

**CALIFORNIA CODE OF REGULATIONS
TITLE 10. INVESTMENT
CHAPTER 6. REAL ESTATE COMMISSIONER
ARTICLE 12. SUBDIVISIONS**

§2790 APPLICATION FOR PUBLIC REPORT

An application for a public report whether it includes a completed questionnaire or consists only of a notice of intention shall be made on a form prescribed by the Department and shall be submitted to the Department with the applicable filing fee. The application shall be executed by or on behalf of the person to whom the public report is to be issued. If executed within California, the information in the application and the documents submitted therewith shall be certified to be true under penalty of perjury or verified before a notary public or other person qualified to administer oaths. If executed outside of California, the information in the application and accompanying documents shall be verified before a person qualified to administer oaths within the jurisdiction where executed, or certified under penalty of perjury in accordance with the provisions of subdivision (b) of Section 2015.5 of the Code of Civil Procedure.

§2790.1.5 FILING FEES

(a) The subdivision filing fees for an application for a public report shall be the following:

- (1)** A notice of intention without a completed questionnaire: One hundred fifty dollars (\$150).
- (2)** An original public report for subdivision interests described in Section 11004.5: One thousand seven hundred dollars (\$1,700) plus ten dollars (\$10) for each subdivision interest to be offered.
- (3)** An original public report for subdivision interests other than those described in Section 11004.5: Six hundred dollars (\$600) plus ten dollars (\$10) for each subdivision interest to be offered.
- (4)** A conditional public report for subdivision interests described

in Section 11004.5: Five hundred dollars (\$500).

(5) A conditional public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).

(6) A preliminary public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500).

(7) A preliminary public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500).

(8) A renewal public report for subdivision interests described in Section 11004.5: Six hundred dollars (\$600).

(9) A renewal public report for subdivision interests other than those described in Section 11004.5: Six hundred dollars (\$600).

(10) An amended public report for subdivision interests described in Section 11004.5: Five hundred dollars (\$500) plus ten dollars (\$10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(11) An amended public report to offer subdivision interests other than those described in Section 11004.5: Five hundred dollars (\$500) plus ten dollars (\$10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(b) The maximum fee under Section 11011(b)(2) and (b)(10) shall be \$7,600 regardless of the number of interests authorized to be offered for sale or lease.

(c) The maximum fee under Section 11011(b)(3) and (b)(11) shall be \$4,100 regardless of the number of interests authorized to be offered for sale or lease.

(d) The filing fee for an amended public report where the amendment consists only of a recurring and non-substantive change including, but not limited to a change in the name of the subdivider shall be \$125 and the filing fee for each additional amended public report consisting only of the same recurring and non-substantive change including, but not limited to a change in the name of the subdivider submitted by that subdivider at the same time shall be \$60.

The subsection does not apply where there is a change in the ownership of

the subdivision along with a change in the name of the subdivider.

§2790.2 CONDITIONAL PUBLIC REPORTS

(a) An applicant for an original, renewed or amended Final Public Report for a subdivision of the type not described in Section 11000.1 of the Code may also apply for a Conditional Public Report for the subdivision.

(b) An applicant for a Conditional Public Report shall submit the following information and documents with the applicable filing fee:

(1) A copy of the statement set forth in Section 11018.12(f) which the applicant proposes to use.

(2) An exemplar sales agreement or lease to be used in any transaction conducted under authority of the Conditional Public Report. Such sales agreement or lease shall include the following provisions:

(A) As a condition of the sale or lease that no escrow will close, funds will not be released from escrow and the interest contracted for will not be conveyed until a current Final Public Report for the subdivision is furnished to the purchaser.

(B) The return of the entire sum of money paid or advanced by the purchaser if a Final Public Report for the subdivision has not been issued within six months of the date of issuance of the Conditional Public Report or the purchaser or lessee is dissatisfied with the Final Public Report because of a change pursuant to Section 11012.

(3) An exemplar of escrow instructions to be used in any transaction conducted under authority of the Conditional Public Report which includes at least the following:

(A) The name and address of the escrow depository.

(B) A description of the nature of the transaction.

(C) Provisions ensuring compliance with Section 11013.2(a) or 11013.4(a) of the Code.

(D) Provisions ensuring that no escrow will close, funds will not be released from escrow and the interest contracted for will not be conveyed until a current Final Public Report for the subdivision is furnished to the purchaser or lessee.

(E) Provisions for the return of money as prescribed in subsection (2)(B) above.

(4) For a subdivision described in Section 11004.5 of the Code, in addition to the requirements set forth above:

(A) Information and documents demonstrating that reasonable arrangements have been made to assure completion of the subdivision and all offsite improvements included in the offering.

(B) Information and documents demonstrating that the applicant has complied with Section 11018.5(a)(2) of the Code for the subdivision.

(c) A Conditional Public Report will not be issued unless the applicant has met the requirements set forth in Section 11018.12 of the Code.

(d) Written notice of the decision to deny issuance of a Conditional Public Report will be mailed to the applicant, pursuant to Section 11018.12(c) of the Code, within five business days after the Commissioner decides not to issue a Conditional Public Report.

(e) The term of a Conditional Public Report will not exceed six months, but the Conditional Public Report may be renewed for one additional six-month period if the Commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

(f) The Commissioner may issue a conditional permit for a subdivision as defined in Section 10250.1 in accordance with the provisions of subsections (a) through (e), above.

§2790.4 QUESTIONNAIRE WAIVER - RURAL HOUSING SERVICE

The submission of a completed questionnaire shall be waived pursuant to subdivision (c) of Section 11010 of the Code for a proposed subdivision offering that satisfies all of the following criteria:

(a) Except as provided in (d) below, the division of the land is not a subdivision as defined in Sections 11000.1, or 11004.5 of the Code.

(b) The financing of the purchase or lease of lots and parcels will be provided exclusively by the Rural Housing Service pursuant to Section 502 of the Housing Act of 1949 (42 U.S.C. Section 1472) as amended.

(c) Lots and parcels will be developed and improved with residential structures exclusively through technical assistance grants to nonprofit agencies pursuant to Section 523 of the Housing Act of 1949 (42 U.S.C. Section 1490(c)) as amended.

(d) If the proposed offering is a planned development subdivision within the meaning of subdivision (a) of Section 11004.5 of the Code, the submission of a completed questionnaire shall be waived if the applicant, pursuant to subdivision (b)(14) of Section 11010 of the Code, submits the following for the subdivision:

(1) Governing instruments for the subdivision and the association of owners.

(2) Detailed budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.

(3) Evidence that common areas and facilities have been or will be conveyed free of liens and encumbrances, to the association of owners or to the owners as tenants in common.

§2790.5 PHASED SENIOR CITIZEN HOUSING DEVELOPMENTS

(a) An applicant for a public report may qualify a proposed project as a senior citizen housing development, even though there are an insufficient number of dwelling units in the initial phase of the project to satisfy the statutory definition of the term as set forth in Section 51.3 of the Civil Code, by complying with the provisions of Section 11010.05 of the Code.

(b) The submission of documentation of the following items shall be deemed to have satisfied the requirements of subdivision (c) of Section 11010.05 of the Code.

(1) A preliminary title report or policy of title insurance showing that the applicant holds fee title, a long-term leasehold interest, or other evidence of controlling interest in the property to be annexed to the first phase, and any subsequent phase, of the subdivision, such as an irrevocable option, as being vested in the applicant.

(2) A covenant, recorded in the office of the appropriate county recorder, limiting use on the land proposed to be annexed to a senior citizen housing development.

(3) A certification from the appropriate local authority that the land proposed to be annexed is sufficient in size to construct the number of additional units necessary to qualify the project as a senior citizen housing development as that term is defined in Section 51.3(b)(4) of the Civil Code.

§2790.6 SEPARATE REVIEW OF DECLARATIONS

The filing fee to review a declaration as described in Section 11010.10 of the Code shall be the maximum fee set forth in Section 11011 of the Code.

§2790.7 GENERAL HOUSING INFORMATION - FOR RESEARCH AND STATISTICAL PURPOSES

As a part of any application required by Section 11010 of the Code (application), each applicant for a final subdivision public report shall, prior to the issuance of the final subdivision public report, complete and submit general housing information to be used solely for statistical and research purposes. Evidence of submission of the information shall be included in the application file, but the information is not a part of the application or its file. A copy of the information will not be included or retained in the application or its file. The information will not be used in any decision controlling the issuance of any public report. Once submitted, the data provided will be incorporated into the statistical database, and the original information provided will be permanently deleted. Unless otherwise established by an amendment to this regulation, the applicant must provide only the following information: the city and/or county in which the subdivision is located; the zip code; the total

acreage; the estimated average number of lots, units or parcels proposed for each phase; whether lots, units or parcels will be offered vacant or with completed residential structures; the anticipated date of the first close of escrow; the estimated average lot/parcel size; the estimated average sale price of the lots, units or parcels; the number of bedrooms, the estimated average square footage and parking arrangements for the residential structures; the prior use of the property (improved or unimproved); and, if the applicant originally entitled the project, the number of lots, units or parcels requested of local government and the total number of lots, units or parcels approved by local government.

§2790.8 EXISTING SUBDIVISION INTEREST DISCLOSURE

- (a)** An applicant for a public report for the sale or lease of an existing subdivision interest shall include an Existing Subdivision Interest Disclosure Statement with the public report application.
- (b)** The Existing Subdivision Interest Disclosure Statement shall be completed and provided by the Subdivider/Seller (Seller) to each buyer as soon as practicable before the transfer of title.
- (c)** If any Existing Subdivision Interest Disclosure required by this Section is delivered after the execution of an offer to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate the purchase agreement by delivery of a written notice of termination to the Seller.
- (d)** The Seller is obligated to disclose information in the Existing Subdivision Interest Disclosure based on Seller's actual knowledge, after making a reasonable effort to obtain such information, whether derived from Seller's own investigation and inspection of the Existing Subdivision Interest or from written reports prepared by third parties retained by Seller to perform inspections.
- (e)** The Seller shall amend any information in an Existing Subdivision Interest Disclosure after the Disclosure is provided to the buyer, if the information in the Disclosure is or becomes materially inaccurate and the Seller has actual knowledge of the inaccuracy. The Seller is otherwise not required to amend the Disclosure once it has been provided to the Buyer. A buyer shall have the

right to terminate a purchase agreement based on an amended Disclosure if the amended Disclosure shows that the original Disclosure was inaccurate or has become inaccurate in any material respect. Buyer shall have three days after delivery in person or five days after delivery by deposit in the mail of the amended Disclosure to terminate the purchase agreement by delivery of a written notice of termination to the Seller.

(f) The term "Existing Subdivision Interest" as used in this section is a subdivision interest described in Section 11004.5 of the Code where the dwelling comprising the subdivision interest has been completed (completion is normally the date on which a Notice of Completion has been recorded evidencing completion of the improvement) or occupied (the occupancy of the improvements is normally the date shown by the issuance of a Certificate of Occupancy or equivalent issued by the local jurisdiction), whichever occurs first, three (3) years or more before the date that the public report application is filed with the Department.

§2791 PURCHASE MONEY DISBURSEMENTS

(a) The Contract proposed to be used by an applicant for a public report (Subdivider) for the sale or lease of subdivision interests shall provide that if the escrow for sale or lease of a subdivision interest does not close on or before the date set forth in the contract, or a later closing date mutually agreed to by subdivider and the prospective buyer or lessee (Buyer), within 15 days after the closing date set forth in the contract or an extended closing date mutually agreed to by Subdivider and Buyer, Subdivider shall, except as provided in subdivision (c), order all of the money remitted by Buyer under the terms of the Contract for acquisition of the subdivision interest (Purchase Money) to be refunded to Buyer.

(b) The Contract may provide for disbursements or charges to be made against Purchase Money for payments to third parties for credit reports, escrow services, preliminary title reports, appraisals and loan processing services by such parties provided that the Contract includes:

- (1)** specific enumeration of all of the disbursements or charges that may be made against Purchase Money, and
- (2)** the Subdivider's estimate of the total amount of such disbursements and charges.

(c)(1) Any contractual provision which calls for disbursement or a charge against Purchase Money based upon Buyer's alleged failure to complete the purchase of the subdivision interest must conform with Civil Code Sections 1675 (including either subsection (c) or subsection (d) thereof), 1676, 1677 and 1678.

(2) Except for a disbursement made following substantial compliance with the procedures set forth in paragraph (4) below or pursuant to a written agreement of the parties which either cancels the Contract or is executed after the final closing date specified by the parties, a disbursement or charge against Purchase Money as liquidated damages may be done only pursuant to a determination by a court of law, or by an arbitrator if the parties have so provided by contract, that Subdivider is entitled to a disbursement or charge against Purchase Money as liquidated damages.

(3) A contractual provision for a determination by arbitration that Subdivider is entitled to a disbursement or charge against Purchase Money as liquidated damages shall require that the arbitration be conducted in accordance with procedures that are equivalent in substance to the commercial arbitration rules of the American Arbitration Association, that any arbitration include every cause of action that has arisen between Buyer and Subdivider under the Contract, and that the Subdivider remit the fee to initiate arbitration with the costs of the arbitration ultimately to be borne as determined by the arbitrator.

(4) The contract of sale may include a procedure under which Purchase Money may be disbursed by the escrow

holder to the Subdivider as liquidated damages upon Buyer's failure to timely give the escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages. This procedure shall contain at least the following elements:

(A) The Subdivider shall give written notice, in the manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action, to escrow holder and to Buyer that Buyer is in default under the Contract and that Subdivider is demanding that escrow holder remit \$_____ from the Purchase Money to Subdivider as liquidated damages unless, within 20 days, Buyer gives escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages.

