

Acceptable Trustees

Refer to Section 11255 and Regulation 2807.3 for acceptable trustees.

SUBORDINATION

If a time-share interest is subject to a blanket encumbrance, the developer may not release purchase monies escrowed under Code Section 11243 until, in compliance with Code Section 11244(a), the timeshare interest, including a time-share interest in any component sites of a nonspecific time-share interest multisite timeshare plan, or any other property or rights to property appurtenant to the time-share interest, including amenities that are represented as part of the time-share plan are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights.

If the property in which the time-share interest is appurtenant to, or property rights, or any amenities represented as being part of the time-share plan, are subject to a blanket encumbrance, purchase monies may be released from escrow if , in accordance with Code Section 11244(a)(2), subordination is recorded that provides that the lien-holder's right, lien or encumbrance shall not adversely affect, and shall be subordinate to the time-share interests.

Alternatively, purchase monies may be released from escrow under Code Section 11244(a)(3), if the developer, owner of the underlying fee, or any person having an interest in a blanket lien or encumbrance against the time-share interest or appurtenant property or property rights, including represented amenities, has transferred the accommodations, amenities or all use rights to the amenities to a nonprofit organization or association to be held for the use and benefit of time-share interest owners, to act as fiduciary to the purchasers. The developer must either transfer control of the entity to the owners or there must be provisions prohibiting the developer from exercising its voting rights in the entity with respect to the property or amenities. Prior to transfer, subordination must be made as required in Code Section 11244(a)(2).

Alternative arrangements for satisfying the provisions of Code Section 11244 may be evaluated by the Deputy to determine if they adequately protect the rights of purchasers.

If the developer has posted a purchase money bond pursuant to Code Section 11243(c), the developer may access purchase monies notwithstanding the provisions of Code Section 11244 as provided in Code Section 11244(b).

If releases from the blanket encumbrance(s) and/or lender subordination are not available, Section 11255(d) provides that each of the accommodations in a time-share estate project that is subject to a blanket encumbrance be conveyed to a trustee acceptable to the Department prior to the closing of the escrow for the first sale of a time-share estate which entitles the purchaser to occupy the unit in question.

LOCAL ORDINANCES

Some local governmental authorities have enacted ordinances that impose restrictions and conditions for compliance prior to permitting the dedication of accommodations to time-sharing.