

COMMON PROBLEMS & SOLUTIONS IN CIC's

I. CONSISTENT PROBLEMS IN TRANSITION – NEW DEVELOPMENTS

- A. Them vs. Us
- B. Owners confusing Warranty Issues with Association Issues
- C. Perception that any company providing services to the Association from the beginning is a developer crony.
- D. Developer Board Members forgetting their fiduciary duty to the Association. Two Hats.
- E. Confusion on who pays for what to maintain the assets.
- F. Who pays for the reserve study at transition and what is the developer responsible to pay.
- G. Can the reserve study cost come out of the reserves.
- H. Understanding the assessments and phasing
- I. Develop sales representatives verbally over stepping their bounds and authority.
- J. Uneducated volunteers
- K. Documents needed by Association from Developer are in storage by the time the Association needs them and un-accessible for use.

II. SOLUTIONS TO THESE PROBLEMS

- A. Them vs. Us
 - 1. Communication - Welcome Letters – Welcome Booklets – Open House Meetings
 - 2. Each Board meeting should start with the President explaining the process and who the players are.
- B. Owners confusing Warranty Issues with Association Issues
 - 1. Warranty Input Forms at all meetings. (Form)
 - 2. Effective Developer Warranty Departments
 - 3. Buyer Warranty Explanation Packet during buying process. – Explanation of Association Issues vs. Developer Issues.
- C. Perceptions of service providers
 - 1. President explains relationship of vendors frequently at meetings.
 - 2. Newsletter clarifies relationships
 - 3. Open House – Discussion of who the players are and actual tables for each entity.
- D. Fiduciary Duty of Developer Board.
 - 1. Comply with Fiduciary Duty Requirements
 - 2. Remember whose hat he/she has on when sitting on the board.
 - 3. (See definitions)
- E. Confusion on who pays
 - 1. If the developer is paying assessments for a parcel the association has accepted, the Association is responsible for the costs, not the developer unless he is subsidizing and disclosing.

2. Sales office expenses, water trucks, etc. are not Association expense.
- F. Reserve Study Cost and Funding
1. Providers have certain requirements now and the developer must comply with the same regulation as the owners.
- G. Can the Cost of the Reserve Study come out of the Reserves?
1. If the cost of the study was put in the budget and the developer has been paying his assessments, which include this cost, the association should cover the cost.
 2. Who should contract for the study? Gary will cover
- H. Phasing & Assessment Collection
1. Key that the Developer give accurate phasing information to the Board/.Management Company. The CPA providing the audit at transition will be asking for it at transition.
 2. Developer pays on the whole phase once the first home has closed escrow in each individual phase whether they have closed escrow or not.
- I. Develop sales representatives verbally over stepping their bounds and authority.
1. Education of real estate agents and Realtors
 2. Forms provided to Sales office to contact Manager and/or Committees
 - a. The Developer usually controls the AC Committee during this point, but forms will remind the owner and developer realtor of the need to submit plans for alterations.
- J. Uneducated volunteers
1. Board training for new owner volunteers – CAI has the full day ABC's. There are other professionals who provide training as well as the Ombudsman's Office.
- K. Documents needed by Association from Developer are in storage by the time the Association needs them and un-accessible for use.
1. Transition of all documents should be in writing and a formal request should be sent to the Developer 30 days after he loses control. (See Form)
 2. This law has been in place for some time. If you are not sure whether the documents were transitioned, ask for them now before they end up destroyed or in deep six storage (See Transition Checklist)

MISCELLANEOUS DEFINITIONS

Black's Law Dictionary, 6th Edition, defines the frequently used terms as follows:

Fiduciary Duty: A duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law.

Good Faith: Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone. Honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. An honest intention to abstain from taking any un-conscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction un-conscientious. In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and generally speaking, means being faithful to one's duty or obligation.

Prudent Man Rule: An investment standard. In some states, the law requires that a fiduciary, such as a trustee for pension funds, may invest the trust's or fund's money only in a list of securities designated by the state – the so-called legal list. In other states, the trustee may invest in a security if it is one which a prudent man of discretion and intelligence, who is seeking a reasonable income and preservation of capital, would buy. For example, under New York's "prudent man rule" the Trustee is bound to employ such diligence and such prudence in care and management of the fund as, in general, prudent men of discretion and intelligence in such matters employ in their own like affairs.

Business Judgment Rule: Such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.