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## Section XVI

# GLOSSARY OF SUBDIVISION TERMS

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**Acceleration Clause:** A condition in a real estate financing instrument giving the lender the power to declare all sums owing the lender immediately due and payable upon the happening of an event, such as the sale of the property or a delinquency in the repayment of the note.

**Air Rights:** The right inherent in real property to the reasonable use of the air space above the surface of the land.

**Alienation:** See Restraint on Alienation.

**Amortization:** The liquidation of a financial obligation on an installment basis; also the recovery of cost or value over a period of time.

**Annexation:** See Declaration of Annexation.

**Articles of Association:** If the homeowners association is not to be incorporated, articles of association may be used to establish the association and to state its purpose. This document is not filed with the Secretary of State.

**Articles of Incorporation:** An instrument filed with the Secretary of State which establishes and sets forth the basic rules and purposes under which an incorporated homeowners association is formed. See the Corporations Code relating to Nonprofit Mutual Benefit Corporations.

**Assessments:** (common interest subdivision) A charge levied upon the owner of a subdivision interest to pay the actual and estimated expenses of operating the common areas and common facilities in common interest subdivisions, including any reasonable reserves set up for such purposes, and all other charges that are designated as common expenses by the governing board pursuant to the governing documents for the subdivision.

**Balloon Payment:** An installment payment on a promissory note; usually the final one for discharging the debt, which is significantly larger than the other installment payments provided under the terms of the promissory note. In Article 7, Chapter 3 Business and Professions Code, a balloon payment is considered to

be an installment which is greater than twice the amount of the smallest installment under the promissory note.

**Blanket Encumbrance:** Lien or agreement which affects two or more interests in a subdivision.

**Board or Board of Directors:** The governing body of the homeowners association as elected by the owners.

**Bylaws:** Rules for the conduct of the internal affairs of corporations and other organizations (e.g., homeowners association).

**CC&Rs - Covenants, Conditions, and Restrictions:** The basic rules/governing instruments establishing the rights and obligations of owners (and their successors-in-interests) of real property within a subdivision or other tract of land in relation to other owners within the same subdivision or tract, and in relation to an association of owners organized for the purpose of operating and maintaining property commonly owned by the individual owners or by the homeowners association.

**Common Area:** Those portions of a common interest subdivision to which title is held by the homeowners association, or to which title is held by all of the owners in common, or it may consist of mutual or reciprocal easement rights appurtenant to the separate interests. Common area could be unimproved land, recreational facilities, driveways, etc. In a condominium project, the common area usually includes the entire project except for the individually owned residential units (See Civil Code Section 1351(b)).

**Common Facilities:** The improvements located on the common area that are available for the use and enjoyment of the purchasers of individual lots or units.

**Common Interest Subdivision:** A subdivision wherein the owner has exclusive fee ownership of a particular lot or unit combined with common ownership or beneficial use of certain areas and facilities which are owned or operated by the homeowners association (See Civil Code Section

1351). Examples of common interest subdivisions are condominiums, planned developments, stock cooperatives, and community apartments.

**Condemnation:** The act of taking private property for public use by a government or quasi-governmental entity, district or agency upon payment to the owner of just compensation; also, a declaration that a structure is unfit for use.

**Conditional Public Report:** Public report issued prior to the final public report, upon request of the subdivider. Allows the subdivider to enter into binding contracts with certain specified conditions needing to be satisfied before transferring title. The term is usually for six months, but may be renewed for one additional six month period if the requirements for issuance of a final public report can be demonstrated as likely to be satisfied. (See Section 11018.12, Business and Professions Code.)

**Condominium:** An estate in real property wherein the owner has exclusive fee, or leasehold ownership of a particular unit in a multifamily structure, combined with joint ownership of common areas, such as the structure and/or the land. (See Civil Code Section 783 and 1351(f).)

**Condominium Plan:** The recorded diagrammatic floor plan of the units built or to be built on the property, which identifies each unit, and shows its dimensions. (See Civil Code Section 1351.)

**Conversion:** A change from one character of use to another, such as converting an apartment building to condominium use.

**Conveyance:** An instrument in writing, such as a grant deed, used to transfer (convey) title to property from one entity to another.

**Declarant:** The party who holds legal title to real property (generally the subdivider) and who signs the declaration of covenants, conditions, and restrictions for the subdivision.

**Declaration of Annexation:** A recorded instrument which has the legal effect of subjecting a described parcel of real property to the covenants, conditions and restrictions already in effect concerning other land.

