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Understanding the Process of Transition from Declarant to Homeowner Control

By Sherri Hall

The transition process from declarant to homeowner control can be a stressful time for an association. However, having a better understanding of the overall process can help alleviate some of the stress and allow for a successful transition. There are responsibilities the board has and should be aware of so that the transition process can run more smoothly and effectively.

First, it's important to understand what a transition entails. According to attorney Steven L. Sugarman, of Steven L. Sugarman & Associates of the greater Philadelphia area, "a transition constitutes the turnover of control of the board of directors of a common-interest ownership community." Sugarman explained that the board of directors changes its composition from being run by appointees of the declarant to being run by homeowners who are elected by the members of the community association.

However, the concept is often misunderstood, he said. "Unfortunately, it is often viewed simply as a formal passing of a baton from declarant to homeowners. Instead, I think that the success of a community can be enhanced if developers and unit owners view it as more of a growth process or as an evolution, not

"Unfortunately, it is often viewed simply as a formal passing of a baton from declarant to homeowners..."

just a turnover of control, but the process of the declarant completing the improvements within the community and ensuring that the units and the common elements have been completed or repaired properly in accordance with the original plans and specifications," Sugarman said.

He also added that various committees and sub-committees should be formed during this time period. "All of this should happen early on as opposed to the back-end of the process when the statutes mandate the turnover," noted Sugarman. Doing so, he said, will not only benefit the community association and its members, but also the declarant.

According to Sugarman, the board of directors, whether run by homeowners or declarant appointees, is governed by a fiduciary responsibility to act in the best interest of the association. "Therein lies certain complications," he said, "be-

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Cats Are Moving In... Tips for Managing Feral Cat Colonies

By Michelle Tomko



For some, one of the downsides of living in a condominium or homeowner association has always been close proximity to your neighbors. This can especially become a problem when your neighbors are loud and inconsiderate. But what if the rowdy family "next door" is a feral cat colony? What are your options when feline squatters settle in your community?

To look at the impact these tiny tigers can have on a prop-

erty, we caught up with Donna Hildreth, board member and Community Cat Program Coordinator at the North Brunswick Humane Association (NBHA) in North Brunswick, New Jersey. The NBHA is an all-volunteer 501(C)(3) serving the greater Brunswick area with the purpose of educating the community in the humane treatment of animals through education and outreach. They also manage a fund for trap-neuter-vaccinate-return (TNVR), lend traps and

teach volunteers how to TNVR with the help of a cooperating clinic.

Recently, Hildreth and her organization were asked to help a homeowners association that was teeming with cats. Using her experience as a test case, she walked us through the punch list on how to coexist when the cats come in.

Hildreth began by defining the type of animal that could end up in a feral cat colony.

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Cost-effective Solutions to Prolong the Lifespan of Your Stormwater Pond

By Kyle Finerfrock

When communities begin anticipating and planning for possible future expenses, they will likely discover that the removal of accumulated sediment in stormwater retention ponds has a very large price tag. In fact, dredging is often one of the largest expenses a community will ever face. Luckily, there are things that can be done to help reduce costs and prolong the time span between dredging. By better understanding the purpose of a stormwater pond and employing proper management techniques, a community can rest assured that the best decisions are made for the pond, the surrounding environment and the community's budget.

While a stormwater pond can be a beautiful asset to a community, it also has specific engineered and environmental purposes. First, it is used to slow down and dissipate the energy of the flowing water from rainstorms, which picks up speed and energy as it passes over a community's impervious surfaces such as roofs, streets, driveways and sidewalks. If the water doesn't get slowed down by a stormwater pond, it can create erosion problems or

flooding downstream. Second, a stormwater pond is used to collect pollutants and sediments in order to prevent them from being deposited elsewhere. Sediment, grass clippings, leaves, fertilizer, pollutants and other organic matter will all be collected and accumulate in the pond over time. At some point in a stormwater pond's lifetime, the sediment accumulation will become too great and dredging will be required to remove several feet of sediment and restore the lifespan of the pond.

It can take years for a community to properly budget for a much-needed dredging project. As a result, I'm frequently asked to identify the exact timeframe dredging should take place, but I often struggle to give a short answer. Each community is different and each has its own unique goals and variables to consider. In some cases, the decision to dredge comes in attempt to revive the aesthetics of a stormwater pond. Other times, dredging occurs as a result of municipal enforcement. In general, dredging is recommended every 20 years to help ensure a stormwater pond is functioning properly. But with proper proactive pond manage-

ment techniques, it is possible to prolong the need for dredging to every 30 years or more, providing significantly more time to budget and prepare for the expense.

