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Longer subdivision construction time frames force shift in expenses

By Carol Marshall

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Residential construction slowdowns that extend subdivision build-outs are forcing developers to absorb expenses typically turned over to homeowner associations.

In some cases, experts said, developer bankruptcy or foreclosure is shifting the burden to the new homeowners or residential builders for maintenance costs - such as landscaping and care for common areas - typically borne by developers.

"We're starting to see these problems now, and we're looking at the tip of the iceberg," said Michelle Harrell, attorney with Maddin, Hauser, Wartell, Roth & Heller PC. "We're on the edge of the cliff."

Larry Cohen in a Heron Hills condominium in Wolverine Lake.

In the best cases, solvent and surviving developers foster relationships with the fledgling associations or new homeowners until they get to the tipping point where the association can manage the communities, even when the building timeline has stretched beyond what they anticipated.

That's the approach Larry Cohen, president of Cohen Homes, has taken with homeowners at his Commerce Township condominium development, Heron Hills. Of the 150 total units, 80 have been completed in the last four years, about twice as long as he typically plans to be responsible for the associations' functions.

"When we start a community, we have to seed - finance or underwrite - the money needed to operate the homeowners or condo association. Typically we seed enough for it to operate for the first two years," Cohen said. Though the seed money is technically a loan, it's his policy to forgive the loan at the end of the two-year period, or when the association is turned over.

But it's a challenge for an association like that at Heron Hills, which now has two resident members of the developer-run association, along with a volunteer advisory committee, to live within a budget.

Sometimes there simply isn't the critical mass of dues-paying members needed, and the association experiences a shortfall, said Darshan Grewal, president of Singh Homes LLC.

"When that happens, the developer will just pay the shortfall or some portion of it to help," Grewal said. And when it's practical, Singh Homes hires a property manager to look after the property during construction, he added.

Even when the transition isn't going perfectly, it helps that Cohen forgives the seed money, he said. He also encourages homeowners to form right from the beginning a volunteer advisory board to work with the company-run association. That prepares the homeowners to ultimately take over the association functions, and also encourages dialogue during the construction process.

"We like it to be a good hearted, pleasant turnover," Cohen said. "We work very hard to keep it non-adversarial, and it always helps that we will forgive this advance."

But not every development goes so smoothly. In the worst cases, financially strapped builders and developers neglect the maintenance and development of common areas and stormwater detention ponds, leaving the homeowners to pay for those services out of pocket with little to no chance of being reimbursed.

"The time to turn over the association to the homeowners is triggered by the number of lots sold. So what you're seeing now is all these developments with five or six prime corner lots built, then empty lots with tall weeds in between," Harrell said. "The homeowners don't want that, but the developers and the builders are overwhelmed with taking on maintenance of those lots for a lot longer than they thought they would have to."

When the developer is cash-strapped what often happens is he will put pressure on the builders to maintain the lots, Harrell said.

"That's not good because then the builder winds up going belly-up faster due to the pressure," she said. The situation creates a domino effect, she added.

"A lot of the problems come from the builders not being able to take down lots on the schedule they agreed to because they don't have the money. So then the developer puts even more responsibility on them, and they still can't buy the lots. So they often walk away from the whole thing," Harrell said.

The other alternative is equally painful, as some developers put the burden on the homeowners, and raise their assessments to cover the costs of maintaining the empty lots, landscaping and snow removal.

When that happens, the homeowners often believe they'll be able to recover those costs, particularly if the development is going through the foreclosure process.

It's during the six-month recovery period of a foreclosure when there is the most potential for chaos. Developers don't want to make the investment, and builders have either abandoned the project or have gone bankrupt themselves, leaving no one to pay for the maintenance but the homeowners.

"Most of my clients (developers) are willing to work with the builders, to a point. But if the builder's not performing, they're stuck with a patchwork of homes and a concept for a community that's not going to happen," Harrell said. "It's really a nightmare. It's really terrible to penalize the people who live there just because your development didn't work out."

Homeowners can't collect on those expenses if the development goes into foreclosure because any liens after the first mortgage aren't collectible, she said.

Often the wisest course of action may be for the homeowners to call the local government code enforcement authority, said Greg Gamalski, partner with Giamarco, Mullins & Horton PC in Troy.

"The association will always be second in line behind any mortgagee if the property goes through foreclosure," he said. "But if a municipality steps in to cut the weeds, they'll come in and charge everything back to the property owner. That will be put on the tax roles, and property taxes are ahead of everything else in terms of a lien on the land."

Often homeowners are just taking on the responsibility themselves, rather than call upon municipalities.

"Honestly, in these cases, the developers and the builders aren't even thinking about things like landscaping and detention ponds. I don't even know, in some cases, if anyone's collecting association dues. Of all the things developers have to worry about, this is the smallest of them," Gamalski said.

It'll probably be a year or better before the first wave of foreclosed subdivisions settles up with associations, he added.

"We're still early in the game unfortunately," Gamalski said. "When the dust settles, everyone is going to step back and say we need to talk to the homeowners associations.

"That problem will have to be faced next year. It's only now that people are starting to see the actual depth of the problem."□