

- **Plot Plan - A large scale, legible plot plan (site plan) showing all improvements, including location of recreational amenities and boundaries of future phases, if any. In certain cases, the map itself may serve as a plot plan.**
- **Floor Plan - This is applicable to hotels or motels and should reflect the dimensions for units. Include room number and other pertinent information which appropriately describe the unit layout.**
- **Vicinity Map - The developer should always submit a large scale, legible vicinity map showing the location of approaches to the subdivision and identifying "landmarks" to help locate the subdivision.**

DEVELOPER MAINTENANCE AND ASSESSMENT EXPENSE OBLIGATION

Reference: Security for Developer's Obligations as an Owner of Time-Share Interests. (Section 11241)

Bond, Letter of Credit, or Cash Deposit

The security shall not exceed the lesser of 50 percent of the anticipated cost of operation and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to the Time-Share Act of 2004.

COMMON AREA – COMPLETION AND CONVEYANCE

Completion and conveyance of the common areas is required by Business and Professions Code Sections 11230(completion) and 11254 (conveyance). Arrangements regarding these two elements must be completed prior to issuance of a Final Public Report. Common area completion and conveyance are separate concepts which need not occur simultaneously and should be processed as distinct requirements by the Deputy. Common areas are either to be owned by the purchasers as tenants in common or in fee by a legal entity such as a homeowners' association or corporation or by a combination of the two ownership forms. The ownership of the common areas will have some effect upon the manner in which the principles of completion and conveyance are processed. Personal property, such as furnishings of the accommodations, should be considered part of the common area improvements when considering completion arrangements. Any provision having to do with assuring completion of common area improvements should also expressly cover financial arrangements under Section 11230 for furnishing of the accommodations and conveying the accommodations to the time-share owners association (see Conveyance of Personal Property on Page 23).

Improvements Completed before Public Reports are Issued

If the applicant presents evidence that all improvements have been completed or will be completed before the Public Report is issued, we need only the assurance that improvements will be conveyed to purchasers or the homeowners' association lien-free. This can be accomplished by insisting upon escrow instructions that prohibit the impound depository from releasing any purchaser's funds from the impound until the time-share interest has been conveyed lien-free to the purchaser or that alternative arrangements for lien-free conveyance of the common area are made in compliance with Section 11244 of the Code.

If the developer completes all improvements before a public report is issued, provides evidence of completion to DRE, and there are no blanket encumbrances, then purchase monies may be disbursed to the developer following the seven-day cancellation period (Section 11243(b) of the Code).

Escrow Instructions Clause – Arrangements for a California Time-share Plan

Escrow instructions containing a clause substantially along the following lines should suffice for this purpose:

"All funds deposited by the purchaser of a time-share interest shall be held in escrow until the project is completed and title free and clear of any blanket encumbrance has been conveyed to the purchaser."

In addition to the above described conditions, escrow shall not close until:

"The expiration of the statutory period for the recordation of all mechanic's lien claims following the recordation of a valid Notice of Completion as defined in Section 3093 of the Civil Code."

Mechanic Lien Endorsement – Title Policy

If the developer has provided that each purchaser of a time-share interest shall receive a policy of title insurance with an endorsement against any possible future liens, a purchaser's funds may be released from impound – without regard to the time for filing of mechanic's lien claims – when the developer is able to convey title to the time-share interest free and clear of any blanket encumbrance of record.

The above procedure constitutes compliance under Sections 11230(b) and 11243(b) either if all development and improvement work will be completed prior to issuance of the Final Public Report or prior to closing of individual sale escrows.

Completed Improvements in an Out-of-State Project

Often, out-of-state jurisdictions do not issue Notices of Completion or any comparable document. Lacking Notices of Completion, evidence of completion may be had by Certificates of Occupancy, statements from licensed architects, a Certificates of Substantial Completion or an inspection by the State Fire Marshal designee or an equivalent public inspection safety inspection agency in the applicable jurisdiction. Photographs are not to be construed as satisfactory evidence of completion although they may be considered as supporting the documentation mentioned above. It may require the Deputy with the assistance of the Managing Deputy Commissioner III and Legal counsel to review applicable subdivision laws from the situs state.

Improvements not Completed Before a Public Report is Issued

If all improvements comprising the residential-structure common areas as well as the improvements to the separate or outside common areas, will not be completed prior to the issuance of a Public Report, the developer must comply with Sections 11230 and 11243(b) of the Business and Professions Code.

Compliance with Section 11230(a)

If the developer elects (a), the bond or other financial arrangement must be in an amount sufficient to cover the completion of the residential-structure common area and the outside common areas within the subdivision for which the Public Report is to be issued. Personal property should also be considered.

Compliance with Section 11230(b)

If the developer elects to assure completion through compliance with (b), appropriate instructions to the impound depository shall be required. See the *Escrow Instructions Clauses* section above for the appropriate escrow instruction language. That language may not be functional for some out-of-state projects, so alternative language will need to be evaluated for purposes of compliance with the statute.

Compliance with Section 11230(d)

DRE may approve an alternative plan for completion such as a procedure akin to the “RE 621” procedure that gives the developer the flexibility of switching from escrow instructions (which prevent the closing of escrows until the total project has been completed and is free of all liens), to a bond under Section 11230(a) to assure completion without obtaining an amended public report. After the final public report is issued, the RE 621 provides that escrows cannot close until the common area improvements are completed free and clear of encumbrances or until a bond, along with a planned construction statement and a RE 621A are deposited in escrow. The bond and attendant documents should guarantee completion of the common area and facilities that remain incomplete as of the date of submittal of the RE 621A security and the planned construction statement to DRE. If the time-share property is located outside California, the RE 621 may need to be tailored to accommodate the laws of the situs state. The Deputy should review the document to ascertain that the alternative document to the RE 621 is adequate.

Owners’ Association or Trustee

In some cases, the developer may be able to convey the common area and facilities to the owners’ association or, when required, a trustee, free of any blanket encumbrances prior to the issuance of the Public Report. When title to common areas and facilities is held by an owners’ association or trustee, no problems are encountered as the number of owners of time-share interests’ increases or decreases. This consideration is particularly important with respect to the phased development of time-share plans.

In these cases, care should be taken to eliminate the possibility that mechanic’s lien claims will be filed against common areas after conveyance to the owners’ association or trustee. This can be accomplished by:

- (1) delaying issuance of the Public Report until expiration of the statutory period for filing of lien claims after the recordation of a Notice of Completion (60-days); or
- (2) the issuance of a policy of title insurance to the owners’ association or trustee with an endorsement against unrecorded liens.

If the time-share plan is not in California, different arrangements may be necessary to accomplish this purpose.

Purchasers as Tenants in Common

The developer may convey some or all of the common area to purchasers as tenants in common rather than to an owners’ association. If the unit being time-shared is a condominium, it is necessary to convey at least some of the common area to purchasers as tenants in common, rather than to an owners’ association, in order to qualify as a statutory California condominium under the definition of Section 783 of the Civil Code or, most likely, in order to qualify a time-share condominium located in another state as a statutory condominium under that state’s condominium statutes. It may be necessary to review the situs state’s condominium statutes if necessary.

Variations

There is nothing, however, that demands that common areas and facilities be conveyed to the purchasers as tenants in common or deeded to a homeowners’ association. In fact, either method or a combination of methods may be used.