There are several things a community can do to take control of its stormwater pond and budget, starting with data collection. Inspecting and collecting data about a pond is the best way to anticipate potential problems that can shorten the lifespan of the waterbody. A stormwater inspection will look at the engineered structures within the watershed to check for failures or damages that can cause erosion and accelerated sedimentation in a pond. Problems found during an inspection might include a cracked inlet pipe, woody vegetation along the dam embankment or a clog in the outlet structure. Most failures found within stormwater ponds can be identified early when problems are manageable; this helps to keep repair costs to a minimum and helps extend the working life of the waterbody.

In addition to a stormwater pond inspection, which helps identify problems outside of a pond, a bathymetric study will provide a detailed internal

map of the pond. During the bathymetry process, GPS lake mapping technology is used to plot the surface of a lake or pond. Each specific GPS point is associated with a particular water depth. After thousands of surface points with corresponding depth information are collected, the data is compiled to create a three-dimensional map of the pond bottom. This map can be used to identify the total water volume and the amount of accumulated sediment, and can help pinpoint problem areas where accumulated sediment has been deposited.

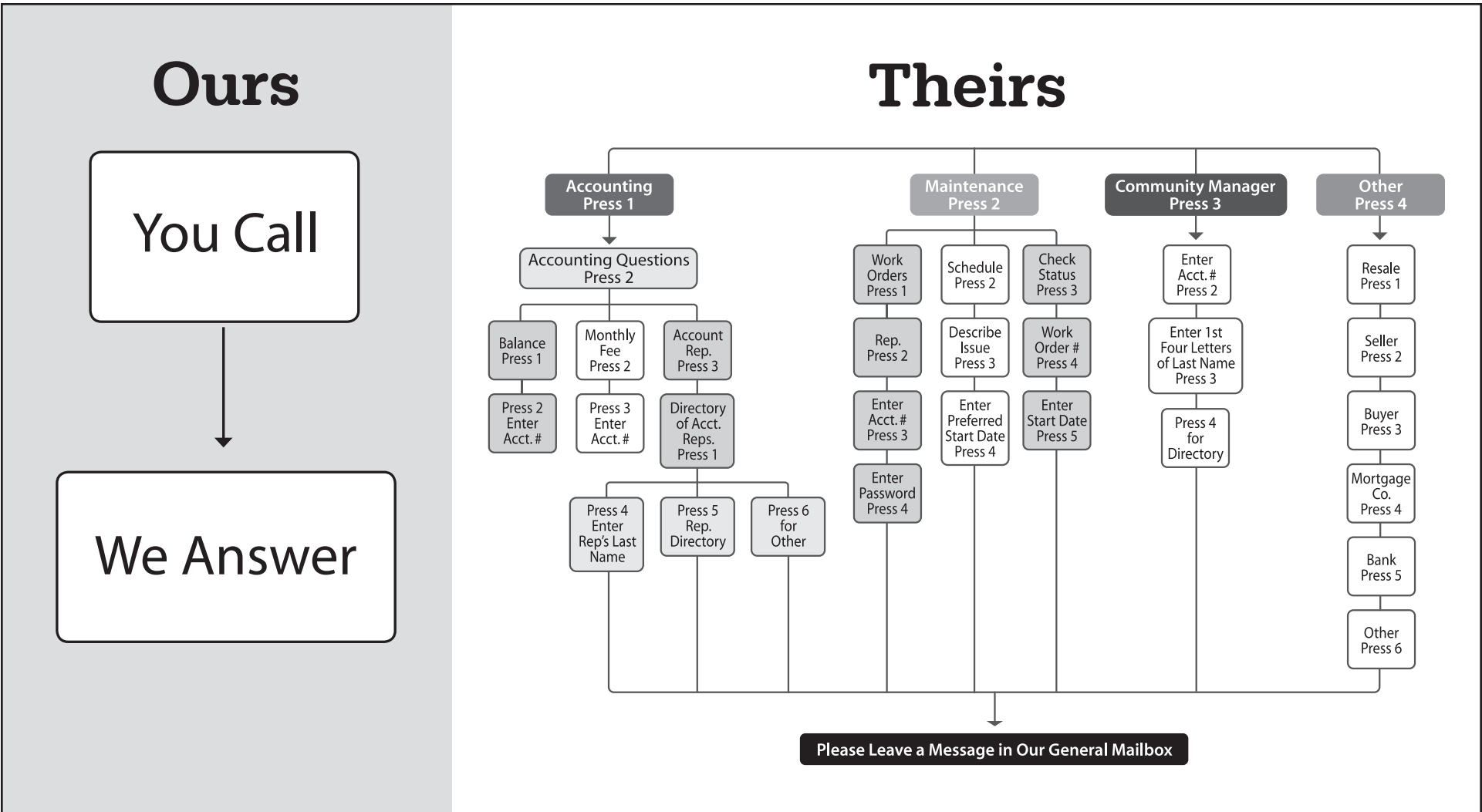
Mapping a stormwater pond every few years allows a community to track the sedimentation rate and more effectively determines when dredging may eventually need to happen. Oftentimes, bathymetry data can be compared to "as-built" stormwater plans to see how the pond has changed since construction. Sometimes the sedimentation problem is due to organic material, including leaf litter or excessive aquatic plant growth that has accumulated material in the pond. These areas can be physically dug out from the shore and localized to where

the problem occurred.

