A good method for avoiding this problem is to require the sponsor to covenant in the assessment article to pay assessments on "x" interests ("x" = the interests to be covered by the Public Report) less interests sold to purchasers.

BUDGET REVIEW

The deputy must obtain a current budget certification from the developer. An independent budget review/acceptance from the DRE Budget Review Unit pursuant to Section 11240(g) and Regulation 2807.4 may also be necessary if the budget certification does not meet the standards set forth in Section 11240(f).

Pursuant to 11240(f), the Commissioner may accept a certification from the following without DRE budget review: (1) an independent public accountant, (2) a certified public accountant, who is an employee of the developer, or (3) at the discretion of the Commissioner, another qualified individual or entity. Form RE699D has been developed to grant approval of such qualified individual or entity to prepare and certify time-share budgets.

The following “Budget Review” information, in part, covers areas commonly reviewed by the Budget Review Unit (BRU). This information is not-intended to apply to budgets certified pursuant to Section 11240(f):

Category I: “Scope of the Offering”

The RE 668A, RE 668B, or RE 635C is reviewed to determine the following: whether the project is a single-site or multi-site, in-state or out-of-state (country), units covered, type of units, intervals or points, club concept, use versus fee, number of interests covered, mixed use, inventory, existing association, completion arrangements, third-party contractual obligations, subsidy arrangement, and management obligation. Finally, depending on whether it exists or is to be built, whether utilities are available or to be charged to the association.

Category II: “Site Inspection”

Ordinarily, if it is an in-state project, an on-site inspection is scheduled. The reviewer determines when and how the inspection is done. The inspection could be done before or after an in-house desk review is completed; however, in either case, the initial review should incorporate the on-site inspection findings.

An on-site inspection is performed in the same manner as a common interest subdivision, with the exception that the unit interiors are inspected, as well as shared use facilities. Particular attention is paid to projects that have a mixed use because of the potential of over burdening the association through cost sharing. For example, a converted hotel with dedicated units, when inspected, may indicate that hotel usage far exceeds the proportionate costs placed on the association and contractual obligation arising from the shared use favors the commercial area, as opposed to the association.

Category III: “Budget Analysis”

The initial budget review follows the same procedure as a regular common interest development project (RE 623). However, because the association’s obligation extends into the interior of the units, particular attention is placed on the project’s inventory (i.e. furnishing contracts, inventory-per-unit, interior construction, etc.). Further, shared use is reviewed (e.g. dedicated units versus others) and its contractual obligations. Also, many projects are multi-tiered and may involve three or more associations maintaining/sharing costs.

An existing project requires additional review procedures, although similar to all common interest reviews. For example, a financial review is conducted, which includes the association's financial status, adequacy of the reserves, and inventory (points or interests).

Under either situation, the proposed budget or the adopted budget is reviewed "item-by-item" to ensure that the charges are reasonable and verified by actual contractual obligations (or proposed contracts). In addition, the contracts are reviewed to ensure that the provisions that impact the association are reasonable, not subject to the sponsor's exclusive control, and in compliance with the appropriate regulations.

Category IV: "Contractual Obligation with the Declarations"

A review of any contractual obligation (e.g. management contract, deficit subsidy agreement, shared costs, lease arrangement, telephone agreements, reservation agreements, etc.) usually is done in tandem with the budget (RE 623) review. In addition, the Declaration sections that cover the association's obligations and the sponsor's obligations are reviewed to ensure that budget concerns are adequately addressed. This would include rental provisions with association reimbursements, timeframe for rental use, and compliance with the appropriate regulations.

Category V: "Security Arrangements"

There would be several areas that may require some form of financial security arrangement, all of which are reviewed by the Budget Review Unit. For example, completion arrangements (may require a site inspection); deficit subsidy agreement (done with the budget review); cash-down subsidy arrangement (done with the budgets); shared cost agreement (done with the budget); fiduciary obligations and any other type of agreement that the sponsor promises to perform.

Recap and Problem Watch List

In general, due to the nature of a time-share project (i.e. highly technical, extremely numbers orientated, and the fact that the sponsor contracts to manage), it usually requires a case-by-case analysis. For example, points conversion and allocation of assessments-to-points, etc. are additional areas of concern. Granted, as indicated above, the approach and procedure are not unlike a common interest subdivision; however, it is the "bundle of obligations" that may impact the association that a reviewer should be most concerned with when reviewing a time-share project.

The following is a watch list of issues relative to a time-share project of which the Budget Review Unit should be aware. Most items simply warrant special note language in the public report:

(1) Designating units as "live-in quarters" or "sales office" to benefit the marketing program without implementing cost sharing agreement.

(2) Failure to provide financial accountability.

(3) Failure to conduct foreclosure sales pursuant to the Declarations (notice and open to the public).

(4) Failure to provide reimbursement to the association pursuant to the foreclosure sale (delinquent assessments and costs).

(5) Failure to provide the defaulted interest's owner with the balance of the foreclosure sales proceeds (above and beyond association amounts).

(6) Failure to provide complete financials. (expenditure, income, year-to-date and profit and loss statements).