

Read by homeowners, condominium and cooperative **board members** and **property managers**.

NEW YORK

AssociationHelpNow™

www.AssociationHelpNow.com

Toll Free: (888) 445-7946

Issue 1, 2015

Navigating the Transition to Independent Owner Control

By Katie Robinson

“How does a transition actually take place?”

The transition from developer control to independent owner control for condominiums and homeowners associations is not just a matter of electing new board members. The full transition process involves a review of financial, management, and maintenance issues to make sure that the newly empowered board members understand the true fiscal and physical condition of the association. With the aid of association professionals and the involvement of the developer and the independent owners, however, this process can move along more smoothly. Kenneth Jacobs, Partner at Smith, Buss & Jacobs LLP, in Yonkers, NY, spoke to us about the responsibilities of the independent owners during a transition and the steps that they can take to ensure a successful transition.

The majority of association sponsors retain voting control of the association board until the sale of a certain percentage of homes or the passage of a regulatory deadline. “At that point, the sponsor is required to transfer voting control of the association board to ‘independent’ owners – that is, owners who are not employees, business associates, or family members of the sponsor.”

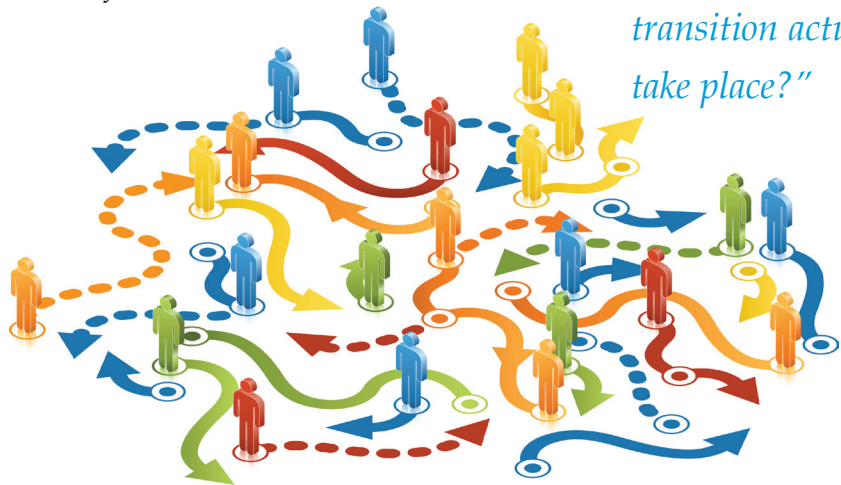
How does a transition actually take place? According to Jacobs, “If the association already has independent

owners on the board, the sponsor might merely resign one seat and allow the other board members to select another owner to fill the vacancy until the next annual meeting.” If that is not the case, the board may schedule a meeting for the homeowners to elect new board members. The replacement of the sponsor on the board majority signifies the formal transition.

Jacobs underscored, though, that the real transition is a complex process that can take months or even years to complete. Prior to a transition, the sponsor frequently makes all decisions on behalf of the board. Sponsors may retain association operating records and liaise with management regarding any association issues without involving other board members. “Board members who have previously depended on the sponsor

for information must now review and assess the quality of the data they have received, decide what additional facts they need, and make decisions for the future,” Jacobs said. For convenience, the areas of board concern can be separated into four categories: financial, physical condition, occupancy and alterations, and potential social and political implications.

Financial: Jacobs stated that the board should seek out detailed management reports to supplement the annual financial statements. These reports should include cash balances, ongoing revenues and expenses, arrears, payables, and year-to-date comparisons with the operating budget. “The board needs to determine whether common charges have been held at artificially low levels to facilitate sales or reduce



iStockphoto.com

CONTINUES ON THE NEXT PAGE.

TRANSITIONS...from previous page.

sponsor obligations to pay deficiencies," Jacobs said. "The board should also get a handle on current operating and service contracts such as laundry, parking, pool, and elevator agreements."

Physical: The board must find out about the condition of association structures. Inquire into past maintenance issues to determine if they were given short-term or long-term solutions. Look into capital repairs, both for the past and the future, and determine their quality and cost.

Occupancy and alteration issues: Management records should be up to date regarding legal ownership and current occupancy of individual homes. Records should also reflect any alterations made by individual homeowners that affect the building systems or that otherwise required consent from the board. Determine if those alterations were filed with municipal authorities and whether the developer-controlled board or management exerted proper oversight to the present date.

Social and political implications: The board should ask whether the association has established policies regarding day-to-day issues, such as leasing, alterations, pets, and smoking, among other things. Have those policies been enforced? If so, do changes need to be made to mitigate the impact on the stability of the association? Boards should also be knowledgeable of the manner in which the association keeps track of and handles owner complaints.

More importantly, Jacobs explained, the transition to independent owner control requires a shift from "renter mentality" to "owner mentality" on the

part of both the board and the homeowners. The board has a duty to prepare the owners for the responsibilities of shared ownership. Communication is vital - the board must clearly detail its investments and goals to the owners. "Since all this effort costs money, especially in the first twelve to twenty-four months after transition, the board could face considerable resistance from previously uninvolved members unless it takes steps to help owners understand the process," Jacobs said. It is crucial that the board communicate regularly with owners and remain aware of their attitudes towards the transition and the association as a whole.

Because each of those areas of inquiry comes with its own extensive set of questions, the board will need help throughout the transition to ensure that it gets the proper facts and good advice. Jacobs said that initial help should come from the association management, as they possess the association's ongoing financial records. Management is typically familiar with physical condition issues and owner complaints, all issues on which the board requires information. "However, management must be assisted by independent counsel and accountants who can address the more complex legal and financial issues that any association will face and who can function as additional resources for boards based on their experience with similar associations," Jacobs added.

Jacobs further recommended that associations retain an engineer during the transition to inspect the association's common elements to determine if the developer completed whatever

was promised in the offering plan and in its filings with governmental authorities. An architect or engineer can also assess the quality of construction and alert the board to the possibility of any future maintenance issues. "After getting this information, many boards negotiate with the developer to cure any violations or dangerous conditions that have been observed," Jacobs said. He noted that association boards should have this inspection done as soon as possible. When an inspection is delayed, developers might tend to label issues as improper maintenance or natural deterioration.

However, Jacobs cautioned boards against getting sidetracked by disputes with the sponsor over building conditions. Boards need to address needed repairs even if the sponsor refuses to accept liability for the cost. "The association needs to keep its buildings in good condition whether or not the sponsor steps up." Furthermore, the sponsor might even be able to assist the board with certain decisions, including those involving sourcing for services and construction.

Boards have a wide variety of responsibilities during a transition, and those responsibilities only increase with the transition. Take advantage of any help available and be sure to remain communicative with all involved parties. "Your professionals should help the board to keep its focus on the long-term stability of the association," Jacobs said. With their assistance, tackling each responsibility head on and remaining aware of the breadth of the transition can help smooth the process along. ■