owner controlled, the finance committee serves as a resource to the developer-controlled board when the budget is revised. When the board becomes fully owner controlled, the committee prepares a proposed budget for board action or works with the manager to prepare it.

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**BEST PRACTICE:** As owner control approaches, the finance committee reviews procedures for expense approval and check-writing so that a workable system is available.

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**BEST PRACTICE:** The finance committee ensures that the association is reporting its financial activities appropriately and regularly. It reviews these reports on a regular basis and alerts the board to matters that need to be considered.

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**BEST PRACTICE:** The finance committee arranges for a certified audit of the books when majority control shifts to the owners.

## Management Committee

The management committee studies the association's committee structure, how committees relate to the board, nomination and election procedures, and service providers' contracts and performance. It then can make recommendations to the board.

**BEST PRACTICE:** The management committee reviews all management procedures and evaluates alternate forms of management (contract, on-site, volunteer).

### Transition Committee

The transition committee coordinates and facilitates transition activities. It ensures that other committees complete their review activities, develop needed recommendations, and resolve remaining disputes between the developer and the association. It is a joint committee of owners and developer representatives. It is the coordinating and facilitating body for the actual transfer of control.

**BEST PRACTICE:** Regardless of structure, the transition committee has both owner and developer representatives.

**BEST PRACTICE:** The transition committee ensures that all records, books, and files are current and complete and that the association is in good standing with all appropriate governmental bodies.

## 8. OTHER CONSIDERATIONS

### Motivating Involvement

New owners must become involved in the association for a developer to successfully transfer control to them. For homeowner involvement to be meaningful, developers should include homeowner participation in the document review and budgeting processes and reviewing construction as it takes place. Developers can encourage homeowner involvement by supporting and educating them about association operations and governance.

Conversely, homeowners can represent themselves if they believe their interests are not being served. Developers will likely be responsive to homeowner requests to become involved. Even without developer sanction, homeowner activities will benefit the owners.

**BEST PRACTICE:** Developers encourage homeowner involvement by ascertaining their skills and interests, facilitating neighbor interactions, and creating committees. They enthusiastically recognize volunteer efforts to encourage more involvement.

### The Effect of the Sales Pace

Transition is a process that depends on the rate of home sales. Decreases and increases in the sales rate each cause problems for associations.

**BEST PRACTICE:** Developers counter the effect of the sales rate by encouraging greater owner participation and earlier education than the sales level might warrant.

## TRANSITION FROM DEVELOPER CONTROL

If sales fall off, and progress toward owner control is slowed, owner leaders may feel their involvement no longer affects the association's operation. Motivating them to stay involved becomes a challenge if they lose enthusiasm for volunteering. When sales eventually pick up and transition becomes a reality, homeowners are not prepared to accept association responsibility.

The reverse of this situation is rapid sellout, but it too leaves owners unprepared for their responsibilities.

### Transferring Common Area Maintenance

One of the responsibilities the developer will transfer to the owners is maintaining physical assets. Normally, owners do not become responsible for maintenance until after they have assumed control of the board, but not always. In a large community, or one developed over time, common property may need maintenance before buildout.

**BEST PRACTICE:** The association that assumes responsibility for maintaining physical assets even while the developer controls the association minimizes questions or misunderstandings about who is responsible for repairs and replacements. This applies also if the association has responsibility for individual property.

### Transferring Financial Control

If the developer has kept proper financial records and followed appropriate practices while controlling the board, transferring financial records and responsibilities should not present a problem for owners.

**BEST PRACTICE:** Developers transfer responsibility for accounting and financial record keeping to the owners when they assume majority control of the board.

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**BEST PRACTICE:** Developers appoint an owner board member as treasurer before owners have majority control of the board to ease owner concerns about finances and to provide owners with valuable financial and record keeping experience.

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**BEST PRACTICE:** Developers establish and maintain separate books and accounting records when the association is formed or when the first closing occurs. Developers ensure that association employees do not work for the developer and vice versa. A clean separation exists.

**BEST PRACTICE:** As early as possible, the developer provides homeowner board members with:

- Comprehensive information and education on association operations.
- CAI memberships.
- An accredited management company or manager.
- Consulting services after turnover.

### Transferring Budget Responsibility

Transferring budget responsibility is part of the overall financial operation of the association. Developers typically analyze comparable projects to get an idea of the profitability of a prospective project. They prepare an *initial* or *preliminary* budget based on their proposed plans that projects revenues and expenses. Once development begins, the numbers invariably change. However, preparing the budget early in the process leaves ample time to modify plans if needed. Homeowners need to understand this process.