**Dedication:** The giving of land by its owner to a public use, and the acceptance for such use by authorized officials on behalf of the public. An example is the dedication of streets in a subdivision for public use.

**Deed in Lieu of Foreclosure:** A deed to real property accepted by a lender from a defaulting borrower in

order to avoid the necessity of a foreclosure proceeding by the lender.

**Deposit Receipt:** A term used by the real estate industry to describe the written offer to purchase real property upon stated terms and conditions, accompanied by a deposit toward the purchase price, which becomes the contract for the sale of the property upon acceptance by the owner.

**Desist and Refrain Order (D&R):** An order directing a person to desist and refrain from committing an act in violation of Real Estate Law. Often issued to stop the unlawful sale of subdivision interests. (See Section 11019, Business and Professions Code.)

**Due on Sale Clause:** An acceleration clause granting the lender the right to demand full payment of the mortgage upon sale of the property.

**Duplicate Budget Package (DBP):** A file to be submitted to DRE by a subdivider which contains duplicate copies of all documents related to a homeowners association budget. The DBP makes possible simultaneous file processing by DRE Budget Reviewers and Deputies.

**Easement:** A right, privilege, or interest limited to a specific purpose which one party has in the land of another.

**Encroachment:** An intrusion onto another's property by improvements to adjacent real property. Two examples are a swimming pool built across a property line and a patio built on an access easement.

**Encumbrance:** Anything affecting or limiting the fee simple title to, or value of, the property, such as a lien, mortgage, or deed of trust.

**Escrow:** The deposit of instruments and/or funds, with a third neutral party with instructions to carry out the provisions of an agreement or contract.

**Fannie Mae:** An acronymic nickname for the Federal National Mortgage Association (FNMA); a quasi-public agency which is a private corporation whose primary function is to buy and sell mortgages in the secondary mortgage market.

**Final Public Report:** See Public Report.

**FHA (Federal Housing Administration):** A federal agency which insures first mortgages, enabling lenders to loan a greater percentage of the sales price.

**Freddie Mac:** An acronymic nickname for Federal Home Loan Mortgage Corporation (FHLMC); an agency established to provide a secondary mortgage market for the Federal Home Loan Bank System (Savings and Loan Associations).

**Ginnie Mae:** An acronymic nickname for Government National Mortgage Association (GNMA); an agency of HUD, which functions in the secondary mortgage market, primarily in special housing programs.

**Governing Documents:** The declaration of covenants, conditions, and restrictions, articles of incorporation (if the association is incorporated), the articles of association (if any), and bylaws (if any).

**Government Survey:** A method of specifying the location of parcels of land using prime meridians, base lines, standard parallels, guide meridians, townships, and sections.

**Graduated Payment Mortgage:** A loan plan that provides for partially deferred payments of principal at the start of the loan. There is a variety of plans; however, after the first five years of the loan, the principal and interest payments are usually substantially higher to make up for the principal portion of the payments lost at the beginning of the loan.

**Grant Deed:** A limited warranty deed which uses the word “grant”, to assure a grantee that the grantor has not already conveyed the land to another, and that the estate is free from encumbrances placed by the grantor.

**Homeowners Association (HOA):** A group composed of the owners in the subdivision, which supervises and manages the subdivision and its common areas, if any.

**Impounds:** A trust type account established by lenders for the accumulation of borrower’s funds to meet periodic tax payments, FHA mortgage insurance premiums and other future insurance policy premiums, in order to protect their security. Under subdivision law, “impounds” often pertain to purchase monies impounded in a neutral escrow depository until clear title to a subdivision interest can be conveyed to the purchaser.

**Installment Sales Contract:** Commonly called a contract of sale or land contract; also referred to as a real property sales contract. Used in the purchase of real estate, the purchase price is paid in installments over a long period of time and title is retained by the seller. Upon default by the buyer (vendee), the payments may be forfeited. They are rarely used in subdivision sales, now.

**Interim Loan:** A short-term temporary loan used until permanent financing is available, e.g., a construction loan.

**Interim Public Report:** Grants the same authority to a subdivider as a preliminary public report, except is issued after a final public report has been issued for a subdivision and is issued on pink paper.

**Leasehold Estate:** A non-freehold interest in real property either limited to a fixed term or a series of recurrent time periods. This is a personal property interest.

**Legal Description:** A land description recognized by law; a description by which property can be definitely located by reference to government surveys or approved recorded maps.

**Lien:** A form of encumbrance which usually makes specific property security for the payment of a debt or discharge of an obligation, e.g., judgments, taxes, mortgages, deeds of trust, etc.

