

# The Passing of the Torch in New Jersey – Transition of Control of a Condominium Association from the Developer to Unit Owners

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Pursuant to the ***Planned Real Estate Development Full Disclosure Act*** (“**PREFDA**”), N.J.S.A. §45:22A-21 et seq., a developer of a proposed condominium development that is subject to the registration requirements of PREFDA must establish an association responsible for the management of the common elements and facilities of the proposed condominium development. N.J.S.A. §45:22A-43. The developer is required to organize the association prior to the filing of the master deed or declaration of covenants and restrictions. The association may be established as a for-profit or nonprofit corporation, unincorporated association, or any other form permitted by law.

No matter the nature of the association, its responsibility is the same – “the administration and management of the condominium and condominium property, including but not limited to the conduct of all activities of common interest to the unit owners.” ***New Jersey Condominium Act*** (the “**Condo Act**”), N.J.S.A. §46:8B-12. The powers of the association are vested in an executive board that is tasked with carrying out the responsibilities of the association. Upon the formation of the association, the developer will appoint representatives to sit on the executive board and carry out the duties of the association. However, as the developer begins to sell units in the condominium development, pursuant to PREFDA and the Condo Act, the developer is required to surrender control of the executive board to unit owners elected by the members of the association. This process is known as “transition.”

PREFDA and the Condo Act require that no later than 60 days after the sale of 25% of the “lots, parcels, units or interests, not fewer than 25 percent of the members of the executive board shall be elected by the owners.” N.J.S.A. §45:22A-47; see also N.J.S.A. §46:8B-12.1. Once the developer sells 50% of the units, etc., within 60 days thereafter 40% of the membership of the executive board is to be comprised of unit owners elected by the owners. Final transition, and complete surrender of the executive board by the developer to the unit owners, occurs once the developer has sold 75% of the units in the development.

Once final transition occurs, PREFDA and the Condo Act further require the developer to turn over to the association “all property of the unit owners and of the association held or controlled by the developer,” including, but not limited to, an accounting of all association funds as well as the funds themselves, all tangible personal property of the association represented by the developer to be part

of the common elements, all contracts to which the association is a party to, and all warranties provided to the developer during the construction of the development.

Transition is a critical time for a condominium development and particularly for the governing board. It is during this time that an association will typically retain the services of an engineering firm to inspect the development for construction defects and deficiencies, as well as to perform a reserve study of the association's finances. The board will also be in the position to retain counsel of its choosing, and upon the conclusion of the initial management agreement—which prior to 75% transition, cannot exceed a contract term of two years—may opt to retain a different management company. During this transition period it is imperative that the governing board retain competent counsel prior to negotiating any transition settlement and/or entering into a release in favor of the developer.

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