(B) Buyer shall have a period of 20 days from the date of receipt of the Subdivider's 20-day notice and demand in which to give escrow holder Buyer's written objection to disbursement of Purchase Money as liquidated damages.

(5) The Contract may not make Buyer's failure to timely give the escrow holder the aforesaid written objection a waiver of any cause of action, other than a waiver of the right to specific performance of the contract, that the Buyer may have against the Subdivider under the Contract unless the waiver is conditioned upon service of the Subdivider's 20-day notice and demand in a manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action.

(6) If the Subdivider has had the use of Purchase Money pending consummation of the sale or lease transaction under authorization by the Department pursuant to subdivision (c) or (d) of Section 11013.2 of the Code or subdivision (b) or (c) of Section 11013.4 of the Code, Subdivider shall immediately upon alleging the default of Buyer, transmit to the escrow holder,

funds equal to all of the Purchase Money paid by Buyer.

§2791.1 PURCHASE MONEY IMPOUNDS

(a) The amount of the money paid or advanced by a prospective buyer or lessee toward the purchase or lease of a subdivision interest (Purchase Money) that must be deposited and retained in an escrow depository or trust account pursuant to Section 11013.2(a) or 11013.4(a) of the Code shall ordinarily be the entire amount of the Purchase Money less disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.

(b) For purposes of compliance with Section 11013.2(a) of the Code:

(1) A proper release has not been obtained from a deed of trust encumbering subdivision lots or parcels unless an instrument has been duly recorded unconditionally reconveying and releasing the lot or lots being sold or leased from the lien or charge of such deed of trust.

(2) As an alternative to obtaining a proper release from the lien or charge of such deed of trust, it shall be deemed acceptable by the commissioner, pursuant to the provisions of Section 11013.2(d) of the Code, if:

(A) the holder of the deed of trust has duly executed an agreement or demand ("release agreement") wherein the holder has agreed, notwithstanding any provision to the contrary in the deed of trust, to promptly perform any act reasonably necessary to record an instrument unconditionally reconveying and releasing the subdivision lots or parcels being sold from the lien or charge of the deed of trust upon payment to the holder of an amount or amounts specified in the release agreement as the release price for the affected subdivision lots or parcels, and the holder has further agreed that specific performance of the terms and provisions of the release agreement shall be compelled in favor of the purchaser or lessee of the lot or lots;

- (B) the release agreement has been deposited with the escrow holder for the transaction(s);
- (C) the subdivider has notified each purchaser or lessee that the release agreement is available upon request from the escrow holder; and
- (D) each purchaser or lessee has been provided a policy of title insurance insuring the purchaser or lessee against loss by reason of the deed of trust.

§2791.2 BOND ALTERNATIVE TO PURCHASE MONEY IMPOUND

The penal sum of a bond or bonds furnished by or on behalf of a subdivider pursuant to Section 11013.2(c) or Section 11013.4(b) or (c) of the Code shall ordinarily be not less than the aggregate amount of the money paid or advanced toward the purchase or lease of subdivision interests for which the subdivider is accountable to prospective purchasers or lessees less the sum of the amount held in escrow depositories or trust accounts pursuant to Section 11013.2(a) or Section 11013.4(a) of the Code and the disbursements made to third parties for services enumerated in subdivision (b) of Regulation 2791.

§2791.3 LIEN AND COMPLETION BONDS FOR ONSITE CONSTRUCTION WORK

The penal sum of a bond or bonds furnished by or on behalf of a subdivider pursuant to Section 11013.4(d)(2) of the Code shall ordinarily be not less than 120 percent of the estimate of the total cost of the onsite construction work to be completed on the subdivision interest being offered for sale or lease.

§2791.4 ACCEPTABLE ESCROW DEPOSITORIES

(a) The following entities which are qualified to do business in the State of California are escrow depositories acceptable to the Commissioner under Sections 11013.2 and 11013.4 of the Code: escrow agents

licensed by the Corporations Commissioner, banks, trust companies, savings and loan associations, title insurers and underwritten title companies.

(b) In exceptional circumstances the Commissioner may approve an escrow depository other than an entity enumerated in subdivision (a).

§2791.6 ACCEPTABLE TRUSTEES

A trust company as defined in Section 107 of the Financial Code which is qualified to do business in California is a trustee acceptable to the Commissioner to hold title to a subdivision under Section 11013.2(b) and other applicable provisions of the Subdivided Lands Law. In exceptional circumstances the Commissioner may approve a trustee other than a trust company as defined in Section 107 of the Financial Code.

§2791.8 DISPUTE RESOLUTION

(a) A contractual provision setting forth terms, conditions and procedures for resolution of a dispute or claim between a homeowner and a subdivider, or a provision in the covenants, conditions and restrictions setting forth terms, conditions and procedures for resolution of a dispute or claim between a homeowners association and a subdivider shall, at a minimum, provide that the dispute or claim resolution process, proceeding, hearing or trial to be conducted in accordance with the following rules:

(1) For the subdivider to advance the fees necessary to initiate the dispute or claim resolution process, with the costs and fees, including ongoing costs and fees, if any, to be paid as agreed by the parties and if they can't agree then the costs and fees are to be paid as determined by the person or persons presiding at the dispute or claim resolution proceeding or hearing.

(2) For a neutral or impartial person(s) to administer and preside over the claim or dispute resolution process.

(3) For the appointment, or selection, as designation, or assignment of the person(s) to administer and preside over the claim or dispute resolution process within a specific period of time, which in no event shall be more than sixty (60) days from initiation of the claim or dispute resolution process or hearing. The person(s) appointed, selected, designated or assigned to preside may be challenged for bias.

(4) For the venue of the claim or dispute resolution process to be in the county where the subdivision is located unless the parties agree to some other location.

(5) For the prompt and timely commencement of the claim or dispute resolution process. When the contract provisions provide for a specific type of claim or dispute resolution process, the process shall be deemed to be promptly and timely commenced if it is to be commenced in accordance with the rules applicable to that process, or if the rules don't specify a date by which the proceeding or hearing must commence, then to a date agreed upon by the parties, and if they cannot agree, a date determined by the person(s) presiding over the dispute resolution process.

(6) For the claim or dispute resolution process to be conducted in accordance with rules and procedures that are reasonable and fair to the parties.

(7) For the prompt and timely conclusion of the claim or dispute resolution process, including the issuance of any decision or ruling following the proceeding or hearing.

(8) For the person(s) presiding at the claim or dispute resolution process to be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the proceeding or hearing. The parties may authorize the limitation or prohibition of punitive damages.

(b) A copy of the rules applicable to the claim or dispute resolution process shall be submitted as part of the application for a public report.

(c) If the claim or dispute resolution process provides or allows for a judicial remedy in accordance with the laws of this state, it shall be presumed that the proceeding or hearing satisfies the provisions of paragraph (a).

§2791.9 USE OF REAL PROPERTY SALES CONTRACTS

If a subdivider proposes to sell subdivision interests using real property sales contracts (hereafter sales contracts) as defined in Section 10029 of the Code, a plan under which the subdivider conveys the subdivision interests in trust and records the conveyance prior to the execution of a sales contract by a prospective purchaser (hereafter vendee) and which includes all of the following elements shall be an acceptable alternative method under Section 11013.2(d) and Section 11013.4(f) of the Code:

(a) The original trustee and any successor trustee are expressly subject to the approval of the commissioner.

(b) An express prohibition against any amendment of the trust instrument directly or indirectly affecting the interests of a vendee without the prior written approval of the commissioner.

(c) An agreement by the trustee to continue in that capacity until a successor trustee acceptable to the commissioner has assumed the position.

(d) Vendees are expressly designated in the trust instrument as beneficiaries.

(e) If the subdivision interests in the trust are not subject to a blanket encumbrance, provisions for the vendee to make payments under the contract (hereafter purchase money) to the trustee and for the trustee to make disbursements from purchase money as follows:

(1) Debt service, taxes, assessments, insurance premiums and any other periodic payments related to the

ownership and use of the subdivision interest that the vendee is obligated to make under terms of the sales contract.

(2) Payment to the subdivider from the balance of purchase money remaining after the trustee has paid or set aside funds to make payments under (1) above.

(f) If a subdivision interest is subject to a blanket encumbrance as defined in Section 11013 of the Code:

(1) Unless there has been an independent determination that the vendee is in default under the terms of the sales contract, all of the purchase money of a vendee will be held by the trustee in an interest-bearing account for the benefit of the vendee until the subdivision interest that the vendee has contracted to purchase is released from the blanket encumbrance.

(2) Unless there has been an independent determination that the vendee is in default under the terms of the sales contract, the refund on demand by the vendee of the entire sum of purchase money paid if the subdivision interest has not been released from the blanket encumbrance within a specified period of time determined by the commissioner to be reasonable in the circumstances.

(3) If the subdivider proposes a disbursement of purchase money to himself or for his account based upon vendee's default under the sales contract, a procedure for a determination of default by a court of law or arbitrator and for the disbursement by the trustee of funds as liquidated damages on the basis of the determination that the vendee has defaulted.

§2792 SUBSTANTIALLY COMPLETE APPLICATION - STANDARD SUBDIVISION

An application for a final subdivision public report is "substantially complete" within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

(a) For a subdivision (standard subdivision) of a type not listed or referred to in Section 11000.1, or 11004.5 of the Code:

(1) Subdivision filing fee including fee for a preliminary public report if applicable.

(2) Completed subdivision questionnaire.

(3) Approved tentative subdivision map unless the Commissioner has made a finding that because of processing delays, a tentative subdivision map has not been approved but will be approved within a reasonable amount of time.

(4) Certificate of qualification from Secretary of State if applicant is a foreign corporation.

(5) Consent to service of process upon Secretary of State if applicant is a nonresident of California.

(6) Current preliminary title report covering all subdivision interests for which a public report is sought including:

(A) Legal description of the subdivided property.

(B) Nature of the interest or estate covered by the report.

(C) Record owner of the interest or estate covered by the report.

(D) All easements, liens, rights, interest and claims disclosed by an examination of the indices in the office of the recorder of the county in which the property is located.

(E) Existence of any encroachment of improvements over

lines of record title.

(F) All mechanics liens arising out of work completed or in progress.

(G) Existence of assessments or potential assessments for public improvements completed or under construction.

(7) Proposed or existing covenants, conditions and restrictions for the subdivision.

(8) Coastal Commission permit or exemption if subdivision in coastal zone.

(9) Evidence of availability of domestic utilities and services to the subdivision.

(10) Information concerning hazards and other unusual conditions within or in the vicinity of the subdivision.

(11) Assessment and improvement bond information if applicable to the subdivision interests to be offered.

(12) Exemplars of all marketing, financing and conveyancing instruments to be used in the offering of subdivision interests.

(13) Exemplar of escrow instructions including at least the following:

(A) A description of the nature of the transaction.

(B) Provision for the return to nondefaulting buyers of funds deposited toward the purchase of subdivision interests if escrows are not closed on or before a date prescribed in the instructions.

(C) Name and address of the escrow depository to be used.

(14) Bond or other device to be used as a means of compliance with Sections 11013.2 and 11013.4 of the Code.

(15) Completed documents for reservations and

reservation deposits if preliminary public report is requested.

(16) Evidence of financial arrangements to assure completion of all offsite improvements included in the offering.

(17) Evidence of financial arrangements for any guarantee or warranty included in the offering.

(18) Evidence of all arrangements to assure completion, maintenance and availability for any use of privately-owned facility that will be offered as an inducement to the purchase of subdivision interests.

§2792.1 SUBSTANTIALLY COMPLETE APPLICATION - CONDOMINIUM, PLANNED DEVELOPMENT, COMMUNITY APARTMENT PROJECT AND UNDIVIDED INTEREST SUBDIVISION

An application for a final subdivision public report is "substantially complete" within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

(a) For a condominium project, community apartment project or planned development:

(1) All of the applicable documents and information listed under subdivision (a) of Section 2792.

(2) Proposed or existing governing instruments for the owners' association.

(3) Condominium plan if the subdivision is a condominium.

(4) Plot plan delineating all improvements including recreational amenities if the subdivision is not a condominium.

(5) Overall subdivision plan if the subdivision is part of a phased development.

- (6)** Evidence of financial arrangements for completion of the common areas and facilities in the offering.
- (7)** Copies of all contracts or proposed contracts obligating the owners' association.
- (8)** Agreement of subdivider to subsidize common area maintenance and owners' association operation where applicable.
- (9)** Financial arrangements to assure performance of the subdivision agreement where applicable.
- (10)** Detailed pro forma budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.
- (11)** Most recent balance sheet and annual operating statement for the owners' association if applicable.
- (12)** Duplicate budget package for departmental analysis of proposed budget for common area maintenance and owners' association operations.
- (13)** Subdivision trust agreement if applicable.
- (14)** Exemplar of deed for conveyance of common area to owners' association.
- (15)** Exemplar of escrow instructions including at least the following:
 - (A)** A description of the nature of the transaction.
 - (B)** Provision for the return to Buyers of funds deposited toward the purchase of subdivision interests if escrows are not closed on or before a date prescribed in the instructions.
 - (C)** Name and address of the escrow depository to be used.
 - (D)** Provision to assure compliance with subdivision (c) of

Section 11018.5 of the Code if applicable.

(E) Provision for conveyance of common area to owners' association if applicable.

