



# Is the Transition of Maryland Condominiums and Community Associations from Developers to Owners Out of Control?

By Judyann Lee, Linowes and Blocher LLP

In October of 2009 the Maryland Condominium Act and the Maryland Homeowners Association Act were both amended by the Maryland legislature to require developers of residential condominiums and homeowners associations to transition control of the boards of directors of condominium associations and homeowners associations from the developer to the homeowners. Under the Maryland Condominium Act, a meeting of the condominium association to elect a board of directors must be held within 60 days from the date that units representing 50 percent of the votes in the condominium have been conveyed by the developer to members of the public. Similarly, a meeting to elect the board of directors of a homeowners association must be held within 60 days from the date that at least 75 percent of the total number of lots that may be part of the development are sold to members of the public. Under both acts, the term of each member of the board of directors appointed by the developer shall end 10 days after such transition meeting, provided a replacement board member is elected. In addition, within 30 days of such meeting, the developer must deliver to the replacement board, at its own expense, certain items including, copies of all association books and records.

The foregoing revisions to the Maryland Condominium Act and the Maryland Homeowners Association Act have arguably made it more difficult for developers to maintain control over the development of their projects. When a condominium or homeowners association is first started, the developer is usually in the midst of developing and completing construction of the project, as well as marketing and selling homes in the project. The developer is investing large amounts of money, time and work in the project. In order to protect its investment, the governing documents for the project usually contain provisions that allow the developer to exercise control over the development and operation of the project until a certain date in the future or when a certain percentage of units or number of lots have been sold. This 'developer control period' could last a year or several years depending on the size of the project, the construction schedule, and rate of sales of homes in the project. During this 'developer control period' the developer appoints the members of the board of directors for the association. By amending

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these statutes the legislature clearly intended to require developers to turn over control of the association to the homeowners, but it's not clear how much control. Does the developer, who may still own 50 percent of the votes in a condominium or 25 percent of the lots in a homeowners association still have the right to vote for members of the board of directors? Can the developer's appointees be nominated and run for election? What if the project is a mixed-use project and the association's board is comprised of residential members and non-residential members — can the developer's non-residential board appointees remain on the board?

While the legislation does not provide clear answers to the foregoing questions, a set of well-drafted governing documents will address any ambiguities. The developer should consider early on what areas of the project's development it wants to control and reserve its rights to do so in the governing documents. For example, the developer will want to reserve the following rights: to approve the initial construction of any improvements within the project; to add property to or withdraw property from the project; to grant certain easements; and to correct errors in the governing documents or otherwise make certain amendments or modifications to them. However, the developer must also carefully balance its reservation of rights with the legislative intent of passing control of the community to the homeowners. While it's not clear when the reservation of developer rights crosses the line and runs afoul of this legislative intent, the more reasonable the reserved right, the less likely it will be challenged by a homeowner or held by a court to be prohibited under the statutes.

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