

SECTION IV
DISCLOSURES RELATIVE TO NEW RESIDENTIAL SUBDIVISIONS

Under the Subdivided Lands Law, a subdivision exists when improved or unimproved land is divided for the purpose of sale, lease or financing (whether immediate or future) into five or more parcels. The law applies to residential single-lot subdivisions, common interest developments, time-shares (of 12 or more interests), and mandatory leases of five or more years in a mobilehome park. Among other exemptions, this law does not apply to: certain industrial and commercial subdivisions, standard in-city subdivisions wherein each lot, parcel or unit will be sold with a completed residential structure, and subdivisions located entirely outside of California (except a time-share subdivision with one or more component sites located within the United States).

A. Public Report: Disclosure of Material Facts about a Subdivision

Unless the project is exempt by operation of law, a person intending to offer subdivided lands for sale or lease, if that is the marketing plan, must apply for and obtain a public report from the Department of Real Estate. The public report discloses to prospective buyers pertinent facts about a subdivision. The report may include information about utilities and water, roads, soil and geologic conditions, title, zoning and use, hazards, and any financial arrangements for completion of the subdivision.

In the case of a common interest development, information is also provided about the homeowners association, the assessments, budget including estimated reserves, and the governing documents. For further information regarding common interest developments, please refer to booklets which are published by the Department of Real Estate available at www.dre.ca.gov entitled:

- “*Living in a California Common Interest Development;*”
- “*Operating Cost Manual for Homeowners Associations;*” and
- “*Reserve Study Guidelines for Homeowner Association Budgets.*”

A subdivider or his/her broker(s)/agent(s) must post a copy of the public report in a conspicuous place in any office where sales of subdivision interests are conducted and must give a copy to any member of the public who asks for one and to each prospective buyer prior to entering into a contract to purchase. The subdivider, owner, or the broker(s)/agent(s) of the subdivider or owner must have each prospective buyer sign a receipt that he or she has received and has had an opportunity to read the public report

before entering into an agreement to purchase. The subdivider is required to keep the receipt for three years.

If the subdivision interest being offered is in a common interest development (a planned development, stock cooperative, condominium, or community apartment project), the subdivider or his/her broker(s)/agent(s) must give the buyer a statement called, “*Common Interest Development General Information.*” This statement, contained in the public report, explains what ownership in a common interest development means with regard to: mandatory membership in the association; rights and remedies under the governing documents; payment of assessments; ownership and use of the recreational facilities; the responsibilities and powers of the governing body; voting rights; and other rights inuring to the members/owners.

(*CAL. BUS. & PROF. § 11000, et. seq.; CAL. CIV. § 1350 et. seq.*)

B. Disclosure of the Right to Rescind

Purchasers in two types of subdivisions have an unqualified right of rescission as follows:

1. Timeshare buyers have a right to rescind the purchase within seven calendar days after receipt of the Public Report or the date of signing the purchase contract, whichever is later.
2. Undivided interest buyers have a right to rescind the purchase by midnight of the third calendar day following the day the purchaser executed the offer to purchase.

(*CAL. BUS. & PROF. §§ 11000.2, 11238*)

The owner, subdivider, or broker(s)/agent(s) of the owner or subdivider must conspicuously disclose to all prospective buyers the right of rescission and give each buyer a rescission form for the possible exercise of this right. Statute and Regulations specify the exact language, type, and size of print to be used. By following the instructions on the rescission form, a person who has made an offer to purchase may cancel/rescind without giving any reason or incurring any penalty.

(*CAL. BUS. & PROF. §§ 11238, 11239; COMMISSIONER'S REGULATIONS 2792.30, 2792.31*)

C. Disclosure and Notice of Blanket Encumbrance

A *blanket encumbrance* is a deed of trust, mortgage, or other lien or encumbrance (excepting taxes or assessments levied by public authority) which affects more than one lot or unit in a subdivision. Section 11013.2 of the Business and Professions Code mandates protection of a buyer's funds, unless the lot or unit can be unconditionally released from the blanket

encumbrance. If there is a blanket encumbrance and the project is not subject to Section 11013.2, a prospective buyer, or lessee for a period of more than five years, must receive and sign the following notice prior to the sale, or lease:

BUYER/LESSEE IS AWARE OF THE FACT THAT THE LOT, PARCEL, OR UNIT WHICH HE OR SHE IS PROPOSING TO PURCHASE OR LEASE IS SUBJECT TO A DEED OF TRUST, MORTGAGE, OR OTHER LIEN KNOWN AS A "BLANKET ENCUMBRANCE".

