

Separate Book and Records – Commercial

There must be provisions requiring separate books and records for the commercial operation.

Reciprocal Easements

The Declaration must include provisions for reciprocal easements between time-share units and commercial facilities if the nature of the project deems cross-use rights necessary.

It is important that the Deputy observe, if the time-share plan property is an out-of-state property, the provisions of Section 11251(b), which provides that if there is a conflict with the requirements of the requirements set forth in Section 11251 and the provisions of the laws of the situs state, the laws of the situs state shall control. That means that DRE cannot compel the developer to change the provisions of the Declaration in this instance.

CONTRACTS AND LIQUIDATED DAMAGES

Contracts

Section 11256 defines specific terms required to be included in the contracts used by a developer in the sale of time-share interests, including prompt return of purchase money to a non-defaulting buyer, and allowable purchase money disbursements.

Contracts for the sale of time-share plan interests that contain provisions for liquidated damages due to default by purchaser must also contain provisions that comply with Section 11256.

Anti-Deficiency Judgment

The Department has taken the position that the anti-deficiency judgment provisions of the Code of Civil Procedure, Section 580(b), are applicable to sales of time-share interests. Each such contract or financing instrument should contain a statement where the subdivider declares he will not seek a deficiency judgment in the event of a default by a purchaser.

RESCISSION RIGHTS

In accordance with the provisions of Section 11238 of the Business and Professions Code, a purchaser of a time-share interest, incidental benefit or any right under an exchange program has the right to cancel the purchase contract if person who has made an offer to purchase a time-share interest shall have the right to rescind any contract resulting from the acceptance of the offer within seven calendar days after the receipt of the public report or the execution of the purchase contract, whichever is later.

Rescission Rights Notice

To inform a person of his or her right to cancellation, the developer shall attach to the face page of every copy of a Subdivision Public Report given to a prospective purchaser the notice as set forth in Code Section 11239. In addition, a "special note" describing these rescission rights is to be shown on every Public Report where the subdivision is a time-share plan. See form RE 615 for the language which is to constitute the "special note."

The contract for the purchase of a time-share interest must also include immediately prior to the space reserved for the purchaser's signature, a disclosure, in conspicuous type, a notice of cancellation as prescribed in Code Section 11238(d)(7).