(16) A completed supplemental questionnaire if the project is a conversion of an existing structure to a condominium or community apartment project.

(17) A permit issued by the Department of Corporations if applicable to the offering.

(b) For an undivided interest subdivision:

(1) All of the applicable documents and information listed in subdivision (a) above.

(2) A proposed schedule of undivided interests in the subdivision sufficient to identify the undivided interest acquired by each purchaser.

(3) Statement from the appropriate authority of the county in which the real property is located setting forth the proposed method to be used in assessing and collecting real property taxes for the subdivision.

§2792.2 SUBSTANTIALLY COMPLETE APPLICATION - STOCK COOPERATIVE AND LIMITED EQUITY HOUSING COOPERATIVE

An application for a final subdivision public report is "substantially complete" within the meaning of Section 11010.2 of the Code if it contains the documents and information enumerated below:

(a) For a stock cooperative subdivision:

(1) Subdivision filing fee including fee for preliminary public report if applicable.

(2) Completed subdivision questionnaire.

(3) Approved tentative subdivision map if applicable.

(4) Plot plan delineating apartments within the

subdivision.

(5) Certificate of qualification from Secretary of State if applicant is a foreign corporation.

(6) Consent to service of process upon Secretary of State if applicant is a nonresident of California.

(7) Current preliminary title report covering all subdivision interests for which a public report is sought including:

(A) Legal description of the subdivided property.

(B) Nature of the interest or estate covered by the report.

(C) Record owner of the interest or estate covered by the report.

(D) All easements, liens, rights, interests and claims disclosed by an examination of the indices in the office of the recorder of the county in which the property is located.

(E) Existence of any encroachment of improvements over lines of record title.

(F) All mechanics liens arising out of work completed or in progress.

(G) Existence of assessments or potential assessments for public improvements completed or under construction.

(8) Proposed or recorded covenants, conditions and restrictions for the subdivision, if applicable.

(9) Coastal Commission permit or exemption if subdivision is in coastal zone.

(10) Evidence of availability of domestic utilities and services to the subdivision.

(11) Information concerning hazards and other unusual conditions within or in the vicinity of the subdivision.

(12) Assessment and improvement bond information if

applicable to the subdivision interests to be offered.

(13) Exemplars of all marketing, financing and conveyancing instruments to be used in the offering of subdivision interests.

(14) Exemplar of escrow instructions for conveyance of the subdivision to the cooperative corporation.

(15) Exemplar of escrow instructions for issuance of memberships and exclusive occupancy rights to purchasers including at least the following:

(A) A description of the nature of the transaction.

(B) Provision for the return to Buyers of funds deposited toward the purchase of memberships if escrows are not closed on or before a date prescribed in the instructions.

(C) Name and address of the escrow depository to be used.

(D) Provision to assure compliance with subdivision (c) of Section 11018.5 of the Code if applicable.

(16) Bond or other device to be used as a means of compliance with Sections 11013.2 and 11013.4 of the Code.

(17) Narrative explanation of plan for financing sales of memberships in cooperative corporation.

(18) Subordination agreement or other instrument to assure compliance with subdivision (c) of Section 11018.5 of the Code.

(19) Completed documents for reservations and reservation deposits if a preliminary public report is requested.

(20) Evidence of financial arrangements to assure completion or proposed renovation of offsite improvements included in the offering.

- (21)** Evidence of financial arrangements for completion or renovation of common areas of the subdivision.
- (22)** Evidence of financial arrangements for any guarantee or warranty included in the offering.
- (23)** Proposed articles of incorporation for cooperative corporation.
- (24)** Proposed bylaws for cooperative corporation.
- (25)** Proposed proprietary lease (exclusive occupancy) agreement and proposed lease assignment instrument if applicable.
- (26)** Copies of all contracts or proposed contracts obligating the cooperative corporation.
- (27)** Proposed preclosing rental agreements if applicable.
- (28)** Completed supplemental questionnaire if the subdivision is a conversion of an existing structure to a subdivision.
- (29)** Detailed pro forma budget reflecting estimated costs of ownership, operation and maintenance expenses and reserves for the subdivision.
- (30)** Most recent balance sheet and annual operating statement for the cooperative corporation if applicable.
- (31)** Agreement of subdivider to subsidize common-area maintenance and cooperative corporation operations if applicable.
- (32)** Duplicate budget package for departmental analysis of proposed budget for common area maintenance and owners association operations.
- (33)** Proposed schedule for allocation of assessments for property taxes and corporate debt service (if applicable) to members of the corporation.
- (34)** Exemplar of deed for conveyance of subdivision to

cooperative corporation.

(35) Exemplar of membership certificate or stock certificate to be issued by cooperative corporation.

(36) A permit issued by the Department of Corporations if applicable to the offering.

(b) For a limited equity housing cooperative:

(1) All of the applicable documents and information listed in subdivision (a) above.

(2) Information concerning the selling prices and methods for determination of transfer value referred to in Section 33007.5 of the Health and Safety Code.

§2792.3 APPROVED FORM OF BOND FOR COMPLETION OF COMMON FACILITIES

A bond posted pursuant to Section 11018.5(a)(2)(A) to secure the faithful performance of a commitment by the subdivider to complete common facilities and common-area improvements shall be in substantially the following form:

COMPANY NAME Bond No. _____ Premium: \$ _____
KNOW ALL MEN BY THESE PRESENTS, that we, _____ (Name of subdivider), as PRINCIPAL, and _____ (Name of surety), a corporation organized under the law of the State of _____, and authorized to transact the business of surety in the State of California, as SURETY, are firmly held and bound unto _____ (Name of homeowners association) (hereinafter referred to as OBLIGEE) in the penal sum of _____ Dollars (\$ _____) for which sum, well and truly to be paid, we bind ourselves, our heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is given pursuant to Section 11018.5(a)(2)(A) of the California Business and Professions Code to assure lien-free completion of the improvements described in PRINCIPAL's "Planned Construction Statement," a copy of which is attached hereto and incorporated herein by reference, for the subdivision development

known as _____ (Name of subdivision), situated in the County of _____, State of _____.

SURETY, for value received, hereby agrees that the matters set forth in California Civil Code Section 3225, or similar acts or omissions which might release the SURETY pursuant to law, shall not in any way release SURETY from the obligation of this bond or reduce SURETY's obligation thereunder.

SURETY, for value received, does hereby waive the right granted to SURETY under California Civil Code Section 2845 to require that OBLIGEE proceed independently against PRINCIPAL to enforce this obligation, but reserves to itself any right under said Section 2845 to require that OBLIGEE proceed jointly against PRINCIPAL and SURETY in any such actions.

The condition of this obligation is such that if PRINCIPAL shall complete or cause to be completed said improvements free of liens and claims on or before the latest completion date specified in said "Planned Construction Statement," or an extension thereof given in writing by OBLIGEE to PRINCIPAL and assented to in writing by SURETY, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

A suit or action on this bond must be filed within two years after the latest completion date set forth in the "Planned Construction Statement" or any extension thereof given in writing by OBLIGEE to PRINCIPAL and assented to in writing by SURETY.

The terms, conditions and coverage of this bond have been approved by the Real Estate Commissioner of the State of California.

IN WITNESS WHEREOF, PRINCIPAL and SURETY have caused these presents to be duly signed and sealed this ____ day of _____, 19____

(PRINCIPAL) (SURETY)

By _____ By _____

§2792.4 SPECIAL PROVISION FOR ENFORCEMENT OF BONDED OBLIGATIONS

When common-area improvements which are included in the subdivision offering have not been completed prior to the issuance of the public report and the subdivision owners' association (hereafter Association) is obligee under a bond or other arrangement (hereafter Bond) to secure performance of the commitment of the subdivider to complete the improvements, the covenants, conditions and restrictions for the subdivision shall include at least the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of the subdivider and the surety under the Bond:

(1) The governing body of the Association shall be directed to consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any common-area improvement, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

(2) A special meeting of members for the purpose of voting to override a decision by the governing body not to initiate action to enforce the obligations under the Bond or on the failure of the governing body to consider and vote on the question. The meeting shall be required to be held not less than 35 days nor more than 45 days after receipt by the governing body of a petition for such a meeting signed by members representing 5% or more of the total voting power of the Association.

(3) A vote by members of the Association other than the subdivider at the special meeting called for the purpose set forth in (2) above.

(4) A vote of a majority of the voting power of the Association residing in members other than the subdivider to take action to enforce the obligations under the Board shall be deemed to be the decision of the Association and the governing body shall thereafter implement this

decision by initiating and pursuing appropriate action in the name of the Association.

§2792.8 GOVERNING INSTRUMENTS FOR COMMON INTEREST SUBDIVISIONS

(a) Governing instruments for the ownership and management of subdivisions enumerated in Section 11004.5 of the Code (common-interest subdivisions) including the Covenants, Conditions and Restrictions (CC&Rs), Articles of Incorporation (Articles) and Bylaws shall ordinarily provide for, but need not be limited to, the following:

(1) Creation of an organization (hereafter Association) of subdivision interest owners;

(2) A description of the common interests of the subdivision owners or lessees;

(3) Transfer of title and/or control of common interests or of mutual and reciprocal rights of use to the owners in common or to the Association;

(4) Procedures for calculating and collecting regular assessments from owners to defray expenses attributable to the ownership, operation or furnishing of common interests or to the enjoyment of mutual and reciprocal rights of use;

(5) Procedures for establishing and collecting special assessments for capital improvements or for other purposes;

(6) Liens upon privately-owned subdivision interests for assessments levied pursuant to the CC&Rs and foreclosure thereof for nonpayment;

(7) Policies and Procedures relating to the disciplining of members for failure to comply with provisions of the governing instruments;

(8) Creation of a governing body for the Association;

(9) Procedures for the election and removal of governing body members and officers of the Association;

(10) Enumeration of the powers and duties of the governing body and the officers and of the limitations upon the authority of the governing body to act without the prior approval of members representing a majority of the voting power of the Association;

(11) Allocation of voting rights to Association members;

(12) Preparation of the budgets and financial statements of the Association and for distribution to the Association members;

(13) Regular and special meetings of Association members with notice requirements;

(14) Regular meetings of the governing body with provision for notice to Association members;

(15) Quorum requirements for meetings of members of the Association and of the governing body;

(16) Procedures for proxy voting at members' meetings;

(17) Policies and procedures governing the inspection of books and records of the Association by members;

(18) Amendment procedures for those provisions of the governing instruments which relate to the ownership, management and control of the Association and/or the common interests;

(19) Prohibitions against or restrictions upon the severability of a separately-owned portion from the common interest portion of a subdivision interest;

(20) Conditions upon which a partition of a condominium project may be had pursuant to Section 1359 of the Civil Code;

(21) Action to be taken and procedures to be followed in

the event of condemnation, destruction or extensive damage to the subdivision interests, including provisions respecting the use and disposition of insurance proceeds or damages payable to the Association or to a trustee on behalf of owners on account of condemnation, destruction or damage;

(22) Annexation of additional land to the existing development where appropriate;

(23) Architectural and/or design control;

(24) Special provisions for enforcement of financial arrangements by the subdivider to secure performance of his commitment to complete common-area improvements;

(25) Granting of easements or use rights affecting the common areas;

(26) Special provisions authorizing the governing body, subject to compliance with Section 1354 of the Civil Code, to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (A) enforcement of the governing instruments, (B) damage to the common areas, (C) damage to the separate interests which the Association is obligated to maintain or repair, or (D) damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.

(b) The Commissioner will ordinarily consider provisions of the governing instruments proposed for a common-interest subdivision to constitute "reasonable arrangements" under Section 11018.5 of the Code if the provisions are in substantial conformance to the applicable standards prescribed in Sections 2792.4, 2792.15 through 2792.21, 2792.23, 2792.24 and 2792.26 through 2792.28 of these Regulations

and if they do not otherwise arbitrarily deny, limit or abridge the right of owners with respect to management, maintenance, preservation, operation or control of their subdivision interests.

**§2792.9 ASSURING OPERATING AND MAINTENANCE
FUND FOR COMMON FACILITIES AND SERVICES**

(a) To assure the availability of funds, or sources of funds, to defray the costs of common facilities and services during the early stages of ownership and operation by the Association and to assure the fulfillment of the subdivider's obligation to pay assessments as an owner of subdivision interests, the Commissioner will ordinarily require that:

(1) No sale of a subdivision interest be closed until 80% of all subdivision interests covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan) and are simultaneously closed; or

(2) The subdivider furnish funds, a surety bond to the Association as obligee, or other security convertible to cash by the escrow depository to assure the fulfillment of the subdivider's obligations as an owner of separate interests covered by the final subdivision public report to pay regular and special assessments; or

(3) The subdivider present an alternative arrangement satisfactory to the Commissioner to secure the fulfillment of the subdivider's obligations to the Association as an owner of separate interests covered by the final subdivision public report.

(b) The security referred to in (a)(2) or (a)(3) above shall ordinarily:

(1) Be in an amount which is equal to six (6) months' regular assessments for the separate interests covered by the final subdivision public report.

(2) Be subject to terms, and conditions which will assure that the subdivider pays, as and when due, all regular

and special assessments which are levied by the Association against separate interests owned by the subdivider in the subdivision until title to 80% of the separate interests which are covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan).

(3) Be the subject of a contract signed on behalf of the subdivider and the Association covering release and enforcement of the security.

