

Desk Clerk Expense

The budgeted management expense may include the services of a desk clerk, who has the duty to check in and out time-share owners. Given that the non-completed or non-renovated units are not subject to occupancy, the desk clerk's salary should be allocable for payment solely to time-share purchasers, and not to the developer. If the developer is not prohibited from renting non-completed or non-renovated units, the developer should not be exempt from sharing in the cost of the desk clerk's salary.

Developer Allocated Expense

Some items of expense are more reasonably allocated to the developer for payment. For example, if the developer's renovation or building program causes the common areas to require more frequent recurring maintenance and clean up, the vacant unit budget should allocate the maintenance person's salary disproportionately, with the developer paying more of this expense per interest owned than does a purchaser.

Other items of fixed expenses, such as real property taxes, reasonably would be shared equally by the developer and purchaser per interest.

The final result of summarizing all such expenses as allocable to purchasers or the developer or both will probably be a lesser cost per interest owned to the developer than to the purchaser. Since the developer will realize that these costs accurately reflect its true carrying costs of the units if they were not part of the time-share project, it will be more likely to include all of the contemplated units in the project from the beginning. The temptation to phase will be reduced, thus avoiding mechanic's lien risks inherent in phasing a one-lot project undergoing construction or renovation; and the association will obtain more control over the project and will be better capitalized.

SUBSIDIZATION OF ASSOCIATION EXPENSES BY SPONSOR - SECTIONS 11241 AND 11242

Buy Down Subsidy Agreement (Code Section 11242)

Under a traditional subsidy agreement a developer may elect to decrease, for a specific time, the purchasers' annual assessments by subsidizing or paying to the association in money all or part of the expenses of the association.

Financial arrangements to assure the ability of the developer to perform will always be required pursuant to Business and Professions Code Section 11242. The bond or other assurance should be accompanied by escrow instructions to the bond/assurance holder. The instructions should provide that the security device should not be released or exonerated until escrow holder receives notice from the association that the developer has faithfully performed under the subsidization contract (Code Section 11242.1).

Subsidization Contract

The subsidization contract should be carefully reviewed. It should provide for the monthly payment of the buy down subsidy by the developer to the association. The subsidy sum should be clearly set forth. If the developer intends to render services or supply goods to the association, the contract should specify in detail the methods to be used in valuing the goods and services (Code Section 11242).

If the developer or an affiliated entity is actually supplying goods or services to the association pursuant to the contract, the developer still must pay the agreed value of these goods/services to the association on a monthly basis even though the association will then write the developer a check for such