**Limited Equity Housing Cooperative:** A nonprofit public benefit, or mutual benefit, corporation which is formed for the purpose of holding title to an interest in improved real property in which all the members of the corporation receive a right of exclusive occupancy in a portion of the corporation’s real property, which right of occupancy is appurtenant to the membership in the corporation, which membership may be acquired or transferred only for a transfer value set as required by law, and which corporation must use its corporate equity only for public or charitable purposes.

**Liquidated Damages:** A sum agreed upon by the parties to be full damages if a certain event occurs. Liquidated damages clauses are contained in contracts, and the parties, by agreement, fix the damages for a breach of the contract, in advance.

**Lis Pendens:** A notice filed or recorded for the purpose of warning all persons that the title or right to the possession of certain real property is in litigation; literally “suit pending”. Usually recorded to give constructive notice of pending litigation.

**Master Geographic Letter (MGL):** An agreement letter from a local agency (city or county) wherein the agency stipulates that it will not approve a subdivision map within its jurisdiction until the subdivider complies with certain standards relative to typical off-sites such as roads, utilities, water, sewer, etc., and certain on-sites.

**Master Management Documents:** Management documents (normally CC&Rs, bylaws, articles of incorporation) which have been pre-approved by DRE staff for use in future subdivision filings of that same type; e.g., single phase condominiums or phased planned developments, etc.

**Material Change:** Any change that results in the public report or Notice of Intention not reflecting the true facts of the subdivision offering; e.g., change in subdivider name, change in purchase money handling procedures, inability of subdivider to fulfill agreements or assurances, etc. (See Regulation 2800.)

**Mechanic's Lien:** A lien created by statute which exists against real property in favor of a person who has performed work or furnished materials for the improvements of the real property.

**Metes and Bounds:** A description of the boundary lines of land, setting forth all the boundary lines together with their terminal points and angles. Metes (lengths or measurements) and bounds (boundaries) description is often used when much accuracy is required, and when no recorded map is available for the purpose of description.

**Minimum Filing Package (MFP):** Basic application for a final public report. It includes the full filing fee, a completed Notice of Intention and essential supporting documents which enable DRE to assign a file number and retain the materials until the SCA criteria has been met.

**Notice of Intention:** Notification that subdivider intends to sell or lease subdivided lands; an application for a subdivision public report.

**Off-Site Improvements:** The improvements located off the lots/parcels or common area in a subdivision; e.g., streets, sewers, sidewalks, water lines, gas lines, and electrical utilities, etc.

**On-Site Improvements:** The improvements located on the lots or common areas. These include residential structures and recreational facilities located on property owned by individual owners or by the homeowners association.

**Partition:** A division of real property, or the proceeds therefrom, among co-owners.

**Phased Project:** A project in which one final map has been divided into two or more portions to facilitate financing, construction, or marketing.

**Planned Development:** A system of individual ownership of separate lots together with beneficial use and enjoyment of a common area and/or the obligation to pay assessments for the benefit of the subdivision. (See Section 1351 Civil Code.)

**Preliminary Public Report (Pink):** Public report issued prior to the final public report, upon request of the subdivider. It only allows the subdivider to advertise and take reservations. It does not allow the subdivider to enter into binding contracts. It is printed

on pink paper (hence the sobriquet "Pink") to distinguish it from the final public report which is printed on white paper; and is normally effective for one year from date of issuance unless the final public report is issued sooner. It is often obtained for market-testing purposes.

**Prepayment Penalty:** The charge payable to a lender by a borrower under the terms of the loan agreement in the event the borrower pays off the outstanding principal balance of the loan prior to its maturity.

**Preliminary Report:** A report which discloses the condition of the title, made by a title insurance company preliminary to issuance of a title insurance policy.

**Public Report (White):** (final subdivision public report) - Document issued by DRE which provides disclosure of material facts in a subdivision offering. The purpose is to prevent fraud, misrepresentations or deceit in the public sale or lease of subdivided land. It must be given to each prospective purchaser before (s)he signs a contract or pays money. It is printed on white paper and is ordinarily effective for five years from the issue date.

**Purchase Money Handling:** Descriptive of the methods required by law to protect the subdivision buyer's right to the return of money paid or advanced if escrow does not close and if there is not a determination of the buyer's default. (See Section 11013 et seq.; Business and Professions Code.)

**Quitclaim Deed:** A deed to relinquish any interest which grantor may have in property, without any warranty of title or interest.

**Range Lines:** A series of government survey lines running north and south at six mile intervals, starting with the principal meridian and forming the east and west boundaries of townships.