(4) Be delivered to a neutral escrow depository acceptable to the Commissioner along with instructions to the depository signed on behalf of the subdivider and the Association covering handling of the security, return of the security to the subdivider, and remittance of the security to the Association, including the following:

(A) The escrow instructions shall include a procedure under which the security shall be returned to the subdivider upon the Association's failure to give the escrow depository within 40 days the Association's written objection to return of the security. The return of the security shall be made but only if the subdivider's demand for return of the security is accompanied by the subdivider's written statement that the subdivider has paid, as and when due, all regular and special assessments which have been levied by the Association against separate interests which are covered by the final subdivision public report owned by the subdivider. Before the security shall be returned, the subdivider shall certify that title to 80% of the separate interests which are covered by the final subdivision public report have been conveyed (or leased if that is the marketing plan).

(B) The escrow instructions shall include a procedure under which all or some specified portion of the security shall be remitted to the Association upon the subdivider's

failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security, but only if the Association's demand for remittance of all or some specified portion of the security is accompanied by a written statement signed by an officer of the Association that the subdivider is delinquent in the payment of regular or special assessments which have been levied by the Association against separate interests covered by the final subdivision public report owned by the subdivider.

(C) The escrow instructions shall provide that, in the event the escrow depository receives conflicting instructions from the subdivider and the Association, the escrow holder is authorized, in its sole discretion, to (1) interplead the security or (2) retain the security until the security is disposed of in accordance with (i) the joint or mutual instructions of the subdivider and the Association, (ii) the order of a court of competent jurisdiction or (iii) in accordance with the final binding decision rendered in an alternative dispute resolution proceeding.

(D) If the security is a letter of credit, the escrow instructions shall include a procedure under which the escrow depository shall draw upon the letter of credit prior to the expiration of the time for drawing thereupon, or upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security to the Association.

§2792.10 SUBSIDIZATION BY SUBDIVIDER

(a) When the subdivider undertakes to provide goods and/or services to the Association or to pay a portion of a purchaser's share of the Association's financial obligations, the subdivider shall:

(1) Enter into a contract with the Association acceptable in form and content to the Commissioner which shall

specify in detail the obligations which the subdivider will undertake to fulfill and, if applicable, the methods to be employed in valuing the goods and services furnished under the program, and cover the release and enforcement of the security referred to in (a)(4), below.

(2) Furnish the Association with an executed copy of the contract, the security referred to in (a)(4), below, and the escrow instructions referred to in (c), below, within ten days after the closing of the first sale (or lease) of subdivision interests.

(3) Submit a monthly accounting to the Association and if the subsidy is other than cash, it shall also contain a description and valuation of the goods and services for the common area furnished directly by the subdivider or contracted and paid for by him.

(4) Furnish a bond to the Association as obligee or other device to secure the subdivider's undertaking to the Association and the owners under the program. The bond or other device shall be in an amount and subject to terms and conditions which will assure prompt and faithful performance of the contract. The penal sum of a bond shall not ordinarily be reduced by reason of the fact that the subdivider has posted a bond or other security device pursuant to Section 2792.9 of these regulations.

(b) The Commissioner will not ordinarily approve any program in which the subdivider undertakes to provide goods and/or services to the Association or promises to pay a portion of a purchaser's share of the Association's financial obligations unless it provides for the accumulation by the Association of reserves for replacement and major maintenance in accordance with accepted property management practices.

(c) The security device referred to in (a)(4) above shall be delivered to a neutral escrow depository acceptable to the Commissioner along with an executed copy of the contract and instructions to the

depository signed by the subdivider and the Association covering handling of the security, return of the security to the subdivider, and remittance of the security to the Association, including the following:

(1) The escrow instructions shall include a procedure under which the security shall be returned to the subdivider upon the Association's failure to give the escrow depository within 40 days the Association's written objection to return of the security, but only if the subdivider's demand for return of the security is accompanied by the subdivider's written statement that the subdivider has faithfully performed all of the subdivider's obligations under the contract.

(2) The escrow instructions shall include a procedure under which all or some specified portion of the security shall be paid to the Association upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to payment of the security, but only if the Association's demand for payment of the security is accompanied by the Association's written statement that the subdivider has failed to perform the subdivider's obligations under the contract.

(3) The escrow instructions shall provide that, in the event the escrow holder receives conflicting instructions from the subdivider and the Association, the escrow holder is authorized, in its sole discretion, to (1) interplead the security or (2) retain the security until the security is disposed of in accordance with (i) the joint or mutual instructions of the subdivider and the Association, (ii) the order of a court of competent jurisdiction or (iii) in accordance with the final binding decision rendered in an alternative dispute resolution proceeding.

(4) If the security is a letter of credit, the escrow instructions shall include a procedure under which the escrow depository shall draw upon the letter of credit prior to the expiration of the

time for drawing thereupon, or upon the subdivider's failure to give the escrow depository within 40 days the subdivider's written objection to remittance of the security to the Association.

§2792.13 UNDIVIDED INTERESTS SUBDIVISIONS - IMPOUND OF FUNDS

All funds received from prospective buyers to be applied to the purchase of undivided subdivision interests, including community apartment projects and stock cooperatives and limited equity housing cooperatives, shall be deposited and held intact in an escrow depository acceptable to the Real Estate Commissioner until bona fide offers have been obtained for the purchase of a prescribed percentage of all of the interests being offered for sale.

In the event that the prescribed percentage of offers have not been obtained within two years from the date of the issuance of the public report, or such other period as the commissioner may approve, all funds theretofore collected shall be promptly returned by the escrow depository to owners without deduction.

The prescribed percentage shall be determined by the commissioner based upon the facts and circumstances of each such offering. Ordinarily this percentage shall be not less than 60% of the interests being offered for sale provided, however, that the commissioner may prescribe a lesser percentage if the plan of the offering includes other financial arrangements to lessen the possibility of foreclosure of a non-delinquent interest on account of the delinquencies of other owners.

§2792.14 UNDIVIDED INTERESTS SUBDIVISIONS - BLANKET ENCUMBRANCES

(a) Except as provided in subdivision (b) hereof, if the real property to be owned by the stock cooperative corporation will be subject to a mortgage or deed of trust affecting the interest of more than one member or shareholder of the stock cooperative (hereafter blanket encumbrance), a public report will not be issued unless legal or

financial arrangements satisfactory to the Real Estate Commissioner have been made to:

(1) Provide assurance that the ownership and possessory rights of a member of the stock cooperative will not be adversely affected by foreclosure or acceleration of the blanket encumbrance by or on behalf of the beneficiary unless the affected member or shareholder is delinquent in payments allocated by the stock cooperative to debt service on the blanket encumbrance.

(2) Provide assurance for the payment of said blanket encumbrance.

(b) The provisions of subdivision (a) shall not apply in the case of a stock cooperative which is

(1) insured under section 213 or section 221 of the National Housing Act, as amended and involves a regulatory agreement between stock cooperative and the Secretary of Housing and Urban Development with the provision for the establishment and maintenance of a general operating reserve or

(2) assisted under section 8 of the U. S. Housing Act of 1937 as amended and involves a housing assistance payment contract between the stock cooperative and the Secretary of Housing and Urban Development with a special provision for the establishment and maintenance of a general operating reserve as the Secretary of Housing and Urban Development may approve.

§2792.15 REASONABLE ARRANGEMENTS - TRANSFER OF COMMON AREAS AND FACILITIES TO ASSOCIATION

(a) In subdivisions in which all or a portion of the common areas and facilities are to be transferred to the Association, those areas and facilities shall be transferred to the Association or to a corporate trustee under a trust agreement acceptable to the Commissioner prior

to or coincident with the first transfer or conveyance of a subdivision interest by the subdivider.

(b) The subdivider may create a contractual right in himself or may reserve easements of limited duration, for common driveway purposes, for drainage and encroachment purposes and for ingress to and egress from the common areas for the purpose of completing improvements thereon or for the performance of necessary repair work and, in the case of phased subdivision projects, for entry onto adjacent property in connection with the development of additional phases of the overall project.

§2792.16 REASONABLE ARRANGEMENTS - ASSESSMENTS AND LIENS

(a) Regular assessments to defray expenses attributable to the ownership, operation and furnishing of common interests by the Association shall ordinarily be levied against each owner according to the ratio of the number of subdivision interests owned by the owner assessed to the total number of interests subject to assessments.

(b) In the case of a subdivision offering in which it is reasonable to anticipate that any owner will derive as much as 10% more than any other owner in the value of common services supplied by the Association, the assessment against each owner may be determined according to a formula or schedule under which the assessments against the various subdivision interests bear a relationship which is equitably proportionate to the value of the common services furnished to the respective interests.

(c) The subdivider - and his successor in interest, if any - is an owner subject to the payment of regular and special assessments against subdivision interests which he owns provided, however, that the subdivider and any other owner of a subdivision interest which does not include a structural improvement for human occupancy may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the

use of the structural improvement. The exemption may include, but shall not necessarily be limited to:

Roof replacement;

Exterior maintenance;

Walkway and carport lighting;

Refuse disposal;

Cable television; and

Domestic water supplied to living units.

(1) Any exemption from the payment of assessments attributed to dwelling units shall be in effect only until the earliest of the following events.

(A) A notice of completion of the structural improvements has been recorded.

(B) Occupation or use of the dwelling unit.

(C) Completion of all elements of the residential structures which the Association is obliged to maintain.

(2) The subdivider and any other owner of a subdivision interest may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. Any exemption from the payment of assessments attributed to common facilities shall be in effect only until the earliest of the following events.

(A) A notice of completion of the common facility has been recorded.

(B) The common facility has been placed into use.

(d) The governing body of the Association must comply with the provisions of Section 1366 of the Civil Code prior to any increase in

assessments.

(e) The governing body of the Association may not levy special assessments without complying with the provisions of Section 1366 of the Civil Code.

(f)(1) Regular assessments against the subdivision interests in a phase of a multi-phase subdivision or against all subdivision interests in a single-phase subdivision shall commence on the date of the first conveyance of a subdivision interest in that phase under authority of a public report or on the first day of the month following the first conveyance of a subdivision interest in the phase.

(2) Except in those subdivision offerings where there is an approved subsidization plan which otherwise provides, voting rights attributable to subdivision interests shall not vest until assessments against those interests have been levied by the Association.

(g)(1) A lien for regular or special assessments against an owner may be made subordinate by the CC&R's to the lien of any first mortgage or first deed of trust (hereafter collectively first encumbrance) against subdivision interests of the owner.

(2) In the case of a subordination of a lien for assessments to a first encumbrance, the transfer of a subdivision interest as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first encumbrance shall extinguish the lien of assessments which were due and payable prior to the transfer of the subdivision interest.

(3) No transfer of the subdivision interest as the result of a foreclosure or exercise of a power of sale shall relieve the new owner, whether it be the former beneficiary of the first encumbrance or another person, from liability for any assessments thereafter becoming due or from the lien thereof.

(h)(1) For the purpose of subdivision (d) and subdivision (e), a quorum means more than 50% of the members of the Association.

(2) Any meeting or election of the Association for purposes of complying with subdivision (d) and subdivision (e) shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(i) Notwithstanding any other provision contained in this section, the governing body may increase assessments necessary for emergency situations pursuant to Section 1366 of the Civil Code.

(j) The governing body shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in Section 1365.5 of the Civil Code.

§2792.17 REASONABLE ARRANGEMENTS - MEMBERS' MEETINGS

(a) Regular meetings of members of the Association shall be held not less frequently than once each calendar year at a time and place prescribed by the Bylaws. The first meeting of the Association, whether a regular or special meeting, shall be held within 45 days after the closing of the sale of the subdivision interest which represents the 51st percentile interest authorized for sale under the first public report for the subdivision, provided that public report authorizes the sale of 50 subdivision interests or more in the subdivision. However, but in no event shall the meeting be held later than six months after the closing of the sale of the first subdivision interest without regard to the number of subdivision interests authorized for sale in the first public report.

(b) Meetings of Association members shall be conducted in accordance with the provisions of Section 1363 of the Civil Code.

(c) A special meeting of the members of the Association shall be promptly scheduled by the governing body in response to:

(1) The vote of the governing body itself.

(2) Written request for a special meeting signed by members representing at least 5% of the total voting power of the Association.

(d) Written notice of regular and special meetings shall be given to members by the governing body by any means which is appropriate given the physical setup of the subdivision. This notice shall be given not less than 10 nor more than 90 days before the date of any meeting at which members are required or permitted to take any action. The notice shall specify the place, day and hour of the meeting and the matters the governing body intends to present for action by the members. Except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(e)(1) Except as provided in Sections 2792.16(d) and (e)(1), a quorum for the transaction of business at a meeting of members of the Association through presence in person or by proxy shall be established at a percentage of not less than 25% and not more than 66 2/3% of the total voting power of the Association. Within these percentage limits, the quorum requirements for members' meetings shall be suited to such factors as the proposed physical layout of the subdivision, the contemplated number of owners of subdivision interests and the nature and extent of the common areas, facilities and services.

(2) In the absence of a quorum at a members' meeting a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five days and not more than 30 days from the original meeting date. The quorum for an adjourned meeting may be set by the governing instruments at a percentage less than that prescribed for the regular meeting, but it shall not be less than 25 percent of the total voting power of the Association. If a time and place for the adjourned meeting is not fixed by those in attendance at the original

meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

(f) Any action which may be taken by the vote of members at a regular or special meeting, except the election of governing body members where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the Corporations Code.

(g) Any form of proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the governing body be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

§2792.18 REASONABLE ARRANGEMENTS - MEMBERS' VOTING RIGHTS

(a) With the exception of those Associations which have two classes of voting membership, a member of an Association, including an Association which provides for unequal assessments against the subdivision interests, shall be entitled to one vote for each subdivision interest owned. If a subdivision interest is owned by more than one person, each such person shall be a member of the Association, but there shall be no more than one vote for each subdivision interest.