IF BUYER/LESSEE PURCHASES OR LEASES THIS LOT, PARCEL, OR UNIT, HE OR SHE COULD LOSE THAT INTEREST THROUGH FORECLOSURE OF THE BLANKET ENCUMBRANCE OR OTHER LEGAL PROCESS EVEN THOUGH BUYER/LESSEE IS NOT DELINQUENT IN HIS OR HER PAYMENTS OR OTHER OBLIGATIONS UNDER THE MORTGAGE, DEED OF TRUST, OR LEASE.

Date

Signature of Buyer or Lessee

When the prospective buyer or lessee receives and signs the foregoing notice, the buyer or lessee acknowledges awareness of the blanket encumbrance and the possible consequences thereof. This may include the inability of the builder/developer to use or retain earnest money deposits advanced by the prospective purchaser prior to the release of the blanket encumbrance from the parcel being purchased.

(CAL. CIV. § 1133)

D. Delivery of Governing Documents and Disclosures to Prospective Purchaser in a Common Interest Development

Any person offering to sell or lease lots or units in a common interest development (a community apartment project, condominium project, planned development, or stock cooperative) which requires a public report prior to the offering must make available the following documents to the prospective buyer or lessee before the execution of an offer to purchase or lease:

- The declaration of covenants, conditions, and restrictions;
- The articles of incorporation and bylaws for the association;
- Any other instrument which establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees of interests in the development;
- The current budget including estimated reserves and related financial statements of the association; and

- A statement prepared by the governing body of the association regarding any outstanding delinquent assessments and related charges levied by the association against the subdivision interest the prospective buyer (or lessee) is considering buying (or leasing).

In addition, the subdivider and the broker(s)/agent(s) must deliver to the prospective buyer (or lessee) copies of the foregoing documents prior to close of escrow.

In the case of resale of common interest developments, the owner or his/her agent must provide various documents to the prospective purchaser. (See Part I, Section I, Subsection J – Furnishing Controlling Documents and Financial Statements Concerning CID’s).

(CAL. BUS. & PROF. § 11018.6; CAL. CIV. § 1368)

E. Statement of Defects Disclosure for a Common Interest Development Conversion

As soon as practicable before the transfer of title for the first sale of a unit in a common interest development which has been converted from an existing dwelling, the owner, subdivider, or the broker(s)/agent(s) for the owner or subdivider must deliver to a prospective buyer a written statement of defects. This statement must disclose all substantial or material defects and malfunctions in the major systems in the individual unit and in the common area, as known to the owner after a reasonable inspection. Major systems include, but are not limited to, the roof, walls, floors, heating, air conditioning, plumbing and electrical systems, and recreational facilities.

After making the inspection, if the owner finds no defects or malfunctions, the owner must provide a written statement to the buyer disclaiming knowledge of any defects or malfunctions.

If the required disclosure is delivered to the prospective buyer after he/she has executed an offer to purchase, the buyer has three days after personal delivery of the disclosure statement or five days after delivery by deposit in the mail to terminate the offer. The termination must be by written notice to the owner, subdivider, or the broker(s)/agent(s) of the owner or subdivider. Any disclosure delivered after the prospective buyer has signed an offer to purchase must contain a statement describing his/her rights, methods, and the time to rescind. Any person who willfully fails to carry out the requirements of this law will be liable for any actual damages suffered by the buyer.

(CAL. CIV. § 1134)

F. Notices to Tenants to Disclose Intent to Convert an Apartment to Individual Ownership

The owner of an existing apartment building may decide to convert the units to condominiums (or other form of common interest development) and offer the units for sale. Among the requirements for approval of such a subdivision are certain notices to current and prospective tenants. These notices must include information relative to public hearings regarding the proposed conversion and the right of a current tenant to purchase his/her unit.

A developer and a city or county may, as a condition of condominium map approval, enter into an agreement that newly-constructed units will be rented for ten years (or more) and then may be sold as condominiums. As part of this agreement, the developer must provide current and prospective tenants with certain notices relative to the eventual sale. Again, a tenant must receive notice of his/her right to purchase the unit.

(CAL. GOV'T §§ 66427.1, 66452.8, 66452.9, 66452.50, 66452.51)