



When Must Developer Turn Over Association Control?

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Q: I live in a newer condominium where the association has not yet been turned over to the members. It is my understanding that once all of the units are sold, the developer must turn over control of the Association. However, since the real estate market has slowed down, very few units are selling and it is not clear at all when the developer might turn over control of the association. Obviously, the owners who do live here would like to have control, or at least more input into association matters such as landscaping, maintenance service and of course, budgeting. Can you explain when the developer must turn over control to the association and what we might do in the meantime to have more input into our community? **A.O. (via email)**

A: As with many answers to condominium law questions, the answer to your specific question is found in the Florida Condominium Act, Chapter 718 of the Florida Statute. In summary, the statute provides that the developer of a condominium must allow unit owners other than the developer to elect not less than a majority of the members of the board when any one of several benchmarks are reached. First, the developer must transition to owner control three years after fifty percent of the units that will be operated ultimately by the association have been conveyed to purchasers. In addition, the developer must turnover control of the association three months after ninety percent of the units have been conveyed to purchasers. Also, if all units have been completed and some have

been conveyed, as in the case of your condominium, and none of the others are being offered for sale by the developer in the ordinary course of business, then the developer must turn over control of the association. Another situation requiring turn over by the developer is when some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business. The statute provides that a developer must turn over control of an association seven years after recording the declaration of condominium without regard to how many units have been sold or whether the developer is actively marketing or constructing units. This seven year mark is the outside date at which turn over must take place. Finally, the statute provides that if the developer files a petition seeking bankruptcy protection or if a receiver is appointed for the developer and retains the appointment for more than thirty days, the developer must turn over control of the association.

As you can see, there are several benchmarks or triggering events that you need to analyze and it would not be unusual in this market for one of these lesser known triggering events to apply. You should also be aware that, in condominiums with less than 500 units, the developer is permitted to retain at least one seat on the board, as long as the developer holds at least five percent of the units for sale in the ordinary course of business. For

condominiums with more than 500 units, the threshold is two percent.

“Turnover” is essentially an election of unit owner board members. The statute requires the developer to commence the election process seventy-five (75) days after occurrence of one of the triggering events described above. At that time, the developer must give a sixty-day first notice of an election meeting and must conduct the election as required by the Condominium Act.

Finally, you inquired as to how members might have a more active role prior to turnover. The Condominium Act does provide that when owners other than the developer own fifteen percent or more of the units, the unit owner shall be entitled to elect no less than 1/3 of the members of the board of administration. I assume your community has at least fifteen percent of the units conveyed to purchasers, and, if so, you may have at least one unit owner member who is willing to serve on the board.

Also, it is important to understand that, even though the control of the association has not been turned over to the unit owners as of yet, the unit owners have all of the same rights as when association has been turned over with respect to inspecting official records, attending board meetings, and insisting upon compliance with the “sunshine” law provisions of the statute, which require notice and open board meetings in most cases.

Q: I have a question regarding a need to obtain quotes for proposed projects at our condominium complex, such as landscaping. Is there a dollar amount in relation to getting quotes? Also, can these quotes be verbal, or do they have to be in

writing? Is there a certain number of quotes that must be obtained for each project? **D.R. (via email)**

A: As with the previous question, all of your answers lie in the Florida Condominium Act. The concept you are referring to is known as “competitive bidding.” If a contract for the purchase, lease or renting of materials or equipment, or for the provision of services, requires payment by the association exceeding five percent of the total budget of the association, including reserves, competitive bids must be taken. In my opinion, “competitive bidding” requires two bids, three or more is better; but not legally required. I believe that bids must be submitted in writing, because the law requires that bids received by the association be maintained as part of the association’s official records for a period of one year. The association does not need to accept the lowest bid.

There are several exceptions to the law. Bidding is not required in the event of an emergency situation. Bidding is also not required if the business with which the association desires to enter into a contract is the only source of supply within the county serving the association. Further, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are not subject to competitive bidding requirements.

Using your example, if the cost of your landscaping service is more than five percent of your budget, the contract must be competitively bid.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.