(b) An Association may have two classes of voting membership according to the following provisions:

(1) Each owner of a subdivision interest other than a subdivider is a Class A member. Class A membership entitles the holder to one vote for each subdivision interest owned.

(2) The subdivider is a Class B member. Class B membership entitles the holder to not more than three votes for each subdivision interest owned.

(3) In a single-phase subdivision development, Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(A) The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member.

(B) A prescribed date which is not later than the second anniversary of the first conveyance of a subdivision interest in the development.

(4) In a multi-phase development for which the subdivider has submitted a plan for phased development through annexation which satisfies the requirements of Section 2792.27, the Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(A) A prescribed date certain which is not later than the second anniversary of the first conveyance of a subdivision interest in the most recent phase of the development.

(B) A prescribed date certain which is not later than the fourth anniversary of the first conveyance of a subdivision interest in the first phase of the development.

(c) With the exception of Section 2792.4, no regulation which requires the approval of a prescribed majority of the voting power of members of the Association other than the subdivider for action to be taken by the Association is intended to preclude the subdivider from casting votes attributable to subdivision interest which he or she owns. Governing instruments may specify either or both of the following for approval of action for which a regulation of the Department - - - other than Section 2792.4 - - - requires the approval of a prescribed majority

of the voting power of members of the Association other than the subdivider:

(1) In those Associations in which Class A and Class B voting memberships have been prescribed in accordance with this regulation, the vote or written assent of a bare majority of the Class B voting power as well as the vote or written assent of a prescribed majority of the Class A voting power.

(2) In those Associations in which a single class of voting membership exists, either as originally established or after the conversion of Class B to Class A shares, the vote or written assent of a bare majority of the total voting power of the Association as well as the vote or written assent of a prescribed majority of the total voting power of members other than the subdivider.

§2792.19 REASONABLE ARRANGEMENTS - ELECTION OF GOVERNING BODY

(a) The first election of a governing body for the Association shall be conducted at the first meeting of the Association. All positions on the governing body shall be filled at that election.

(b)(1) Voting for the governing body shall be by secret written ballot. Cumulative voting in the election of governing body members shall be prescribed for all elections in which more than two positions on the governing body are to be filled subject only to the procedural prerequisites to cumulative voting prescribed in Section 7615(b) of the Corporations Code.

(2) Unless the entire governing body is removed from office by the vote of members of the Association, no individual governing body members shall be removed prior to the expiration of his term of office if the votes cast against removal would be sufficient to elect the governing body member if voted cumulatively at an election at which the same total number of votes were cast and the

entire number of governing body members authorized at the time of the most recent election of the governing body member were then being elected.

(c)(1) A special procedure shall be established by the governing instruments to assure that from the first election of the governing body and thereafter for so long as a majority of the voting power of the Association resides in the subdivider, or so long as there are two outstanding classes of membership in the Association, not less than 20% of the incumbents on the governing body shall have been elected solely by the votes of owners other than the subdivider.

(2) A governing body member who has been elected to office solely by the votes of members of the Association other than the subdivider may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in members other than the subdivider.

§2792.20 REASONABLE ARRANGEMENTS - GOVERNING BODY MEETINGS

(a) Regular meetings of the governing body of the Association shall be held as prescribed in the Bylaws. Ordinarily such meetings shall be conducted at least monthly though the Bylaws may prescribe meetings as infrequently as every six months if business to be transacted by the governing body does not justify more frequent meetings.

(b)(1) Regular meetings of the governing body shall be held at a time and at a meeting place fixed by the governing body from time to time. The meeting place shall ordinarily be within the subdivision itself unless in the judgment of the governing body a larger meeting room is required than exists within the subdivision in which case the meeting room selected shall be as close as possible to the subdivision.

(2) Notice of the time and place of a regular meeting shall be posted at a prominent place or places within the common area and shall be communicated to governing body members not less than four days prior to the

meeting unless the time and place of meeting is fixed by the Bylaws provided, however that notice of a meeting need not be given to any governing body member who has signed a waiver of notice or a written consent to holding of the meeting. If the common area consists only of an easement or is otherwise unsuitable for posting of such notice, the governing body shall communicate the notice of the time and place of such meeting by any means it deems appropriate.

(c)(1) A special meeting of the governing body may be called by written notice signed by the President of the Association or by any two members of the governing body other than the President.

(2) The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

(3) Notice shall be posted or communicated in a manner prescribed for notice of regular meetings and shall be sent to all governing body members not less than 72 hours prior to the scheduled time of the meeting provided however that notice of the meeting need not be given to any governing body member who signed a waiver of notice or a written consent to holding of the meeting.

(d) Regular and special meetings of the governing body shall be governed by the provisions of Section 1363.05 of the Civil Code.

(e)(1) The governing body may take actions without a meeting if all of its members consent in writing to the action to be taken.

(2) If the governing body resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the common area within three days after the written consents of all governing body members have been obtained. If the common area consists only of an easement or is otherwise unsuitable for posting the explanation of the action taken, the governing body

shall communicate said explanation by any means it deems appropriate.

§2792.21 REASONABLE ARRANGEMENTS - GOVERNING BODY POWERS AND LIMITATIONS

(a) The powers and duties of the governing body of the Association shall normally include, but shall not be limited to, the following:

- (1)** Enforcement of applicable provisions of the Covenants, Conditions and Restrictions, Articles, Bylaws and other instruments for the ownership, management and control of the subdivision.
- (2)** Payment of taxes and assessments which are, or could become, a lien on the common area or a portion thereof.
- (3)** Contracting for casualty, liability and other insurance on behalf of the Association.
- (4)** Contracting for goods and/or services for the common areas, facilities and interests or for the Association subject to the limitations set forth below.
- (5)** Delegation of its powers to committees, officers or employees of the Association as expressly authorized by the governing instruments.
- (6)** Preparation of budgets and financial statements for the Association as prescribed in the governing instruments.
- (7)** Formulation of rules of operation of the common areas and facilities owned or controlled by the Association.
- (8)** Initiation and execution of disciplinary proceedings against members of the Association for violations of provisions of the governing instruments in accordance with procedures set forth in the governing instruments.

(9) Entering upon any privately-owned subdivision interest as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the owners in common.

(10) Election of officers of the governing body.

(11) Filling of vacancies on the governing body except for a vacancy created by the removal of a governing body member.

(b) The governing body of the Association shall ordinarily be prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the members, other than the subdivider, constituting a quorum consisting of more than 50 percent of the voting power of the Association residing in members other than the subdivider:

(1) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or the owners' Association for a term longer than one year with the following exceptions:

(A) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(B) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(C) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured.

(D) Lease agreements for laundry room fixtures and equipment of not to exceed five years duration provided that the lessor under the agreement is not an entity in

which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(E) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(F) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of 10 percent or more.

(G) A contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty, or other obligation upon ninety (90) days written notice of termination to the other party.

(2) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year.

(3) Selling during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year.

(4) Paying compensation to members of the governing body or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the governing body may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(5) In the case of a limited equity housing cooperative, using the corporate equity for any purpose permitted under Section 33007.5(d)(1) of the Health and Safety Code without the vote or written consent of a bare majority of the stock or membership interests of resident owners.

§2792.23 REASONABLE ARRANGEMENTS - INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS

(a) Commencing not later than 90 days after the close of escrow of the first interest in the subdivision, copies of the documents listed below, as soon as readily obtainable, shall be delivered by the subdivider to the governing body of the Association at the office of the Association, or at such other place as the governing body of the Association shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the subdivider no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision:

(1) The recorded subdivision map or maps for the project.

(2) The recorded condominium plan, if any, and all amendments thereto.

(3) The deeds and easements executed by the subdivider conveying the common area or other interest to the Association, to the extent applicable.

(4) The recorded covenants, conditions and restrictions for the subdivision, including all amendments and annexations thereto.

(5) The Association's filed articles of incorporation, if any, and all amendments thereto.

(6) The Association's bylaws and all amendments thereto.

(7) All architectural guidelines and all other rules

regulating the use of an owner's interest in the subdivision or use of the common area which have been promulgated by the Association.

(8) The plans approved by the local agency or county where the subdivision is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.

(9) All notice of completion certificates issued for common area improvements (other than residential structures).

(10) Any bond or other security device in which the Association is the beneficiary.

(11) Any written warranty being transferred to the Association for common area equipment, fixtures or improvements.

(12) Any insurance policy procured for the benefit of the Association, its governing board or the common area.

(13) Any lease or contract to which the Association is a party.

(14) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association.

(15) Any instrument referred to in Section 11018.6(d) but not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of members of the Association.

(b) Commencing not later than 90 days after the annexation of additional phases to the subdivision, copies of those documents listed under subdivision (a) which are applicable to that phase, shall, as soon as readily obtainable, be delivered by the subdivider to the governing body of the Association at the office of the Association, or at such other place as the governing body of the Association shall prescribe. The obligation to deliver the documents listed in subsection (a) shall apply to any documents obtained by the subdivider no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (1) the conveyance of the last subdivision interest covered by a subdivision public report or (2) three years after the expiration of the most recent public report, on the subdivision.

(c) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association shall be made available for inspection and copying by any member of the Association - or by his duly-appointed representative - at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the subdivision as the governing body shall prescribe.

(d)(1) In the case of the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the governing body, other than an executive session, shall be available to members within 30 days of the meeting and shall be distributed to only members upon request and payment of the fee prescribed in (e)(3) below.

(2) At the time the pro forma operating budget is distributed or at the time of any general mailing, members of the Association shall be notified in writing of their right to have copies of the minutes of meetings of the governing body and as to how and where those minutes may be obtained and the cost of obtaining such copies.

(e) The governing body shall establish reasonable rules with respect to:

(1) Notice to be given to the custodian of the records by the member of the Association desiring to make the inspection.

(2) Hours and days of the week when such an inspection may be made.

(3) Payment of the cost of reproducing copies of documents requested by a member of the Association.

(f) Every member of the governing body shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a member of the governing body includes the right to make extracts and copies of documents.

§2792.24 REASONABLE ARRANGEMENTS - GOVERNING INSTRUMENTS AMENDMENTS

(a) In a single-class voting structure, amendments of the CC&R's may be enacted by requiring the vote or written assent of members representing both:

(1) A majority of the total voting power of the Association which is at least a bare majority and not more than 75%; and

(2) At least a bare majority of the votes of members other than the subdivider.

The percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. For example, if the CC&R's expressly state that 75% of the voting power must agree to an increase in the maximum annual assessment, then 75% of the voting power is necessary to amend this provision regardless of the percentage prescribed in the

general provision pertaining to amendments of the CC&R's.

(b) Amendments of the Articles or Bylaws shall require the vote or written assent of members as follows:

(1) An owners association other than for a limited equity housing cooperative.

(A) Articles

1. At least a bare majority of the governing body; and

2. At least a bare majority of the voting power of the association; and

3. At least a bare majority of the votes of members other than the subdivider.

(B) Bylaws

1. At least a bare majority of a quorum, but not more than a bare majority of the voting power of the association; and

2. At least a bare majority of the votes of members other than the subdivider.

(2) An owners association for a limited equity housing cooperative.

(A) Articles

1. At least a bare majority of the governing body; and

2. At least 66 2/3 percent of the resident-owner members or shareholders.

(B) Bylaws

1. At least 66 2/3 percent of the resident-owner members or shareholders.

(c) Notwithstanding the provisions of (b) above, the percentage of a quorum or of the voting power of the Association or of members other than the subdivider necessary to amend a specific clause or provision

in the Articles or Bylaws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) If a two-class voting structure is provided and is still in effect in the Association, none of the governing instruments may be amended without the vote or written assent of a prescribed percentage of the voting power of each class of membership or a prescribed percentage of a quorum of members of each class.

(e) If a two-class voting structure was originally provided in the governing instruments, but is no longer in effect because of the conversion of one class to the other, the provisions for amending the governing instruments set forth in subdivisions (a) and (b) above shall be applicable.

§2792.26 REASONABLE ARRANGEMENTS - DISCIPLINING OF MEMBERS BY THE ASSOCIATION

(a) The Association cannot be empowered to cause a forfeiture or abridgement of an owner's right to the full use and enjoyment of his individually-owned subdivision interest on account of the failure by the owner to comply with provisions of the governing instruments or of duly-enacted rules of operation for common areas and facilities except by judgment of a court or a decision arising out of an arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments duly levied by the Association.

(b) The governing instruments shall include provisions which authorize the governing body to impose monetary penalties, temporary suspensions of an owner's rights as a member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the procedures for notice and hearing, satisfying the minimum requirements of subdivision (h) of Section 1363 of the Civil Code, are followed with respect to the accused member before a decision to impose discipline is reached.

(c) A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the governing

instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member was allegedly responsible or in bringing the member and his subdivision interest into compliance with the governing instruments may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

(d) The provisions of subdivision (c) do not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

§2792.27 REASONABLE ARRANGEMENTS - ANNEXATION OF PROPERTY TO THE SUBDIVISION

(a) Provisions in the CC&Rs to effect the annexation of real property to the existing subdivision shall require the vote or written assent of not less than 66 2/3% of the total votes residing in Association members other than the subdivider unless the proposed annexation is in substantial conformance with a detailed plan of phased development submitted to the commissioner with the application for a public report for the first phase of the subdivision.

