

# CHECKLIST FOLLOWING TURNOVER

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The developer of a community that is subject to covenants (whether the community consists of detached houses, condominiums, or townhouses) is generally called the declarant. When a community includes a mandatory community association (whether a homeowners association, condominium association, or townhouse association), the declarant will usually establish and incorporate the association at the beginning stages of the community's development. As people purchase houses, condominium units, or townhouses within the community, those new owners will automatically become members of the association. The association's board of directors will in most circumstances be controlled initially by the declarant. The eventual change of control of the board of directors from the declarant to the owners is called "turnover."

The first owner-controlled board of directors following turnover is, in my opinion, the most important board. This is the board that often has to work with the declarant (the developer) regarding several matters, including everything from finances to construction issues. This is also the board that generally sets the agenda for the community and often the agenda for future boards.

I have been on the first homeowner-controlled boards following turnover in my own neighborhoods. Our firm represents over 500 community associations. From this experience, and from my experience as an attorney practicing law for over thirteen years, with most of that time concentrated on community association law, I offer this checklist following turnover. This is not intended to be a comprehensive list of everything that may need to be addressed in your community, and there may certainly be matters in your community that are unique to your association, but the following list is a good start.

### Confirmation of Turnover

1. Confirm turnover has occurred. The declaration or bylaws will generally provide that the declarant has the right to control the board of directors by appointing and removing directors until the first of three events to occur. Those three events will generally include either (i) a certain percentage of houses, condominium units, or townhouses in the community being sold; (ii) a specific number of years from the date the declaration was recorded in the county land records, or (iii) the declarant surrenders the right to appoint and remove directors. Depending upon your community's governing documents, this right can also be tied to the declarant being the sole Class B member of the association with multiple votes per lot until such time as the declarant is converted to Class A membership with only one vote per lot. When turnover occurs, the declarant will also sometimes lose the right to unilaterally amend the declaration and bylaws and the right to expand the community by annexing more property to the declaration.

## **Governing Documents**

2. Obtain a recorded copy of the declaration of covenants or declaration of condominium, as well as all amendments and supplements.
3. Obtain the association's bylaws and articles of incorporation, as well as all amendments.
4. Consider amendments to the governing documents, including, for example, submission to the Georgia Property Owners' Association Act, fining ability, initiation fees, and leasing restrictions.
5. Obtain the plats for each phase of development, and obtain a copy of the deed for each parcel of community property that was to be conveyed from the declarant to the association, such as the property for the pool, tennis courts, and detention/retention ponds. Make sure to compare the deeds to the plats so you can identify each parcel of common property versus association property on individual lots. (Only homeowner associations and townhouse associations will have deeds to common property; condominium associations will not have deeds for common elements since the condominium unit owners will jointly own the common elements as tenants-in-common). For condominiums, make sure the limited common elements assigned on the plats or declaration, such as parking spaces, are assigned to the correct units.

## **Organization / Administration**

6. Obtain all documents concerning the administration of the association, including minutes from member meetings and minutes from board meetings.
7. Make sure the association, which is a nonprofit Georgia corporation, is in good standing with the Georgia Secretary of State and update the name of the association's registered agent and officers.
8. Obtain a complete list of owners and their addresses and keep the list current as new owners move into the community. The association will need this list in order to send assessment invoices, and in the event an owner violates the covenants, the association will need to have the name and address of the violator in order to address the matter.
9. Elect officers, create committees, and appoint committee members.
10. Start a newsletter and/or plan a social event to keep homeowners informed as to what the new board is doing and what it plans to do. A social event is also a good way meet your neighbors in the community.
11. Implement reasonable rules and regulations, such as pool rules.

## **Finances**

12. Obtain from the declarant or manager all documents concerning the finances of the association, including an accounting of credits and debits of the association since the association came into existence and the budgets for all previous years. Many associations also like to have an accountant review the records to make sure all funds are accounted for.
13. Obtain from the declarant or manager a complete list of all current vendors and all previous vendors that provided services for the association since its existence. Also obtain a copy of each vendor's contract with the association and a copy of any other contracts to which the association is a party. Make sure the utilities and vendors paid by the association prior to turnover were for services for the benefit of the association, rather than, for example, on the water meter for the declarant's model house or construction trailer. (This example will require obtaining account numbers and matching those numbers with meters). If there is a pool, make sure the pool vendor has obtained the permit for the current pool season or upcoming pool season.
14. Obtain a list of all owners who are delinquent on their assessments and obtain the current balances owed so the board can undertake collections. Also obtain the original of any lien filed in the courthouse against an owner's property and find out if there are any collection litigation cases in progress.
15. Confirm who is on the association's signature card for its bank accounts (checking/savings/COD's) and obtain those account numbers.
16. Make sure property taxes on common property have been paid. Discovering that a third party holds a tax deed to the association's amenities from a public auction does happen and is, of course, not a good thing. Also obtain the tax identification number for each parcel of common property, and make sure the common property is being taxed at a nominal value. (Homeowner associations and townhouse associations only; condominium associations do not pay taxes on common elements).
17. Obtain the association's federal tax identification number and copies of the association's nonprofit tax returns.

## **Facilities**

18. Have an inspection performed on all the facilities, including condominium building roofs and exteriors, the clubhouse, pool, tennis courts, detention and retention ponds, parking lots, sidewalks, sprinklers, etc., to see if there are any construction problems that will need to be addressed with the declarant.

19. Have a reserve study conducted to determine the remaining useful life of the facilities and make sure the budget includes a section for reserves. For example, if the community has tennis courts that have a ten year useful life, and the price to resurface the courts will be \$10,000, then \$1,000 should be put into the reserve account each year for ten years so that \$10,000 will be in the account to resurface the courts in ten years.

### **Covenant Enforcement**

20. Create design standards for architectural modifications.
21. Obtain a copy from the declarant-controlled architectural control committee (or its equivalent) of all plans and requests submitted to it by homeowners since the association's existence and whether such plans and requests were approved or denied. Also, if your association has a management company, make sure the management company knows who to contact on your board or architectural control committee regarding future architectural plans and requests.
22. Make an inventory of exterior modifications made by homeowners, such as fences, and see if there are approved plans on file for those modifications. Make an inventory of covenant violations.

### **Insurance**

23. Make sure there is an insurance policy in place covering (1) casualty, (2) liability, and (3) directors and officers. Keep a copy of the insurance policy in the association's records.

### **Professional Help is Out There**

24. Meet with the association's manager (or look into hiring a manager if the association does not already have one) and set an agenda as to how the new board plans to govern the association. Some boards are more hands-off, while other boards are extremely proactive. Determine the management style that works best for your community.
25. Hire an attorney knowledgeable in community association law to assist in the above. Our firm is very experienced in community association law and would welcome the opportunity to work with your association.