

# ASSOCIATION TIMES

*A Web Resource for Community Associations*

Tuesday, June 1, 2004

June 2004

Home
Current Articles
Archive Articles
Contributors
Links
Resources
Questions & Answers
Ask The Experts
Glossary
Subscribe
Site Index

## The Developer Controlled Community



Wow! "Developer Controlled Community"— exactly what does that mean? During my many years of community management and working with developer-controlled boards of directors, I have found that the term is often misunderstood both by homeowners and developers serving on the board of directors. This being the case, you can only imagine the struggle **new** homeowners have with the concept.

Community associations are conceived by the developer who typically forms a non-profit corporation to own the land and amenities, and in the case of condominiums, certain parts of the building exterior. Initially, the developer owns all of the lots or units in the association and has all of the votes; therefore, the developer controls the association. A board of directors typically consisting of the developer and other individuals professionally related to the developer is established to manage the affairs of the association including not only the physical attributes, but also the financial and administrative issues such as collecting owner assessments, holding the annual meeting, and enforcing the deed restrictions.

Early in the development process the developer, acting on behalf of the board of directors, may hire a manager or management firm and delegate much of the day-to-day operation of the association to this third-party manager. This seems to be where things get a bit confusing at times for not only the developer but for the homeowners and the manager as well. The management company often finds itself in a juggling act between meeting the desires of the developer while also acting in the best interest of their employer (the board of directors). The board has a fiduciary responsibility to make decisions

and set policies that are in the best interest of the association and the manager is bound by contract to carry out the decisions and policies of the board. Sounds simple, but in the real world of community living and governance, misconceptions about the different parties' roles and responsibilities grow right along with the community.

To clarify the roles that each party plays, you will find below a short list of the most common **misconceptions** about developer-controlled communities. Please keep in mind that the clarifications are based on typical scenarios and you should always refer to the governing documents for your specific community to obtain the most reliable answers.

1. **The manager works for the developer.** Wrong! Managers act at the direction of the entire board of directors, not the developer, one individual director or committee member (unless the board grants a particular individual the authority to deal with a specific matter). The management agreement between an association and a management company usually stipulates that the board should identify one person to act as liaison to the manager.
2. **The developer pays the manager.** Not so! Typically, the developer will subsidize or deficit fund the association until there are homeowners paying in sufficient assessments to cover the expenses. The association, whether funded by developer subsidy or owner assessments, pays the manager and all other contractors that perform work for the association. The board collectively decides on all such transactions.
3. **The manager/management company determines the assessment rate.** No. The manager instead assists the developer in the creation of the initial budget for the association. The board of directors adopts the annual budget and sets the rate of the assessments.
4. **The developer does not pay assessments.** In some cases, the developer drafts the documents in such a way that it is exempt from paying regular assessments. With that "get out of jail free card" exemption, the developer assumes the responsibility for funding the budget until there are enough homeowners paying assessments to cover all of the expenses of the association. The board of directors (including the developer members) must set the rate of the assessment based on what each lot should pay - - assuming the community is complete and all lots were assessed.
5. **The manager is the homeowners' advocate.** Well, not exactly. Although the manager is responsible for implementing the decisions and policies of the board, homeowners should have enough interest in their community to present their concerns to the board either in person or in writing. The best way to be heard is to submit to the management company in writing anything you would like passed on to the board. The manager does not vote on any board issues. Owners should attend board meetings to learn what's happening in the association. Those who can't attend meetings should read the newsletter, visit your community website or contact board or committee members for updates. If you are unaware of whether or not your association maintains a website, you

should contact the manager or management firm.

6. **The manager is responsible for choosing contractors.** Keeping in mind that the management company itself is a contractor of the association, the board (with occasional recommendations made by the management company) tries to choose the best contractors for the association. The manager does not have direct control over the contractors' actions and they are not responsible for poor performance. The manager is responsible for monitoring contractors' performance and reporting problems to the board. The board is responsible for any subsequent actions. The developer is responsible for the quality and quantity of the amenities, replacement of defective components and addition of amenities during the development period. Once amenities are completed, they are "turned over" to the association for the purpose of upkeep, insuring, and use.
7. **The developer is responsible for construction defects in individual homes.** Only if the developer built the home is he responsible for defects or poor construction. The homebuilder is responsible for problems that arise relating to construction of the home, lot drainage and other issues involving an individual home within a community. In a single family development, this distinction is very clear; however, in a condominium project, the governing documents will detail those items that become the individual owner's responsibility versus association responsibility.

To summarize, the management duties of a developer-controlled community should not differ significantly from a homeowner-controlled community. In each case, the manager works at the direction of the board of directors. The developer board just happens to be comprised of the same person(s) wearing several hats - developer, director, committee member and association member. Both the manager and the board must work together and in the appropriate capacity that best serves the association and its entire membership. When these interests work in harmony, the community as a whole is strengthened.

**Sherrill Schafer, PCAM**

Vice President, Alliance Association Management

© Association Times

Permission to reprint any of the information contained in this article is granted provided Association Times is credited as the source.

Copyright ©2004 Association Times | [Home Page](#) | [Privacy Policy](#) | [Site Index](#) | [Conta](#)