Budgets should be revisited and updated annually. With each new budget, an explanation as to why it may differ from the previous should be provided, and input should be solicited from homeowners as to the level of services provided.

**BEST PRACTICE:** Developers educate homeowners about the purpose of a preliminary budget and how and why it is adjusted over time.

In communities where the developer initially subsidized the project, the amount of the subsidy should be accounted for and should also be explained to the homeowners with clear detail as to when that subsidy will end.

**BEST PRACTICE:** The budget reflects the procedure and formula the developer used to pay assessments on unsold units. (The developer may be obligated by statute to pay 100 percent of the assessment on unsold units in most condominium associations, and a smaller percentage payment is possible in homeowners associations.) The developer provides an affirmative statement of this procedure from the first sale.

**BEST PRACTICE:** Developers eliminate shortfalls in reserves at transition by updating reserve studies (as specified in the National Reserves Study Standards) during the developer control period.

### Liability and Litigation

During the transition period, liability is always a concern—for developers and homeowner boards. Some think construction defects are inevitable during homebuilding, but this does not mean litigation is inevitable. Developers and homeowners are increasingly working together to reduce problems during transition.

The three developer's activities that create the greatest potential for liability are construction, marketing, and sales; for associations, fiduciary responsibility probably presents the most significant potential. Theories of law regarding construction defects, breach of warranties, fraud, negligence, breach of fiduciary duty, and other areas of liability should concern developers and associations alike. They are complex, and they vary from state to state.

Examining these areas of law—including prevention and remedies—is beyond the scope of this report; those involved in the development process are strongly encouraged to educate themselves using other resources like *Developer Transition: How Community Associations Assume Independence; Standards of Care: A Survey of State Standards; Volunteer Immunity: A Survey of State Laws*. Each is available from CAI Press, [www.caionline.org/shop](http://www.caionline.org/shop).

## 9. ESTABLISHING A SAFETY PLAN

Transition is not only a time for the new board to take control of the community, but it's also a time to put in place plans for replacing, maintaining, and preserving the common property. Particular attention should be placed on buildings and their structures. A proactive plan—one that begins with the developer—must be put in place.

The importance of this type of planning was seen clearly with the collapse of Champlain Towers South in Surfside, Fla., in June 2021. While the reasons for this tragedy have not been fully determined, a critical review of how to keep this from happening again has been undertaken by Community Associations Institute (CAI). Although just a starting point, CAI convened stakeholders across the globe and from a wide range of disciplines, expertise, interests, and organizations to develop and publish *Condominium Safety Public Policy Report*. The task forces that worked on the report recognize and explain the necessity for a plan of action that incorporates reserve studies, maintenance, and periodic inspections.

While each area of the plan evaluates various physical components of the community, the overall plan not only incorporates all components but also evaluates the budgetary impact of each over the life cycle of the community.

While the collapse in Florida was of a high-rise, it is understood that this type of planning is dependent on the building's structure, not just its height. The plan should cover structural components and all of the common elements through the reserve study. While the public policy report focuses primarily on the building structures, the plans proposed include all common elements.

**BEST PRACTICE:** Structural components are defined as the major structural elements, owned, or maintained by the community association, of a multifamily residential building(s) of concrete, load-bearing masonry, steel, or hybrid structural systems such as heavy timber including podium decks.

While the concerns for issues such as these become more critical as buildings age, it is clear that the planning for this process starts during construction and with the information provided to the new community by the developer.

**BEST PRACTICE:** It is important to understand that while a reserve study is a critical part of this goal, it is only one part of a community's safety plan.

From a construction perspective, the proposed plans and basis of these plans is not related to improper construction but to the aging of the building and making sure improper construction does not occur. To address this, it is recommended that the developer:

- Perform ongoing inspections during construction to confirm general conformance to the plans and specifications.
- Provide a complete set of the final approved architectural and engineering design drawings used for construction which reflect any changes to the community that took place during construction. This is most important relating to the structural components of the buildings.
- Provide a preventative maintenance manual to the association to be undertaken by the association over the life of the common area components.
- Provide to prospective purchasers a summary of the future building inspection requirements.

The purpose of the above is not only to make sure that the buildings are constructed properly but also to provide the information and guidance necessary for the new community to implement a plan for monitoring the common elements as they age.