**Reconveyance:** The transfer of the title of land from one person to the immediately preceding owner. This instrument of transfer is commonly used to transfer the legal title from the trustee to the trustor (borrower) after a trust deed debt has been paid in full.

**Red-lining:** A lending policy, illegal in California, which denies real estate loans on properties in older, changing urban areas usually with large minority populations, because of the alleged higher lending risks, without due consideration being given by the lending institution to the creditworthiness of the individual loan applicant.

**Release Clause:** A stipulation that upon the payment

of a specific sum of money to the holder of a trust deed or mortgage, the lien of the instrument as to a specifically described lot or area shall be removed from the blanket lien on the whole area involved.

**Remainder:** An estate which takes effect after the termination of the prior estate, such as a life estate; a future possessory interest in real estate; that portion of land which is not included in a subdivision but which is owned by the subdivider.

**Rescission Rights:** The privilege which a prospective buyer may have to cancel a contract to purchase real property and to the return of any money or consideration given toward the purchase or lease of a subdivision interest within a specified time period. An example of rescission rights:

- Three days/five days for conversion projects. (See Civil Code §1134.)

**Restraint on Alienation:** A conveyance provision which restricts, or purports to restrict, the owner's right to transfer his interest in real property. (See also Unlawful Restraint or Alienation.)

**Restricted Common Area:** Those portions of the common area set aside for the exclusive use of (a) certain unit owner(s).

**Reversion:** The right to future possession or enjoyment by the person, or the person's heirs, creating the preceding estate; e.g., the owner's right to possession at the end of a lease term.

**Security Agreement:** An agreement between the secured party and the debtor which creates the security interest. (Uniform Commercial Code.)

**Septic Tank:** An underground tank in which sewage from the house is reduced to liquid by bacterial action and drained off; used in larger lot subdivisions where sewer systems are not available.

**Set Back Ordinance:** An ordinance requiring improvements built on property to be a specified distance from the property line, street, or curb.

**Special Assessment:** A legal charge against real estate by a public authority to pay the cost of public improvements, such as streets, lights, sidewalks, etc. Special assessments may also be levied by homeowners associations in common interest subdivisions for the purpose of paying unexpected costs or for capital improvements.

**Standard Subdivision:** A subdivision where there are no common or mutual rights of ownership among the owners of the lots or parcels.

**Stock Cooperative:** Corporation formed to hold the

title to real property where the members have a right of exclusive occupancy of a portion of the property and the right to transfer occupancy can only be made concurrently with the transfer of memberships. (See Section 1351, Civil Code.)

**Subdivision:** Any improved or unimproved real property divided into five or more lots, parcels, units, interests or memberships, for the purpose of sale, lease or financing. (See Section 11000 et seq., Business and Professions Code.)

**Subordination Agreement:** An agreement by the holder of an encumbrance against real property to permit that claim to take an inferior position to other (later) encumbrances against the property.

**Subsidy Agreement:** A contract between a subdivider and a homeowners association which provides that the subdivider will pay all or a part of the assessment obligation for the buyers in addition to his own obligation. (See Regulation 2792.10.)

**Substantially Complete Application (SCA):** All documents enumerated in Regulation 2792 (standard subdivision) or in Regulation 2792.1 (common interest subdivision).

**Take-Out Loan:** The loan arranged by the owner or builder-developer for a buyer. The construction loan made for construction of the improvements is usually paid off from the proceeds of this, more permanent, mortgage loan.

**Tentative Map:** The Subdivision Map Act requires subdividers to initially submit a tentative map of their tracts to the local planning commission for study. The approval, or disapproval, of the planning commission is noted on the maps. Thereafter, final maps of the tracts incorporating any changes requested by the planning commission are required to be filed with the planning commission.

**Title:** The "fee" position of lawful ownership and right to property; the "bundle of rights" possessed by an owner; a combination of all elements constituting proof of ownership.

**Township:** In the survey of public lands of the United States, a territorial subdivision six miles long, six miles wide and containing 36 sections, each one mile square, located between two range line and two township lines.

**Unit:** The elements of the condominium which are not owned in common with the owners of other units in the project. The boundaries of the unit are described in the condominium plan (See Civil Code Section 1351(f)).

***Unlawful Restraint on Alienation:*** A restriction on the owner's right to transfer his/her interest in real property which is inconsistent or incompatible with that interest.

***Utilities:*** Services such as water, gas, electricity, telephone, cable television, etc.

***Zoning:*** Act of city or county authorities specifying the type of use to which property may be put in specific areas.