To help prolong the need for dredging, hydro-raking may be an effective solution for removing organic material. A hydro-rake is a floating machine that can rake out organic material down to depths of 8-12 feet. Removing built up organic material can help reduce nutrient sources and add depth to a pond, which can help create an environment less likely to grow unwanted algae and aquatic weeds. While a full-scale dredging operation will require draining a stormwater pond of all the water, disturbing ecology of the organisms living in and around the pond, hydro-raking will give a community the chance to remove material with minimal disturbance to the ecosystem and prolong the time before dredging becomes a necessity.

From the moment a stormwater pond is created it begins to die, but a highly trained lake and pond professional can help identify proactive and individualized management strategies to reduce the waterbody's rate of aging, including nutrient remediation, aeration, buffer management, water quality monitoring and more. Just as a car requires reg-

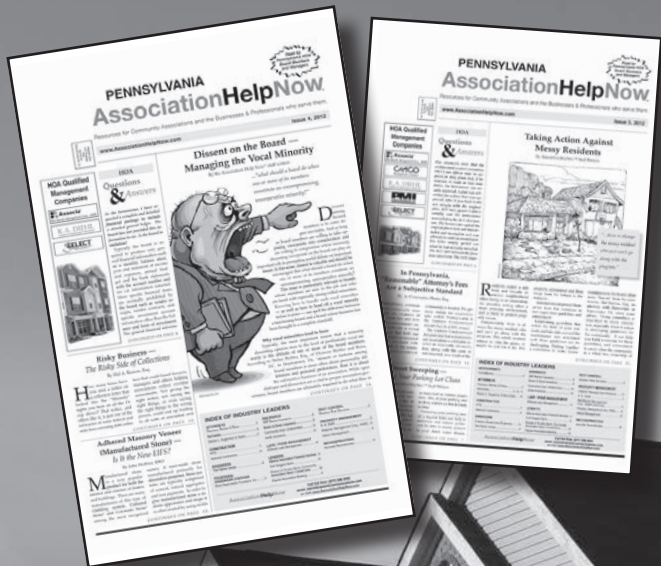
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HOA Q&A...

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officer making such a decision has acted outside of his/her authority and could be personally liable for any damages (as could the association). Here, it sounds like the problem is not whether the fundraiser was allowable, but just that it was not approved by the board. The easy fix is for the board to retroactively approve the event.

Sara A. Austin, Esq.
Austin Law Firm LLC
York, PA

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Q: We're an association of detached townhomes. We (the board) wants to pass that, to become and remain a board member, a homeowner cannot be delinquent on their association dues two or more times within twelve consecutive months. Some on our board believe this would be illegal. If correct, is it something we could put forth to all our

homeowners to vote on?

A: The association has the legal right to amend its bylaws to impose qualifications for serving on the board of directors. If this is an HOA organized under New York's NPCL, any change affecting the election of directors (such as this one) has to be disclosed to the members at the next annual meeting. (However, disclosure does not give the members the right to approve the change.) If this is a typical business corporation or a condominium association, the disclosure requirement does not apply. The board would certainly be advised to let owners know prior to soliciting nominees, though, to save owners from embarrassment and keep members abreast of changes.

Kenneth Jacobs, Esq.
Smith, Buss & Jacobs LLP
New York, NY

A: The association can certainly impose a "good standing" requirement for board members. The declaration or

bylaws may have to be amended by the appropriate vote of the unit owners.

Stefan Richter, Esq.
Clemens Richter & Reiss, P.C.
Doylestown, PA

A: This qualification (that a homeowner not be delinquent in the payment of dues) for eligibility to serve on the board of directors is perfectly legal. You would need to amend the qualifications of directors section of your association's bylaws to provide that any homeowner, who has been delinquent in the payment of his or her association dues two or more times within any twelve-month period, is ineligible to serve (or to continue to serve) on the board of directors. Typically, an amendment to the bylaws requires a vote of two-thirds of the members.

John Harris Gettinger, Esq.
Banks Shapiro Gettinger & Waldinger, LLP
Mount Kisco, NY

A: It is not illegal but will probably require an amendment to either the declaration or bylaws (whichever document currently contains the requirements to become [and remain] a board member)

Sara A. Austin, Esq.
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York, PA

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Dredging...

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ular maintenance to ensure it operates effectively, proactive maintenance will go a long way in ensuring a stormwater pond performs as intended. By understanding the functions of a stormwater pond and using

data to fix problems when they are small, a community can cut costs, utilize the full potential of its stormwater pond and spend more time budgeting for the future. ■

Kyle Finerfrock is an Environmental Scientist with SOLitude Lake Management, an environmental firm providing lake, pond, wetland and fisheries management services and solutions.



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