

THE CALIFORNIA REGULATORY PROCESS FOR TIME-SHARE OFFERINGS

Types of Time-share Plans Regulated by the DRE

The California Department of Real Estate (DRE) regulates the initial setup and sale of all California and out-of-state time-share plans, that are offered for sale in California.

Definitions - Time-Share Plan, Estate, Use and Time-Share Interests

Definitions of the different types of time-share plans are found in the Real Estate Law as follows:

- Time-share plan defined – Business and Professions Code Section 11212(z)
- Time-share estate defined – Business and Professions Code Section 11212(x) (1)
- Time-share use defined – Business and Professions Code Section 11212(x)(2)
- Single site time-share plan defined – Business and Professions Code Section 11212(z)(1)
- Multisite time-share plan defined – Business and Professions Code Section 11212(z)(2)
- Specific time-share interest defined – Business and Professions Code Section 11212(z)(2)(A)
- Nonspecific time-share plan interest defined – Business and Professions Code Section 11212(z)(2)(B)

Department Responsibility

The Time-share Act of 2004 charges the Real Estate Commissioner with the responsibility of assuring that purchasers of time-shares interests receive everything for which they bargained. A Time-share Plan Conditional or Final Public Report must be issued and a copy given to each purchaser prior to the execution of a sales contract for a sale of a time-share. A copy of this report must also be given to any member of the public who requests one. The Time-share Final Plan Public Report is issued only after the developers comply with the provisions of all the applicable laws and regulations.

Exemption From Corporation Code 25100(f) Defined

Pursuant to Business and Professions Code Section 11218, a time-share interest in a time-share plan that satisfies all the requirements of the Time-share Act of 2004 shall be deemed an interest in subdivided lands or a subdivision for the purposes of subdivision (f) of Section 25100 of the Corporations Code. Their sale may be exempt from qualification unless the offer is coupled with an investment contract, including such features as a mandatory rental pool. This means that in practically all time-share sales, the transactions can be handled by real estate licensees. No securities license is usually necessary. However, if investment contracts are being sold in connection with a time-share, a securities license may also be necessary. Developers and their marketers should check with the Corporations Commissioner for clarification.

History – Time-Share

The Subdivided Lands Act was amended effective January 1, 1981, to include time-share estates and time-share uses; however, the Department had jurisdiction prior to that date over time-share estates. In fact, the Department had issued Public Reports on 26 time-share projects before 1981. The first time-share Public Report was issued on *The Brockway Springs of Tahoe Condominiums* when the Public Report was amended on June 30, 1972, to accommodate 1/11 interests in the remaining condominiums.

Time-share use offerings in hotels, motels and apartment houses were exempt from our jurisdiction before January 1, 1981. After the law was changed to give the Department jurisdiction over these offerings, it was also modified to allow a “compliance grace period.” This meant that if the previously exempt projects made timely filings with the Department of Real Estate for Public Reports, they could continue their sales programs until Final Public Reports could be issued. This also mandated that the Department had to allow sales to continue unless we were able to prove that continued sales would result in a dangerous situation for the time-share purchasers. There were 26 “compliance grace period”

applications. Some obtained Public Reports and others have voluntarily suspended sales, have abandoned their filings or have had their application denied by the Department.

Since January 2005, time-shares have not been regulated under the Subdivided Lands Law. Rather, a separate chapter of the Business and Professions Code, the Vacation Ownership and Time-Share Act of 2004 (Business and Professions Code Sections 11210 et seq.), was created for the regulation of the time-shares. This had several implications that change the way DRE processes applications for time-share public reports that is much different from how public reports subject to the Subdivided Lands Law are processed. Some key differences:

- The developer is entitled to purchase monies following the seven-day cancellation period if the time-share interest is free and clear of blanket encumbrances and the project is completed or the developer has posted a bond to assure completion (Sections 11243 and 11244 of the Business & Professions Code).
- If a CPA employed by the developer or an independent CPA certifies the time-share association budget as prescribed by Section 11240(f), the DRE will not review the budget. All time-share budgets must be certified, but the budget may be examined by DRE to confirm the accuracy of the certification if the budget is not certified by an independent CPA, a CPA employed by the developer or an individual or entity acceptable to the Commissioner to conduct the review.
- There are no reasonableness arrangements applicable to management documents for time-share plans. Sections 11265 through 11275 set forth the provisions to be included in management documents. For the most part, there is no room for discretion from those provisions of the statutes. There are no regulatory arrangements for reasonableness comparable to Sections 11018.5(d) or (e) of the Business & Professions Code.
- The time-share instruments shall be in compliance with applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between the affirmative standards of the laws of the situs state and the requirements set forth in the Time-share Act, the law of the situs state shall control.
- Time-share plans are exempt from certain portions of the Common Interest Development Act, commencing with Section 1350 of the Civil Code as specified in Code Sections 11211.7(a) and (b) of the Time-share Act of 2004
- Time-share purchase contracts must include information as prescribed by Code Section 11238(d) of the Time-share Act of 2004.
- The only statutory time frame for processing final public report applications is the requirement that DRE has 60 days from the date of receipt of an application for a public report to provide a list of deficiencies to the developer.
- Preliminary, conditional and final public reports may be issued for both in-state and out-of-state time-share plans.
- It is mandated by Section 11234 of the Business & Professions Code that the developer prepare the public report and that the public report include the specific disclosures as required by that statute. DRE does not prepare time-share public reports. Developers and SRPs should be directed