



Homeowners Have Issues With Developer Control

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Q: My community, which is a homeowner's association, is in limbo because of the bad real estate market. The developer stopped building after about half of the homes were completed. While homes are still for sale, it doesn't look like the neighborhood will be completed anytime soon. In the meantime, the developer controls the association and is not doing the greatest job in many ways. In addition, there are some concerns that the developer is not properly paying its share of the assessments to the association. Is there anyway we can get control of our association or force the developer to take a more active interest in keeping up our neighborhood? **D.S. (via e-mail)**

A: Unfortunately, your situation is not unique. Of course, developers always would like to complete a development and turn over control of the association as soon as possible. That is what they are in business to do. Further, many developers are not well equipped, nor really inclined, to operate an association over the long term.

There are clear, legal obligations imposed on the developer-controlled association arising from the Florida Homeowners' Association's Act and presumably from the declaration of covenants governing your community. The Homeowners Associations' Act establishes legal standing for any member of the association to bring a legal

action against the association, any member, any director or officer, or any tenants, guests or invitees occupying the parcel. So you and all of your neighbors have legal rights available to you at this time. However, as a practical matter, it is difficult for individuals to assert rights because most are disinclined to finance professional assistance (such as attorneys or accountants) on their own. Many communities in your situation put together a "pre-transition ad-hoc committee". Many times, these groups will pool resources and hire an attorney at least to get some basic advice about their rights, responsibilities, and what they might expect going forward.

As you may know, the Florida Homeowners' Associations Act does not require a developer to turn over control of the association until after 90% of the lots in the community have been sold. There is no maximum time deadline in the statute for turning over control of a homeowners' association, as contrasted with the Florida Condominium Act, which requires turnover after seven years from starting the project under all circumstances.

With respect to ensuring that the developer is paying its fair share of assessments, every association member has the right to inspect the "official records" of the association, and must be provided with access to such records within ten business days of the association's receipt of a

written request. There should be separate accounting records which will enable you to identify whether the developer is properly paying assessments. Most developers elect a “deficit funding guarantee” option, rather than the obligation to pay assessments on their inventory lots. Under a deficit funding guarantee, the developer does not have to pay assessments on its inventory lots, but must make up any shortfall in the operation of the association (i.e., deficits), which cannot be paid from assessments receivable from the non-developer owners.

Q: I am writing to you with a question about financial reports by condominium associations. I have lived in my condominium for nearly 10 years, and each year, no later than March 1st, I have received financial reports in the mail. This year, those reports have not been received, and when I called the manager to ask about the reports, I was told that they would not be sent unless I made a written request to receive a copy of the report. Of course, I sent a written request, but I believe that all owners should be sent a copy of the report. I don't understand why the Board this year did not send the reports as in years past. Isn't this a requirement under the law? **P.R. (via e-mail)**

A: As you may know, the Florida Condominium Act requires certain levels of financial reporting depending upon the total annual revenues of a condominium association. Not less than 90 days after the end of the fiscal year, or 90 days after an annual date as provided in the bylaws, the association shall prepare and complete, or at least sign a contract for the preparation and completion of, the required financial report for the preceding fiscal year. A condominium association must have its financial report completed not later than 120 days after the end of the fiscal year or a designated annual date. But there is no statutory requirement to send or deliver a copy of the financial report. However, if the association does not send out a copy of the year-end financial report, it must send a notice to all unit owners indicating that a copy is available, free of charge. An owner may then make a written request and receive a copy of the report. In that case, the association must mail or hand-deliver the report to the owner without charge.

Residents in homeowners' associations may be interested to know that the same, general financial reporting thresholds and timelines apply to homeowners' associations.

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.

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