(b) The plan for phased development through annexation referred to in subdivision (a) must include, but need not be limited to, the following:

(1) Proof satisfactory to the Commissioner that no proposed annexation will result in an overburdening of common facilities.

(2) Proof satisfactory to the Commissioner that no proposed annexation will cause a substantial increase in assessments against existing owners which was not disclosed in subdivision public reports under which pre-existing owners purchased their interests.

(3) Identification of the land proposed to be annexed and the total number of residential units then contemplated by the subdivider for the overall subdivision development.

(4) A written commitment by the subdivider to pay to the association, concurrently with the closing of the escrow for the first sale of a subdivision interest in an annexed phase, appropriate amounts for reserves for replacement or deferred maintenance of common area improvements in the annexed phase necessitated by or arising out of the use and occupancy of residential units under a rental program conducted by the subdivider which has been in effect for a period of at least one year as of the date of closing of escrow for the first sale of a residential unit in the annexed phase.

§2792.28 REASONABLE ARRANGEMENTS - ARCHITECTURAL AND DESIGN CONTROL

(a) The committee for the control of structural and landscaping architecture and design (Architectural Control Committee) within the subdivision shall consist of not less than three nor more than five members.

(b) The subdivider may appoint all of the original members of the Architectural Control Committee and all replacements until the first anniversary of the issuance of the original public report for the first (or only) phase of the subdivision. The subdivider may reserve to himself the power to appoint a majority of the members of the Committee until 90% of all the subdivision interests in the overall development have been sold or until the fifth anniversary date of the original issuance of the final public report for the first (or only) phase of the subdivision, whichever first occurs.

(c) After one year from the date of issuance of the original public report for the first (or only) phase of the subdivision, the governing body of the Association shall have the power to appoint one member to the Architectural Control Committee until 90% of all of the subdivision interests in the overall development have been sold or until the fifth

anniversary date of the original issuance of the final public report for the first (or only) phase of the subdivision, whichever first occurs. Thereafter the governing body of the Association shall have the power to appoint all of the members of the Architectural Control Committee.

§2792.30 RESCISSION RIGHTS

A person who has made an offer to purchase an interest in an undivided interest subdivision may exercise the right of rescission granted by Section 11000.2 of the Code by giving written notification of the election to rescind to the subdivider at the place of business designated by the subdivider pursuant to Section 2792.31 of these regulations.

If the notice of election is by United States mail, it shall be considered given on the date that it is postmarked. If the notice is sent by telegraph, it shall be considered as given when transmitted by telegraph from the place of origin. If notification is by means of writing sent other than by United States mail or telegraph, it shall be considered as given at the time of delivery at the place of business designated by the subdivider.

§2792.31 NOTICE OF RESCISSION RIGHTS

(a) To inform a person of his/her right of rescission under Section 11000.2 of the Code, the subdivider shall attach to the face page of every copy of a subdivision public report given to a prospective purchaser, the notice set forth in subdivision (b) hereof printed in not less than 12-point bold face capital letters and numerals.

(b) The form and content of the notice shall be as follows:

IF YOU MAKE AN OFFER TO PURCHASE AN UNDIVIDED INTEREST(S) IN THE UNDIVIDED INTEREST SUBDIVISION IDENTIFIED BELOW, YOU HAVE A LEGAL RIGHT TO RESCIND (CANCEL) THIS OFFER, AND ANY CONTRACT RESULTING FROM THE ACCEPTANCE OF YOUR OFFER, AND THE RETURN OF ALL MONEY AND OTHER CONSIDERATION THAT YOU HAVE GIVEN TOWARD THE PURCHASE UNTIL MIDNIGHT OF THE THIRD

CALENDAR DAY AFTER THE DAY ON WHICH YOU SIGN THE OFFER TO PURCHASE.

YOU MAY EXERCISE THIS RIGHT TO RESCIND WITHOUT GIVING ANY REASON AND WITHOUT INCURRING ANY PENALTY OR OBLIGATION BY NOTIFYING

(Name of Subdivider)

AT _____

(Address)

OF YOUR ELECTION TO RESCIND BY TELEGRAPHIC COMMUNICATION, MAIL OR OTHER WRITTEN NOTICE.

IF THE NOTICE OF RESCISSION IS SENT BY UNITED STATES MAIL, IT SHALL BE CONSIDERED GIVEN ON THE DATE THAT IT IS POSTMARKED. IF THE NOTICE IS BY TELEGRAPHIC COMMUNICATION, IT SHALL BE CONSIDERED GIVEN WHEN TRANSMITTED FROM THE PLACE OF ORIGIN. IF NOTIFICATION IS BY MEANS OF A WRITING TRANSMITTED OTHER THAN BY UNITED STATES MAIL OR TELEGRAPH, IT SHALL BE CONSIDERED GIVEN AT THE TIME OF DELIVERY AT THE ABOVE PLACE OF BUSINESS.

YOU MAY USE THIS NOTICE FOR THE PURPOSE OF RESCINDING YOUR OFFER TO PURCHASE BY COMPLETING THE BLANKS AND BY DATING AND SIGNING BELOW. THE USE OF REGISTERED OR CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED IS RECOMMENDED FOR TRANSMITTAL OF THIS NOTICE BY MAIL.

(Name of Undivided Interest (DRE File Number)

Subdivision)

I HEREBY RESCIND MY OFFER OF

(Date)

TO PURCHASE AN UNDIVIDED INTEREST

(Identification Number, If Known)

IN THE ABOVE-NAMED UNDIVIDED INTEREST
SUBDIVISION.

_____, 19____.
(Date)

(Signature)

(Signature)

**§2792.32 ALTERNATIVE ARRANGEMENTS FOR MASTER
PLANNED COMMUNITIES**

(a) A "Master Planned Development" is a development which ordinarily satisfies all of the following criteria:

(1) The development is or will be a planned development subdivision within the meaning of subdivision (k) of Section 1351 of the Civil Code.

(2) The development consists of, will generally consist of, or is proposed to consist of both (a) approximately five hundred (500) or more separate residential interests, and (b) one or more subdivisions, including planned developments, community apartment projects, condominium projects, stock cooperatives, time-share projects, or other residential, recreational, commercial, or

mixed residential/non-residential projects.

(3) The Master Planned Development shall be managed by a community association ("Master Association") that is responsible for the maintenance and operation of areas and/or facilities affecting the Master Planned Development and enforcement of use restrictions pertaining to the Master Planned Development.

(4) The Master Planned Development is or will be developed in two or more phases.

Provided, however, the subdivider may demonstrate from specific facts and circumstances that a development that does not satisfy the criteria set forth in this subsection (a) should nonetheless be treated as a Master Planned Development.

(b) Recognizing that control by the subdivider over the governing body serving a residential common interest development and over the architectural control committee serving the development is ordinarily necessary until a reasonable portion of the project has been completed, in order to fulfill the expectations of the subdivider and the purchasers, the governing instruments for a Master Association shall substantially conform to the applicable standards prescribed in subsections (c) through (g), inclusive, below.

(c) SUBDIVIDER'S MEMBERSHIP VOTING RIGHTS:

The governing instruments for a Master Association may include provisions for two classes of membership as defined in Section 2792.18(b). For such a Master Association, Class B membership shall be automatically converted to Class A membership and Class B membership shall thereafter cease to exist on the first to occur of the following:

(1) When seventy-five percent of the separate residential interests proposed for the overall Master Planned Development have been conveyed to Class A members;

(2) On the fifth anniversary following the most recent

conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or

(3) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

(d) DELEGATE VOTING: The governing instruments for a Master Association may include provisions for establishing a geographical area in the Master Planned Development for one or more delegates to represent the collective voting power of the members residing in such residential or mixed residential/non-residential projects within the Master Planned Development. Arrangements in the governing instruments for the exercise of the voting power of the Master Association by delegates selected by each delegate district shall conform to the following criteria:

(1) The governing instruments must establish a procedure for the selection of delegates, for defining delegate districts, and for determining the number of votes that may be cast by a delegate.

(2) There shall be at least one delegate and one alternate for each delegate district.

(3) In any meeting of the members of the Master Association, the votes of members residing in a delegate district shall be cast by delegates selected to represent that delegate district.

(4) The duties of the delegates shall be prescribed in the governing instruments.

(e) QUORUM FOR MEMBERSHIP MEETINGS: The quorum for an adjourned meeting of the members of the Master Association, as described in Section 2792.17(e)(2) of these Regulations, may be set by the governing instruments at a percentage less than that prescribed

for the regular meeting, but it shall not be less than 15 percent of the total voting power of the Master Association.

(f) GOVERNING BODY MEMBERSHIP:

(1) The governing instruments may include provision for the election of a majority of the governing body of the Master Association by the subdivider under a Class C vote or similar device. For such a Master Association, this arrangement shall irreversibly terminate on the first to occur of the following:

(A) When seventy-five percent of the separate residential interest proposed for the overall Master Planned Development have been conveyed to Class A members;

(B) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report; or

(C) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

(2) The governing instruments may include provision for the election of twenty percent of the members of the board of directors of the Master Association by the subdivider until the first to occur of the following:

(A) When ninety percent of the subdivision interests in the overall development have been conveyed to Class A members;

(B) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report.

(C) On the twenty-fifth anniversary of the first conveyance of a separate residential interest to a Class A member in the overall Master Planned Development under the authority of a public report.

(g) ARCHITECTURAL CONTROL: Members appointed to the Architectural Control Committee by the governing body or by the subdivider need not be members of the Master Association. The governing instruments may include provision for the election of a majority of the Architectural Control Committee of the Master Association by the subdivider. This arrangement shall irreversibly terminate on the first to occur of the following:

(1) When ninety percent of the subdivision interests proposed for the overall Master Planned Development have been conveyed to Class A members; or

(2) On the fifth anniversary following the most recent conveyance to a Class A member of the first separate residential interest in any phase of the overall Master Planned Development under the authority of a public report.

(h) ADDITIONAL ASSOCIATIONS: If any residential structure or other major special benefit facility or amenity will be constructed or provided within the Master Planned Development and commonly maintained or operated for the use or benefit of some but not all of the homeowners within the Master Planned Development, ordinarily one or more separate homeowners associations shall be established under arrangements substantially satisfying the requirements of Sections 2792.4, 2792.8(a), and 2792.15 to 2792.26, inclusive, of these Regulations to maintain the residential structure or to maintain and operate the major special benefit facility or amenity and to enforce any obligation or commitment, and any bond or other arrangement securing such obligation or commitment, relating to the residential structure or major special benefit facility or amenity.

(i) Notwithstanding the foregoing, the subdivider may present to the Commissioner specific facts and circumstances relating to a Master Planned Development that demonstrate the need for alternative arrangements, satisfactory to the Commissioner, from those provisions set forth in subsections (c) through (h) above.

(j) The subdivider of a Master Planned Development may enter into an arrangement with the Master Association to sell or to convey under a lease purchase arrangement common area amenities to the Master Association. The provisions of this subsection are not available to anyone other than the subdivider of a Master Planned Development. The sale or lease purchase arrangement shall include:

(1) All common area amenities subject to this arrangement shall be specifically identified and defined as "common area" or "future common areas" in the CC&Rs. The common area amenity must be a part of the proposed Master Planned Development, accessible to all homeowners who will be charged an assessment to pay for the amenity and must be located on a separate lot or parcel. The term common area shall not include any element or amenity within a separate interest or unit.

(2) All common area amenities subject to this arrangement that have not been completed shall be covered by a bond or other arrangement to secure completion of the amenities.

(3) The Master Association shall not be obligated to make any payments nor shall any homeowner be required to pay any assessment for common area amenities subject to this arrangement until those amenities have been completed and a Notice of Completion as defined in Civil Code Section 3093 has been recorded.

(4) The CC&Rs must obligate the Master Association to maintain and control the common area amenities subject to this arrangement after the sale or lease purchase and to act on those amenities, as appropriate, during the term

of the sale or lease purchase.

(5) Title to the common area amenities shall be delivered free and clear of any liens or blanket encumbrances to the Master Association upon completion of the sale or lease purchase. All encumbrances affecting the common area amenities shall include assurances that the ownership or use by the Master Association shall not be adversely affected.

(6) The purchase price of the common area amenities shall not exceed the cost of construction of those amenities. The master subdivider shall provide a bond to secure completion of construction. The Department may, in its discretion, determine whether the purchase price of the common area amenities exceeds the cost of construction of those amenities. In order to make that determination, the Department may review construction bids, records or analyses submitted by the subdivider and, if deemed necessary, may request an independent third party evaluation. The costs of any independent third party evaluation shall be paid by the subdivider.

(7) The term of the sale or lease purchase arrangement shall not exceed ten (10) years and shall provide for substantially equal monthly payments by the Master Association sufficient to fully amortize the sale or lease purchase. The terms of the sale or lease purchase agreement shall be fair, just and equitable and may not provide for a prepayment penalty, negative amortization or balloon payments. Payments on the sale or lease purchase arrangement shall begin not later than three years from the date a Notice of Completion as defined in Civil Code Section 3093 has been recorded unless the Department has approved a longer time period.

(8) The master subdivider shall submit to the Department, prior to use or execution all sale or lease purchase

agreements, covenants and documents relating to the sale or lease purchase agreement.

(9) The sale or lease purchase arrangement shall specify who is responsible for maintenance, insurance, reserves and operation of the common area amenities. In a lease purchase arrangement, the subdivider shall pay the property taxes attributable to the common area amenities. The subdivider shall post a bond or other form of acceptable security to insure performance if the master subdivider is responsible for any task requiring such security.

