



**By Casey L. Cirner, ESQ.**

Casey is an associate with Miles & Stockbridge's Rockville office. She practices in the areas of land use, zoning, municipal law, real estate, real estate litigation and appellate litigation. Casey's clients are residential and commercial property owners, developers and builders, whom she represents through the various development processes.

# Dissolution

## What a Homeowners Association Should Consider

The governing documents of a typical homeowners association provide limited guidance on dissolution. Generally, a single paragraph in these often voluminous documents addresses the topic. Thus, what should a homeowners association consider when deciding whether or not to dissolve? Three primary considerations are: (i) what is the process for member notice and approval of the dissolution; (ii) what happens to the assets, if there are any; and (iii) whether any outside approvals are required.

The dissolution process typically requires notice to the members, written approval of a specific percentage thereof, and the preparation and filing of articles of dissolution. The notice often has to address disposition of the association's assets. The homeowners association will need to identify its assets and determine what will happen to them upon dissolution. An association's assets may include reserve funds, signage, real property (common areas or out lots), recreational facilities, landscaping and hardscapes. If an association owns and is responsible for maintaining numerous assets, dissolution is an unlikely choice because it will be difficult to identify who will take over the assets.

The governing documents may instruct to whom the association is to dedicate its assets upon dissolution, and that the successor continue the existing or similar purpose for the asset following dissolution in order to avoid disturbing the neighborhood. The governing documents may suggest dedicating the assets to a public or quasi-public agency, though public agencies may not want to be burdened with assets that require a lot of maintenance or create enforcement issues. For example, homeowners association property backing to improved neighborhood lots may create government enforcement issues because often times those abutting homeowners expand their backyards by encroaching upon the association property. When requested, the agency (potentially a parks department) will analyze acquisition of the association's real property on a case-by-case basis and do what makes sense for the agency. Do not be surprised if you encounter some skepticism in this part of the process – not many people give away ideal property.

If the agency refuses to take over the asset, the governing documents may identify alternatives to which the association should dedicate its assets, such as non-profits, another association or trustees.

A different challenge arises if a public agency has approval authority over dissolution of a homeowners association under its governing documents. In these cases, it is unlikely that the documents outline the process for obtaining the agency's approval of the proposed dissolution.

In Montgomery County, Maryland, homeowner's association documents identify the local planning agency, the Maryland-National Capital Park and Planning Commission, as the approving authority. As with most agencies, identifying the appropriate person who can assist you with your request is crucial. That person may often be the attorney responsible for representing the specific agency.

At some point in the dissolution process, appropriate documentation will need to be drafted to transfer ownership and responsibility of the assets. Thus, given all the aspects of dissolution that an association must consider before embarking upon the process, as well as the relative lack of identified process, it is best to first consult your management agent or an attorney.

*The opinions expressed and any legal positions asserted in the article are those of the author and do not necessarily reflect the opinions of Miles & Stockbridge or its other lawyers.*