The elements of the recommended plan are provided below.

### **Periodic Inspections**

The structural elements are the most critical relative to homeowners' safety. Periodic inspections should be conducted to review major structural elements on the following schedule:

- For new construction, the first inspection shall be conducted no later than five years after occupancy of the building.
- For existing buildings more than 10 years old that have not yet been inspected, the first inspection should take place within two years.
- After the first inspection has taken place, future inspections should be conducted a maximum of every 10 years during the first 20 years after construction and a maximum of every five years thereafter.
- At any time that an event occurs that affects the building's structure, such as a significant weather event.

## Reserve Studies and Funding

Another critical part of long-term planning is the reserve study. The planning not only includes the preparation of the studies but also providing for adequate funding. CAI's National Reserve Study Standards, updated in 2019, are the recommended standards to be used in the preparation of the community's reserve study.

**BEST PRACTICE:** Adequate funding is defined as a funding plan in which special assessment or borrowing is not required when a replacement occurs.

These studies provide funding for the replacement of the common elements as they reach the end of their useful lives. It must be recognized that a reserve study is a budgetary tool and does not include a review of a building's structure and that the Reserve Specialist (RS) designation offered by CAI does not require that the person preparing the reserve study be a structural engineer.

It is recommended that reserve studies be prepared with the following guidelines:

- By the developer:
  - Prepare a preliminary reserve study for inclusion in the disclosure documents as a part of the initial budget.
  - Prepare a full reserve study at the completion of construction to reflect the as-built conditions.
  - Provide ongoing funding in conformance with the study and reflective of reserve study components as their construction is completed.
  - Include within the study the cost for both updating the study as well as for performing periodic structural inspections.
- By the community:
  - Update the study with a best practice period of three years maximum.
  - Include within the study the cost for both updating the study in the future as well as for performing periodic structural inspections in the future.
  - Provide ongoing funding in conformance with the study.

## Maintenance

The remaining part of this planning is maintenance. There are two types: planned maintenance (defined as preventive maintenance) and unplanned maintenance (defined as corrective maintenance and may be uncovered as part of the periodic inspections).

From a budgetary perspective, the lack of preventive maintenance which results in a loss in useful life of the reserve study components will result in increases in reserve fund contributions, special assessments, or borrowing to perform replacements that are required earlier than planned.

**BEST PRACTICE:** Preventive maintenance is applied to the components contained within the reserve study to make sure that the included components reach their full useful life.

The need for corrective maintenance is uncovered as a part of the periodic inspections. If discovered, it should be budgeted for and performed to prevent a progressive deterioration as well as a potential safety issues.

**BEST PRACTICE:** From a life cycle perspective, the cumulative cost of preventative or corrective maintenance is significantly less than the consequential remediation and early replacement costs if not funded and implemented.

In conclusion, it is critical that, as a part of the transition process, the community not only look back at what they are now in control of but also look to the future to maximize their property values and continue to live in a safe community. With all of this information at hand, the new community can now put into place a plan for both budgeting and monitoring their buildings as they age.

## 10. ADDITIONAL RESOURCES

### Books available from CAI

*Developer Transition: How Community Associations Assume Independence*, by Amanda G. Hyatt, 2004.

*Guiding Principles for Community Association Governing Documents: A Resource for Lawyers*, by CAI's College of Community Association Lawyers, 2021.

*Home and Condo Defects: A Consumer Guide to Faulty Construction 3rd Ed.*, by TE Miller, RM Miller & MT Miller, 2022.

*Management Companies: How to Find the Right Community Association Professional*, by Michael E. Packard, PCAM, 2007.

*Managing & Governing: How Community Associations Function*, by Clifford J. Treese, 2007.

*On-Site Managers: How to Find the Right Community Association Professional*, by Thomas Burgess, PCAM, and Pam Washburn, PCAM, 2005.

*Self-Management: A Guide for Small Community Associations*, by Debra Lewin and Ellen Hirsch de Haan, ESQ., 2010.

For more information or a CAI Press catalog, please call (888) 224-4321 (M-F, 9-6:30 ET) or visit [www.caionline.org/shop](http://www.caionline.org/shop).