(10) The sale or lease purchase arrangement shall provide for the distribution of proceeds and the action to be taken in the event of condemnation or destruction.

(11) The Master Association CC&Rs and budget shall provide for: specific language binding the Association to fund the common area amenities prior to, during and after acquisition of the amenities; the ability of the Association to address issues related to the operation of the common area amenities while they are subject to a sale or lease purchase arrangement; sufficient funds to meet the monthly obligations of the sale or lease purchase arrangement, including a minimum 5% sinking fund to cover defaulting individual homeowner payments until such time as the sinking fund equals the outstanding balance; reserve payments for the common area amenities commencing upon recordation of a notice of completion; and, the right of the Master Association to file liens against the interests of homeowners who have failed to pay their respective portion of the sale or lease purchase costs. Individual homeowner assessments to create the sinking fund shall begin upon the commencement of payments by the Master Association under the sale or lease purchase arrangement. The

sinking fund may only be used to cover defaulting individual homeowner payments on the common area amenities covered by the sale or lease purchase arrangement.

(12) The sale or lease purchase arrangement and agreements shall not be modified without the assent of a simple majority of the owners other than a subdivider.

§2792.33 CONTINUING CARE SUBDIVISIONS

(a) A "Continuing Care Subdivision" is a subdivision described in Section 11004.5 of the Code that includes all of the following:

(1) The subdivision qualifies as housing for older persons pursuant to 42 USC 3607(b)(2)(c) and Section 51.3 of the California Civil Code.

(2) The subdivision offers or provides to its members continuing care services or assisted living services as described in Section 1771 of the Health and Safety Code.

(3) The continuing care provider is a person or entity responsible for providing such continuing care services or assisted living services.

(b) Notwithstanding the provisions of Sections 2792.17, 2792.18, 2792.19 and 2792.21, the governing instruments of a continuing care subdivision may provide for the following:

(1) A quorum for an adjourned meeting of the members of the Association as set forth in Section 2792.17(e)(2) of not less than 15 percent of the total voting power of the Association.

(2) Two classes of membership as defined in 2792.18.

(A) The continuing care provider may be a Class B member. Class B membership entitles the holder to not more than three votes for each subdivision interest owned.

(B) The continuing care provider or its successor may hold at least one Class B membership for as long as the provider or successor provides continuing care services or assisted living services for the subdivision.

(C) The governing instruments shall contain provisions for the resolution of impasses or disputes between Class A and Class B memberships.

(3) The election by Class B membership of 20 percent of the members of the governing body of the Association.

(4) The governing body of the Association may enter into an agreement with a continuing care provider to provide for members of the Association continuing care services or assisted living services as described in Section 1771 of the Health and safety Code. Such agreements shall ordinarily include at least the following provisions:

(A) A term of not more than five years with automatic renewals for a two year period after expiration of the first term unless the Association by the vote or written assent of a majority of the voting power residing in members other than the subdivider or continuing care provider determines not to renew the agreement and gives notice of that determination. Notice of a determination not to renew shall be given not less than six months prior to expiration of the first term or of a subsequent renewal.

(B) Termination for cause at any time by the governing body.

(C) Review by the governing body not less than every two years of the performance of the continuing care provider.

(D) No agreement to provide continuing care services or assisted living services shall be terminated unless the governing body has entered into an agreement with another continuing care provider so that there will be no

lapse in services provided to members.

(c) The provisions of this section and Section 2792.21 do not apply to continuing care services or assisted living services agreements between a continuing care provider and individual members.

(d) If the State Department of Social Services determines in writing that a conflict exists under Section 1775 of the Health and Safety Code, the Commissioner may vary some of the requirements of the following regulations in order to remove such conflict: 2792.8, 2792.9, 2792.15, 2792.16, 2792.17, 2792.18, 2792.19, 2792.20, 2792.21, 2792.23, 2792.24, 2792.26, 2792.27 and 2792.28.

§2793 APPLICATIONS FOR CONSENT UNDER SECTION 11018.7

(a) Application for consent of the Real Estate Commissioner under Section 11018.7 of the Business and Professions Code shall be made on a form provided by the department.

(b) The application shall consist of at least the following:

(1) A statement signed by or on behalf of the applicant containing the following:

(A) A narrative explanation of the proposed change and the anticipated effects thereof.

(B) The reasons why the amendment is being proposed.

(C) The means whereby persons eligible to vote on the proposed change will be informed concerning the substance of the change, and the voting procedure to be employed if the consent of the commissioner is obtained.

(D) Identification of the subdivisions which will be affected by the proposed change by reference to the file numbers of the public reports for the subdivisions.

(2) A copy of the instrument to be amended in its present form.

(3) A copy of the instrument incorporating the changes proposed in the application with suitable marking to indicate proposed amendments.

(4) A copy of the resolution or other authority for submission of the application if made on behalf of a corporation or association.

(5) A copy of the letter or notice to be given to all persons eligible to vote on the proposed change.

(6) An application fee of twenty dollars (\$20.00) in the form of a check or money order.

(c) If the commissioner finds that the proposed change will not materially change the rights of any owner to ownership, possession or use of interests in the subdivision, the commissioner shall consent to the submission of the proposed change to a vote of the owners or members. If the commissioner finds that the proposed change will materially change such rights, the commissioner shall require, as a condition of the commissioner's consent, that a notice approved by the commissioner describing the substance of the proposed change be given to those persons eligible to vote at least fifteen days prior to the vote.

(d) If the commissioner determines that the change as proposed would create a new condition or circumstance that would be the basis for denial of a public report under Section 11018 or 11018.5, the commissioner shall issue a formal order denying consent to the submission of the proposal to persons eligible to vote thereon.

(e) If an applicant fails to take the steps necessary to obtaining the consent of the commissioner within ninety days after the application is filed, the commissioner may deem the application to be abandoned in which case a new application must be filed if the application is to be thereafter pursued.

§2795 PRELIMINARY PUBLIC REPORT

(a) If a subdivider makes application and pays the appropriate fee, a preliminary subdivision public report may be issued by the Department in advance of satisfaction of all requirements for issuance of a final public report when in the judgment of the Commissioner it is reasonable to expect that all of the requirements for the issuance of a final public report will be satisfied in due course.

(b) A subdivider and persons acting on his behalf may solicit and accept reservations to purchase or lease subdivision interests under authority of a preliminary public report if there is compliance with each of the following:

(1) The person making the reservation (potential buyer) has been given a copy of the preliminary public report and has executed a receipt for a copy before any money or other thing of value has been accepted by or on behalf of the subdivider in connection with the reservation.

(2) A copy of the reservation instrument signed by the potential buyer and by or on behalf of the subdivider, along with any deposit taken from the potential buyer, is placed into a neutral escrow depository acceptable to the Commissioner.

(3) The reservation instrument used is a form previously approved by the Department with at least the following provisions:

(A) The right of either subdivider or potential buyer to unilaterally cancel the reservation at any time.

(B) The payment to the potential buyer of his total deposit on cancellation of the reservation by either party.

(C) The placing of the deposit into an interest bearing account for the benefit of the prospective buyer at the prospective buyer's request and upon the prospective buyer's agreement to pay any charges of the escrow

depository for this service.

(c) The initial term of a preliminary public report shall not exceed one year from the date of issuance. The authority to use a preliminary public report shall automatically terminate with respect to those subdivision interests covered by a final public report which is issued before the scheduled termination date of the preliminary report.

§2795.1 RECEIPT FOR FINAL OR PRELIMINARY PUBLIC REPORT

(a) A receipt on the form specified herein shall be taken by or on behalf of the subdivider from each person executing a reservation agreement under authority of a preliminary public report and each person who has made a written offer to purchase or lease a subdivision interest under authority of a final subdivision public report.

(b) The subdivider or his agent shall retain each receipt for a public report for a period of three years from the date of the receipt and shall make the receipts available for inspection by the Commissioner or his designated representative during regular business hours.

(c) The form approved by the Commissioner for the acknowledgment of receipt of a final or preliminary public report as follows:

RECEIPT FOR PUBLIC REPORT

The Law and Regulations of the Real Estate Commissioner require that you as a prospective purchaser or lessee be afforded an opportunity to read the public report for this subdivision before you make any written offer to purchase or lease a subdivision interest or before any money or other consideration toward purchase or lease of a subdivision interest is accepted from you.

In the case of a preliminary or interim subdivision public report, you must be afforded an opportunity to read the report before a written reservation or any deposit in connection therewith is accepted from you.

In the case of a conditional subdivision public report, delivery of legal title or any other interest contracted for will not take place until

issuance of a final public report. Provision has been made in the sales agreement and escrow instructions for the return to you of the entire sum of money paid or advanced by you if you are dissatisfied with the final public report because of a material change. (See California Business and Professions Code Section 11012.)

DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE READ IT.

I have read the commissioner's public report on

(File No.) (Tract No. or Name)

I understand the report is not a recommendation or endorsement of the subdivision, but is for information only.

The date of the public report which I received and read is

(Date Issued) (Date Amended)

Name

Address

(Date)

Subdivider Is Required to Retain This Receipt for Three Years.

§2795.3 TERM OF PUBLIC REPORT AND EXTENSION THEREOF

The term of any Final Subdivision Public Report issued pursuant to Section 11018 of the Business and Professions Code shall be limited to five (5) years. A renewal shall be issued if the subdivider, owner or agent makes application for renewal of any report and has submitted such additional information as the commissioner may require.

§2797 COMMON INTEREST DEVELOPMENT - INDIVIDUAL HOMEOWNER MAINTENANCE

A subdivision that is a common interest development as defined by Civil Code 1351(c) consisting of three (3) or more attached residential dwellings may have individual homeowner maintenance for their own dwelling if all of the following exist:

- (a)** The individual dwellings will be independent structurally from the other dwellings.
- (b)** All utility lines, except for the fire service line as described below, serving the individual dwellings will consist of separate lines which run through easements located in accessible areas capable of maintenance by each owner of a dwelling. Such easements will be established in the CC&R's. A fire service main will run through the easement and will branch off from the main to each dwelling.
- (c)** The individual homeowners will be responsible for exterior maintenance of their dwelling. The exterior stucco will contain architectural enhancements, which will indicate the boundaries between the dwellings.
- (d)** The homeowners association will maintain, repair and replace the roof. The association budget will include a reserve item for roof replacement.
- (e)** The association will also have other limited maintenance responsibilities, such as, fire extinguisher cabinets, fire extinguishers, electrical panels, gas meters and telephone panels, gutters and downspouts, address numbers and common exterior lighting. These responsibilities will be described in the CC&Rs or in an exhibit to the CC&Rs specifically allocating responsibility to the association.
- (f)** Maintenance Manuals and warranty manuals will be prepared to be consistent with this allocation of

responsibility and will further elaborate as necessary on the maintenance obligations.

(g) The association is responsible for obtaining property insurance for each residential dwelling, excluding items typically covered by dwelling owners such as personal property, floor and wall surface materials, upgrades installed by the homeowners and liability insurance for injury or damage caused inside the dwelling. The insurance should cover all components of the dwelling including the roof, foundation and other exterior elements.

(h) In the event of damage or destruction, the association is responsible for the reconstruction of the dwellings.

(i) The dwelling owners will receive a separate disclosure to be signed or initialed describing in detail their maintenance, repair, replacement and insurance obligations. That information will also be included in the subdivision's CCR's. In addition, the subdivision public report will include a special note that there is a separate disclosure, which must be signed by all homebuyers and describing the building configuration, association assessment structure, maintenance responsibilities and financing issues. The report will indicate that the lower than usual association assessment will be offset by higher owner maintenance costs.

§2798 PHASED SUBDIVISION DEVELOPMENT

If a subdivider, for the purpose of developing and marketing subdivided land in increments or phases, requests and obtains a public report that covers less than all of the contiguous subdivision interests or land which the subdivider intends ultimately to develop as part of an overall project, a new notice of intention, questionnaire and original filing fee must be submitted in connection with each subsequent application for a public report covering subdivision interests to be annexed to the

subdivision interests for which a final public report has previously been issued.

§2799.1 SUBDIVISION ADVERTISING CRITERIA

(a) Standards which will be applied by the Real Estate Commissioner in determining whether advertising for sale or lease of subdivision interests is false, untrue or misleading within the meaning of those terms in Sections 10140, 10177(c), 11022 and 17500 of the Business and Professions Code shall include, but shall not be limited to the following:

(1) Advertising shall not imply a use of a subdivision interest that is not set forth in the Notice of Intention and Questionnaire comprising the application for a public report or permit.

(2) A subdivision shall not be advertised under a name, designation or appellation that is not set forth in a Notice of Intention and Questionnaire.

(3) A subdivision shall not be advertised by a name or trade style which implies, contrary to fact, that the subdivider or his agent is a bona fide research organization, public agency, nonprofit organization or similar entity.

(4) No improvement, facility or utility service may be advertised unless it has been completed or installed and is available for use, or unless completion and availability for use are assured through bonding or other arrangements approved by the commissioner. If not completed, the estimated date of completion shall be set forth in the advertising.

(5) There shall be no reference to the prospective availability of private facilities outside of the subdivision for the use and enjoyment of purchasers of subdivision interests if the facilities are to be constructed or installed

by the subdivider or an affiliated entity unless financial arrangements for completion or installation have been approved by the commissioner.

(6) There shall be no reference to proposed or uncompleted private facilities over which the subdivider has no control unless the estimated date of completion is set forth and unless evidence has been presented to the commissioner that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.

