Error by Managing Agent and/or Monetary Compensation to Damaged Owner. [Section 11251(c)(7)]

If, due to the error or negligence of the association or the managing agent, a dwelling unit cannot be made available for the period of use to which an owner is entitled by schedule or under a reservation system, the association is obligated to provide such owner with compensating use periods or money. This duty should be set forth in the Declaration.

FIDELITY BOND – SECTION 11267(a)(9)

The time-share instruments shall require the employment of a managing entity for the time-share plan or component site pursuant to a written management agreement that shall include the following provisions:

> A requirement that the managing entity provide a policy for fidelity insurance or bond for the activities of the managing entity, payable to the association, which shall be in an amount no less than the sum of the largest amount of funds expected to be held or controlled by the managing entity at any time during the year, pursuant to the budget. The commissioner may provide a reduction in the insurance policy or bond amounts required by this paragraph.

MIXED COMMERCIAL AND TIME-SHARE PROJECT

Dwelling units to be dedicated to time-sharing use may be situated within a facility which includes dwelling units which will be utilized as rentals and/or a restaurant, bar, stores or other commercial establishments.

When the project is a time-share estate offering in which the project includes commercial establishments, it is necessary to determine whether those establishments will become conveyed to time-share interest owners or the association. The developer may attempt to retain ownership of these businesses under the theory that ownership of such profit-making enterprises by a non-profit incorporated association would constitute a security requiring registration with the Department of Corporations. The fact that a time-share estate purchaser may derive a pro rata monetary benefit from rental payments by the lessee of a commercial adjunct to the time-share project probably does not create a security out of the time-share estate being sold. Unless an investment contract is offered in the sale, it is doubtful that ownership of a business by an association of interest owners would constitute a security if the income to the association is incidental.

If qualification of the project with the Department of Corporations or the SEC is necessary, a Public Report must not be issued without evidence of a prospectus from the Department of Corporations/SEC, or a written opinion of counsel or a written statement from the Department of Corporations that the project does not require registration. If the project is still in the planning stages, you should implore the sponsor to segregate the commercial facilities and the property containing the time-share dwelling units through a lot split or other means.

If the developer is unable to facilitate such a lot split, and the time-share interest owners (or the HOA) will have a proprietary interest in the commercial facility, it would normally be considered reasonable for the association to operate the business if the profits are nominal as there would be no securities issued.

If however, the developer presents evidence from the Department of Corporations or the SEC stating that this type of an offering would be considered a security or if the non-profit status of the association would be jeopardized in operating such an enterprise, alternative arrangements for operation of the business should be made. For example, provisions may be made within the management documents to