### Best Practices Reports (available at [foundation.caionline.org](http://foundation.caionline.org)):

- Community Harmony & Spirit
- Community Security
- Energy Efficiency
- Ethics
- Financial Operations
- Governance
- Green Communities
- Natural Disasters
- Reserve Studies/Management
- Strategic Planning
- Transition from Developer Control

## 11. ATTACHMENTS

### Sample Condominium Transition Agreement and Release

THIS AGREEMENT made by and between the \_\_\_\_\_ Condominium Association, Inc., a [State] Corporation, with offices at \_\_\_\_\_, \_\_\_\_\_ (hereafter, the "Association") and at \_\_\_\_\_ a [State] Corporation, with offices at \_\_\_\_\_.

WHEREAS, \_\_\_\_\_ is the developer of a condominium community located in the \_\_\_\_\_ County, State, known as \_\_\_\_\_ (hereafter, the "Condominium"); and

WHEREAS, the Association is responsible for, and maintains the common elements and property of the Condominium and represents the concerns of individual unit owners of the Condominium with respect to such common elements; and

WHEREAS, various disputes have arisen between \_\_\_\_\_ and the Association concerning certain repairs to and conditions of said common elements of the Condominium; and

WHEREAS, representatives of the Association and \_\_\_\_\_ have met on numerous occasions to discuss resolution of disputed issues between the Association and \_\_\_\_\_ arising out of the development of the Condominium; and

WHEREAS, the Association received and delivered to \_\_\_\_\_ engineering reports prepared by \_\_\_\_\_ dated \_\_\_\_\_ (the "Engineer's Reports"); and

WHEREAS, numerous letters and supplemental reports have been delivered by both \_\_\_\_\_ and the Association; and

WHEREAS, subsequent to the issuance of the Engineer's Reports, \_\_\_\_\_ and the Association conducted walkthroughs of the Condominium in an effort to narrow and resolve the outstanding issues between them; and

WHEREAS, the Association and \_\_\_\_\_ desire to resolve this matter and mutually release each other from any and all claims regarding the repair or construction of the Condominium, provided, however, all conditions enumerated below are complied with;

NOW, THEREFORE, in consideration of the mutual promises contained herein, \_\_\_\_\_ and the Association agree as follows:

1. \_\_\_\_\_ agrees to perform all work more particularly described in Exhibit A, attached hereto and incorporated herein. This work shall be completed within the time frames more specifically set forth in Paragraph 5.
2. \_\_\_\_\_ agrees to make a one-time contribution of \$\_\_\_\_\_ to the Association. This settlement amount will be paid within 30 days from the date this Agreement is signed.

## TRANSITION FROM DEVELOPER CONTROL

### 3. Release:

The Association hereby absolutely releases and discharges \_\_\_\_\_, and any of \_\_\_\_\_ subsidiaries, subcontractors, affiliates, agents and related entities and any and all past and present officers, directors, shareholders, agents, subcontractors, or employees of any said entities, including but not limit \_\_\_\_\_ any of the \_\_\_\_\_, any subsidiary of any of the foregoing entities and any and all former members of the board of directors of the Association ("Board") heretofore designated by \_\_\_\_\_ or otherwise selected to serve on the Board on behalf of \_\_\_\_\_ in their individual capacities (all such \_\_\_\_\_ related entities and persons shall hereafter collectively be referred to as the "\_\_\_\_\_") from and against any and all liabilities, damages, promises, covenants, agreements, causes of action, judgments, claims, or determinations in law or in equity or any costs or expenses including but not limited to attorney's fees, arising from or in connection with any and all claims which the Association, and its members (as claims of such members relate to the common elements themselves and not to claims arising from the Purchase Agreement or the individual unit) shall or may have against \_\_\_\_\_ and/or \_\_\_\_\_, and particularly any and all claims arising out of or asserted, whether, or not involving actions taken or not by \_\_\_\_\_ and/or the \_\_\_\_\_, in connection with (i) the approval and creation of the Condominium, (ii) the preparation, approval and satisfaction of the documents required for its creation, including but not limited to any Public Offering Statements filed in [State], any amendments thereto, the plans and/or specifications referred to therein or related to the Condominium and the land use documents, (iii) the construction, repair and maintenance of the Condominium, (iv) the management of the Association monies including any reserve funds, and (v) any other matter for which \_\_\_\_\_ and/or the \_\_\_\_\_ might be responsible in connection with the Condominium including but not limited to:

(A) Any and all defects in the Condominium, whether latent or patent, and whether now existing or hereafter arising or discovered, including any deviation from applicable building codes;

(B) Any deviations between the plans and specifications referred to in the Public Offering Statement, amendments thereto and exhibits thereto, or on file with any governmental agency, and the Condominium as actually constructed;

(C) Any deviations between the plans, including site plans and amendments thereto, for the Condominium referred to in documents filed with any applicable planning board or board of adjustment or on file with any building department, building official or any other governmental agency including but not limited to, use or bulk variances, parking requirements, construction plans, etc.