(7) Unless the facilities and improvements listed below have been completed, or unless financial and other arrangements for completion have been made, subdivided land offered for residential use shall not be described as "improved," "developed," or by similar terms without disclosure of any facility or improvement listed below that is not included in the offering:

(A) Paved roads within the subdivision.

(B) A potable water system.

(C) A sewage system.

(D) A source of electricity at the building site.

(8) Reference shall not be made to a proposed public facility or project which purports to affect the value and utility of subdivided lands without a disclosure of the existing status of the proposed facility based upon information supplied or verified by the authority responsible for the public facility or project.

(9) A subdivider shall not advertise the availability of financing for on-site construction unless he has a bona fide written expression of an intention to finance such construction by a recognized lender or unless the subdivider has established to the satisfaction of the commissioner that financing of on-site construction will be

provided by a source other than a recognized lender.

(10) Pictorial or illustrative depictions of the subdivision and surrounding lands must accurately portray the land as it exists and proposed improvements as they will be constructed.

(11) Pictorial or illustrative depictions other than unmodified photographs shall bear a prominent disclosure identifying the nature of the depiction, e.g., ARTIST'S CONCEPTION and a legend identifying those improvements which are not then in existence.

(12) If a map or diagram is used to show the location of the subdivision in relation to other places, actual road miles from each other place to the subdivision shall be shown or the map or diagram shall be prepared to scale and shall include a scale of miles.

(13) If there is advertising of streets, roads, sewers, storm drains or other utilities which have not been accepted for maintenance by a public entity, that fact must be disclosed in the advertising. Rights-of-way for passenger vehicles to a subdivision or to lots within a subdivision which have not been accepted for maintenance by a public entity shall be adequately described in terms of roadbed and surfacing.

(14) If the existence of a lake, river, canal or other body of water, which is subject to a fluctuating water level other than through natural causes, is advertised as a feature of the subdivision, any significant effect of the fluctuation upon the use of the water facility and upon the subdivision interests shall be described.

(15) No advertisement shall imply that a facility is available for the exclusive use of purchasers of subdivision interests if a public right of access or of use of the facility exists.

(16) There shall be no reference to the availability for use by owners of subdivision interests of private clubs or facilities in which an owner will not acquire a proprietary interest through purchase of a subdivision interest without an accompanying disclosure that the existence of the facilities and their availability for use by subdivision interest owners are at the pleasure of the owner of the facility.

(17) An advertisement of any facility in which a purchaser will acquire a proprietary interest with his purchase of a subdivision must set forth the estimated costs and other obligations of the purchaser with respect to the facility or shall refer the purchaser to a fact sheet or similar source of this information.

(18) No representation may be made that subdivision interests being offered for sale can be further divided unless a full disclosure is included as to the legal requirements for further division of the interests.

(19) Subdivision interests may not be advertised as available at a particular minimum price if the number of subdivision interests available at that price comprise less than 10% of the unsold inventory of the subdivider, unless the number of lots then for sale at the minimum price is set forth in the advertisement.

(20) Advertising of a discounted purchase price shall not be made unless the subdivider has established base prices for application of the discount through a substantial number of sales at base prices.

(21) A prospective increase in the price of a subdivision interest other than an interest offered with an on-site residential, commercial or industrial structure may not be implied nor shall a price increase of such a subdivision interest be announced more than sixty days prior to the date that the increase will be placed into effect.

(22) If the phrase "closing costs only" or similar terminology is used to describe the price of a subdivision interest, the estimated dollar amount of the costs must be set forth in the advertisement.

(23) The total amount of any special bonded indebtedness, or the range of such bonded indebtedness, against the subdivision interests shall be set forth in any advertisement which states or implies that off-site improvements for the subdivision have been completed and paid for in connection with the development of the project. If the selling price of a subdivision interest is advertised, the special bonded indebtedness against that subdivision interest shall be given equal prominence with the selling price unless the bonded indebtedness is included in the advertised selling price.

(24) No representation shall be made as to the availability of a resale program offered by or on behalf of the subdivider unless the resale program has been made a part of the offering as submitted to the commissioner.

(25) An asterisk or other reference symbol may be used to explain, but not to contradict or to change the ordinary meaning of the material in the body of the advertisement.

(26) Unless an offer made in connection with a sales promotion is unequivocally without conditions, the terms "free," "no obligation" or terms of similar import may not be used to describe that which is offered.

(27) Offers of travel, accommodations, meals or entertainment at no cost or reduced cost, the purpose of which is to promote sales, shall not be described as "awards," "prizes" or by words of similar import.

(28) Offers or solicitations of trip reservations to visit subdivided property or any other place where a sales presentation for subdivided property is to be made shall

set forth all conditions, limitations or qualifications that will be applied before the recipient will be allowed to make the trip.

(29) The approximate retail value of any gift, prize or premium offered through an advertisement to prospective purchasers shall be set forth in the advertisement.

(30) Complete rules and procedures for any contest or drawing advertised in connection with the marketing of subdivision interests shall be included in the advertisement, or the advertisement shall state the means by which a person can secure full information concerning said rules and procedures prior to his participation in the contest or drawing.

(31) Advertising shall not include testimonials or endorsements which contain matters which the subdivider would be precluded by law or regulation from making in his own behalf.

(32) An offer or inducement to purchase which purports to be limited as to quantity or restricted as to time shall set forth the numerical quantity and/or time applicable to the offer or inducement.

(33) An advertisement or an offering of undivided or fractional interests in a subdivision, which does not include a right of exclusive ownership or occupancy of a particular lot, parcel or unit by the purchaser, shall disclose the total number of undivided or fractional interests to be offered for sale in the subdivision.

(34) If the subdivision offering involves something less than a fee interest with an exclusive and perpetual right to occupy a lot, parcel or unit, e.g., a leasehold or time-sharing-ownership interest, the limitations and restrictions on occupancy rights shall be included in the advertisement or the advertisement shall refer the

purchaser to a fact sheet or similar source of this information.

(35) No direct mail advertisement purporting to have resulted through a referral shall be used unless the solicitation includes the name of the person making said referral.

(36) Investment merit or profit potential of a subdivision interest other than an interest which is offered with an on-site residential, commercial or industrial structure shall not be expressed or implied unless the commissioner has determined from evidence submitted by or on behalf of the subdivider that the representation is neither false nor misleading.

(37) Statements appearing in the public report for a subdivision shall not be quoted, paraphrased or cited out of context nor shall any part of the public report be underscored, italicized, bold faced or otherwise highlighted except in strict conformance with highlighting in the public report itself.

§2799.2 ADVERTISING REVIEW FEE

A submission of each advertisement to the Department for approval pursuant to Section 11022 of the Code shall be accompanied by a fee of seventy-five dollars (\$75).

§2800 NOTIFICATION OF MATERIAL CHANGE

The owner of a subdivision which is the subject of an outstanding public report shall immediately report in writing to the Real Estate Commissioner relevant details concerning any material change in the subdivision itself or in the program for marketing the subdivision interests. A material change in the subdivision or in the offering shall include, but shall not be limited to the following:

(a) The sale, conveyance, including a transfer of title in trust, or the granting of an option to another to acquire, five or more subdivision

interests in a subdivision other than a time-share project or twelve or more time-share estates or time-share uses in a time-share project.

(b) Change in the name or organization of the subdividing entity such as incorporation, dissolution of corporation or change in corporate or fictitious business name.

(c) Change in purchase money handling procedures under Section 11013.2 or 11013.4 of the Code including but not limited to a change in name or location of escrow or trust account depository or the creation of a blanket lien or encumbrance affecting a lot, parcel or unit of subdivided land being offered for sale.

(d) Change in methods of marketing or conveyance of subdivision interests, including but not limited to the following:

(1) Use of real property sales contracts, lease-option agreements or similar marketing instruments.

(2) Special sales inducements involving a financial commitment to purchasers by or on behalf of the subdivider such as buy-back agreements, special interest rates or a short-term basis and prizes, gifts or premiums.

(e) Inability of the subdivider to fulfill agreements and assurances to purchasers of subdivision interests given by the subdivider to the commissioner in the application for a public report.

(f) Creation or discovery of latent hazards affecting the subdivisions such as adverse geologic conditions not apparent at the time of issuance of the current public report for the subdivision.

(g) Addition of common areas or common facilities for the use and enjoyment of owners in the subdivision which were not contemplated at the time of issuance of the current public report for the subdivision.

(h) A relocation of easements affecting unsold subdivision interests.

(i) The creation of a district, or the annexation of the subdivision into a district, having the power to tax or levy assessments against real property interests within the subdivision.

(j) An increase of 20% or more or a decrease of 10% or more in the regular assessment charged by an Association against owners in a common-interest subdivision over the amount of the regular assessment reflected in the current public report for the subdivision.

(k) Delinquencies in the payment of regular assessments by owners within a common-interest subdivision resulting in the receipt by the Association of income which is more than 10% less than scheduled income from said assessments.

(l) A proposed change in the use for which the subdivision is offered as, for example, from residential to investment or a proposed change from an offering of the sole and exclusive use of a unit in a common-interest subdivision to a program involving the sharing of ownership or use with others as, for example, a time sharing program.

(m) Changes in the means for furnishing potable water, sewage disposal and other public services to lots, parcels or units within the subdivision.

(n) Any change in the configuration of the subdivision interest being offered for sale from the configuration according to the subdivision map or parcel map upon which the current public report for the subdivision was based.

(o) An amendment to the CC&Rs or other governing instruments for the subdivision or for an association of owners of subdivision interests.

(p) Failure by the subdivider as an owner of interests in a common interest subdivision to pay regular assessments where:

(1) Assessments are payable on a monthly basis and the subdivider has failed to pay three or more months of such assessments.

(2) Assessments are not payable on a monthly basis and the subdivider has failed to pay such assessments within three months after such assessments become due and payable.

(q) A program which does not comply with Section

2792.10 in which the subdivider undertakes to subsidize the cost of operating and maintaining common areas and of providing services in lieu of payment of regular assessments by the subdivider.

(r) The affiliation by a single-site time-share project as defined in Section 11003.5 of the Code with: 1) other time-share projects or accommodations under a contractual or membership program through a mandatory reservation system or 2) a mandatory reservation system.

§2801.5 "SUBDIVIDER" DEFINED

The term "any person" in Section 11010 and the terms "owner" and "subdivider" in Sections 11012 and 11018.1 of the Code include any person, who at any point in time, owns, or has an option or contract to acquire, the subdivision interests listed in (a) or (b) below for purposes of sale, lease or financing if the subdivision interests were acquired or are to be acquired from the original recipient of a public report for the subdivided land, or from a person who succeeded to the interest of the original recipient in five or more subdivision interests in a subdivision other than a time-share project or in twelve or more time-share estates or uses in a time-share project:

(a) Five or more subdivision interests in a subdivision other than a time-share project.

(b) Twelve or more time-shares estates or time-share uses in a time-share project.

Except as provided in Section 11010.5 of the Code, an "owner" or "subdivider" as herein defined shall not offer for sale or lease, nor cause to be offered for sale or lease, any of the subdivision interests herein above referred to unless a subdivision public report has been issued by the Department expressly authorizing the sale or lease of the interests by or on behalf of said owner or subdivider.

§2803 NONCONTIGUOUS PARCELS

If the notice of intention referred to in Section 11010 of the Code includes lots, parcels or units of subdivided land that are not contiguous to each other, the commissioner will determine which of the lots, parcels or units are sufficiently close together and sufficiently similar to each other in physical and other characteristics to be included within the coverage of a single public report.

§2804 ABANDONING APPLICATION FOR PUBLIC REPORT

(a) The commissioner may abandon an application for a final, conditional, amended, or renewed public report, if:

(1) The data required by Section 11010 has not been furnished within three years from the date a notice of intention was filed for the subdivision public report; and

(2) Six months have elapsed since the commissioner has given notice of deficiencies or substantive inadequacies contained in the documents which are required to make the filing substantially complete and the deficiencies and inadequacies have not been corrected by the applicant; and

(3) The term of any one-year extension of time in which to complete the application, as provided in subdivision (d), has elapsed.

(b) Ninety (90) days prior to abandoning an application the commissioner shall mail to the applicant and the applicant's designated representative, notice of the commissioner's intent to abandon the application. The notice shall include a statement that the applicant may, in accordance with subdivision (d), file a petition to keep the application open.

(c) Sixty (60) days or more following the mailing of the notice required by subdivision (b), the commissioner may issue a final notice of intention to abandon the application. The application shall be deemed abandoned thirty (30) days after the final notice is mailed to the

applicant and the applicant's designated representative, unless, prior to the expiration of the thirty day period, a one-year extension has been granted pursuant to subdivision (d).

(d) The commissioner, on his own motion, or after receipt of a petition from the applicant or the applicant's designated representative, may, under the following terms and conditions, grant a one-year extension in order to allow the applicant to complete the application:

(1) The petition is received prior to the expiration of the thirty (30) day notice period referred to in subdivision (c).

(2) The petition sets forth reasons of hardship or justifiable extenuating circumstances explaining why the file has been inactive. Hardship and justifiable extenuating circumstances shall include mistake, inadvertence, surprise, excusable neglect, or circumstances beyond the control of the applicant or the applicant's designated representative.

Written notice of the decision to grant or deny the petition will be mailed or delivered to the applicant and the applicant's designated representative, within thirty (30) calendar days after receipt of the petition.

(e) The commissioner may grant one or more one-year extensions, provided that the application has not been abandoned as provided in subdivision (c).

(f) The term "applicant" as used in this section shall have the same meaning as the term "subdivider" as used in Section 11018.13 of the Code.