

## MANAGEMENT TRANSITION:

# What Happens When a Management Company Fails to Comply?



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In 2018, the CAI-NJ Managers Committee published the Community Associations Institute – New Jersey chapter’s, “Best Practices in Management Transition” guidance document. Once adopted by CAI-NJ’s Board of Directors, it was circulated to CAI-NJ’s association, manager and management company members to provide guidance on how to best facilitate the transition process when the board of a community association decides to make a change in management. The guidance provided covers situations where an association wished to transition from self-management to a management company, vice versa, or from a management company to a different management company. As part of the creation of these best practices there was a mutual understanding amongst all the authors that the success of any management transition required the professionalism and cooperation of all parties involved. Management transition is an essential phase of the community association life cycle, but it comes with anxiety for both management companies and communities alike. Unfortunately, when that

anxiety turns to unprofessional conduct or outright refusal to comply with the transition process, it becomes necessary to take steps to ensure that the legal right of a community association to make a change in management is protected.

The Community Associations Institute is an organization that promotes professionalism amongst all its members and has a code of conduct specifically for manager members. Still, not all management companies that operate in New Jersey are members of CAI, and even some that are may not hold themselves to the same standard of professionalism. Instances of delay in data transfer, non-cooperation with accounting requests, failure to communicate important information requested, or a complete lack of acknowledgement or response to a management transition notice are all possible issues that could arise during the transition process, to the association’s detriment. It is therefore important to remember that all information maintained by a management company is the association’s property, not the management company’s information. The management

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company has a legal obligation to turn over all data to the client upon request. This data should be provided in a format that does not cause undue hardship on the receiving party. Additionally, failure to turn over data may result in a breach of contract and may trigger other legal provisions of the various statutes governing community associations in New Jersey. This will be discussed in further detail shortly. Until the actual termination date, the outgoing management

*"If multiple attempts to gain a response/resolution to a deficiency in the transition process fail, the next step is a certified letter..."*



company is still contractually obligated to the client. The legal requirement to transfer data upon direction by the board (client) survives the expiration/termination of the management agreement until compliance is met.

With this knowledge, let's discuss some ways to address issues that may arise during the transition process.

First, respectful and direct communication is essential to success during the transition process. When one company fails to respond in a timely manner to a request by a second company, the first avenue to gain resolution is a phone call. Many times, there may be a simple explanation for a lack of response that a phone call can resolve. Any phone call should be followed up with an email confirming any conversation or notifying of the attempt to contact. This should be followed up with a communication to the mutual client of both companies (the association) of the issue and steps being taken to resolve the issue.

If multiple attempts to gain a response/resolution to a deficiency in the transition process fail, the next step is a certified letter (return receipt requested) to the nonresponsive company regarding the deficiency with a deadline for



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response. It is important that the new management company inform the mutual client (the association's board) of any issues immediately and going forward on a routine basis. At this point, it is also recommended that the association's legal counsel become involved if they have not been contacted already, as the association counsel may wish to send the communication to outgoing management as opposed to the new management company doing so.

In the event that outgoing management fails to respond, the association's legal counsel should be consulted to take legal action on behalf of the association, to compel compliance. This may require the filing of a lawsuit to obtain a court order compelling the prior management company to trans-

fer the information. Association counsel is a key part of the team, if issues arise during a management transition. Boards should be in contact with counsel early on if issues arise, to ensure both the board and incoming management are taking correct steps to protect their interests and gain compliance from outgoing management.

We are fortunate in New Jersey

that difficult management transitions are not a regular occurrence. Most management companies and managers (especially those affiliated with CAI) are professionals who understand the dynamics of the industry and typically work together as "friendly competitors." We serve on committees and boards together, see each other routinely at industry functions, and generally

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have a strong rapport with each other. However, when instances of non-compliance arise during the management transition process, it is important for association boards and management companies to know their rights and obligations to ensure the association's best interests are protected.

— Special thanks to Steven Mlenak, Esq., Partner at Greenbaum, Rowe, Smith & Davis LLP for his review and contributions to this article.

Please note: Nothing in this article should be construed as legal advice. Associations and management companies should consult with legal counsel regarding specific circumstances and legal guidance.



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