(D) Any and all claims asserted or arising out of or in connection with any matters set forth in any reports prepared by \_\_\_\_\_ or any representatives or employees of that firm, any documents referred to in those reports, and/or any other engineers or consultants engaged by the Association.

(E) Any and all warranties, whether express or implied, including but not limited to any warranties under the [State] New Home Warranty and Builders Registration Act, and the Planned Real Estate Development Full Disclosure Act. Notwithstanding the above, to the extent that the 10-year warranty as to major structural defects provided by a third party insurer has not yet expired, same shall be unaffected by this release, but only as to the rights against such insurer.

## TRANSITION FROM DEVELOPER CONTROL

(F) The turnover of documents pursuant to the [applicable state statute].

4. Simultaneous with the signing of this Agreement, the Association shall also adopt a resolution (attached as Exhibit B) by which the Board of Trustees authorizes the execution of this Agreement and Release, and ratifies the settlement of this matter.

5. Subject to weather conditions and the availability of materials, \_\_\_\_\_ will commence all repairs, replacements or improvements as specified above within 30 days of the execution of this Agreement. Within 180 days of signing this Agreement, Developer will complete all repairs, replacements or improvements as specified above, unless, by its terms, such repairs or improvements are not to be made or completed until some time later.

6. \_\_\_\_\_ shall provide the Association with an express warranty for a period of twelve (12) months as to the quality of workmanship and materials for the work set forth in Exhibit A. This warranty shall commence upon written notification from \_\_\_\_\_ that the work is complete. Developer is not providing any implied warranties to the Association. The Association shall have one (1) year from the expiration of the aforesaid warranty to commence an arbitration or civil action against Developer, or forever release \_\_\_\_\_ from any such claims pursuant to the warranty.

7. It is the intent of the Agreement and Release that both parties waive and relinquish their claims concerning any and all defects or deficiencies, alleged or real, reported or not, discovered or not, except as provided in the ten (10) year warranty as to major structural repairs as set forth in Paragraph 3(E).

8. Should any work or matter set forth in this Agreement in an amount not to exceed Fifty Thousand (\$50,000) Dollars, not be completed or resolved to the mutual satisfaction of \_\_\_\_\_ and the Association, such dispute shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association with an arbitrator as to responsibility, methods and cost allocation. Such ruling shall be binding upon both parties and may be reduced to judgment. Any dispute concerning an amount in excess of Fifty Thousand (\$50,000) Dollars may only be arbitrated upon the mutual written agreement of the parties.

9. Upon completion of all work as set forth in this Agreement, \_\_\_\_\_ and the Association shall have no further responsibility to each other with regard to the development and creation of the Community, except as provided in the ten (10) year warranty as to major structural repairs as set forth in Paragraph 3(E).

10. The Association shall use its best efforts to assist \_\_\_\_\_ in securing a final release of the bonds posted with the municipality for public improvements as set forth in connection with all approved site plans. Upon completion and acceptance by Association's engineer of the work under this Agreement, the Association agrees not to assert any objections to the release of the bonds by the municipality.

11. This Agreement and the Exhibits attached hereto shall not constitute an admission of liability or serve as evidence of liability on the part of \_\_\_\_\_ and/or any related entities.

12. The Association accepts the promises and covenants set forth in the Agreement in full satisfaction and discharge of all rights and/or claims now and forever due and owing.

TRANSITION FROM DEVELOPER CONTROL

13. This Agreement shall be binding upon all successor Boards of Trustees for the Association, its successors and/or assigns.

14. This Agreement including the Exhibits attached hereto contains the entire agreement between the parties as to the settlement of their disputes and no amendment, modification or addendum to this Agreement shall be effective unless in writing dated subsequent to the date hereof and executed by the duly authorized officers of the respective parties. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this Paragraph and shall be deemed an essential term of the Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ATTEST:

CONDOMINIUM ASSOCIATION, INC.

\_\_\_\_\_  
Secretary

BY: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

BY: \_\_\_\_\_



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