

2014

A Guide to Understanding Residential Subdivisions in California

Alberto Esquivel
Jaime R. Alvayay



A Guide to Understanding Residential Subdivisions in California

Alberto Esquivel

College of Continuing Education
California State University, Sacramento

Jaime R. Alvayay

CSU Real Estate & Land Use Institute

and

College of Continuing Education
California State University, Sacramento



SACRAMENTO STATE
COLLEGE OF CONTINUING EDUCATION



California Department of Real Estate

www.dre.ca.gov

DISCLAIMER:

This Guide is designed to provide accurate and authoritative information regarding the subject matter covered as of the publication. The Guide is offered with the understanding that the California Department of Real Estate, the California State University, Sacramento, and the authors and editors of the Guide, are not engaged in rendering legal, tax, accounting or other professional advice, and the Guide is not a substitute for the advice of a licensed attorney or other professional. If legal advice or other expert assistance is required, the services of a competent attorney or other professional should be sought.

ABOUT THE AUTHORS

Jaime R. Alvaay – Project/Research Director

Dr. Alvaay is a professor of real estate and business statistics at California State University, Sacramento and Executive Director of the CSU – Real Estate & Land Use Institute (RELUI). He received a M.A. in Banking and Finance and a Ph.D. in Financial Economics from the University of Georgia. He has taught Business Statistics, Corporate Finance, Housing and Mortgage Markets, and Real Estate Finance and Investments.

His research has been published in *Structural Change and Economic Dynamics*, *Review of Quantitative Finance and Accounting*, *Real Estate Economics*, *Journal of Real Estate Research*, *Journal of Real Estate Literature*, *Journal of Real Estate Portfolio Management*, *Land Economics Review*, *Appraisal Review Journal*, and *Industrial Development Journal*. His work has received awards from the Homer Hoyt Institute and the Industrial Development Research Council.

Dr. Alvaay has worked for the Chilean National Development Corporation and the Central Bank of Chile. He also has held managerial positions in industry and agriculture and was vice president and partner of a consulting company.

He has been a member of the Board of Directors of the International Real Estate Society, the Editorial Board of the *Journal of Real Estate Literature*, International Section, and has served as referee for *Real Estate Economics*, the *Journal of Real Estate Research*, and the *Journal of Real Estate Literature*.

Alberto Esquivel - Subject Matter Expert

Mr. Esquivel is a real estate broker, project manager, and land use consultant with more than 23 years' experience in real estate development in northern California. Mr. Esquivel's career includes both private sector and public sector experience in land development and residential development.

Since 1996, Mr. Esquivel has focused on redevelopment, housing development, and land use in urban areas. Mr. Esquivel's experience includes management of:

- Township 9, a 65-acre mixed-use, transit-oriented master planned redevelopment project north of downtown Sacramento consisting of 2,350 housing units, 800,000 square feet of office, 160,000 square feet of retail, and 26 acres of open space in downtown Sacramento
- The Rivers, a 210-acre conversion of the former Lighthouse Golf Course into a master-planned residential community of approximately 1,200 dwelling units in West Sacramento
- The Fremont Building, a mixed-use building containing 69 apartments and 12,000 square-feet of retail at 16th and P streets in midtown Sacramento
- Capitol Park Homes, a residential subdivision containing 64 for-sale, single-family detached homes on two city blocks bounded by 12th, 14th, P & Q streets in midtown Sacramento
- 1801 L Street Building, which consists of 176 apartments and 9,600 square feet of retail in midtown Sacramento
- L Street Lofts, 92 mid-rise loft condominiums in midtown Sacramento

Mr. Esquivel previously served as an Assistant Director with the Sacramento Housing and Redevelopment Agency. Mr. Esquivel is a part-time lecturer of real estate and land use courses at California State University, Sacramento. Mr. Esquivel holds a B.S. in Business Administration from California State University, Sacramento and an MBA from the J.L. Kellogg Graduate School of Management at Northwestern University in Illinois. Mr. Esquivel is a graduate of the Sacramento Chamber of Commerce's Leadership Program. He has previously served as a Commissioner on the Sacramento Development Oversight Commission, and the Kellogg School's Alumni Admissions Organization. He is a former member of the Board of Governors of City Seminary of Sacramento, and a Deacon of Covenant Reformed Church. Mr. Esquivel, his wife Ruthanna, and his son Alejandro reside in Carmichael, California.

FOREWORD

The California Department of Real Estate (DRE) is extremely pleased to offer *A Guide to Understanding Residential Subdivisions in California* as a free resource for everyone who has an interest in California subdivisions. We hope that this guide will be useful as a resource to, and a practical and valuable tool for, subdivision developers and builders, consumers who are interested in purchasing a home in a subdivision, owners of homes and units in subdivisions, real estate lawyers, real estate licensees, land use planners and other regional subdivisions staff, our specialized subdivisions staff, and anyone else who might be interested in residential subdivisions.

DRE is the State entity which is responsible for enforcing the Subdivided Lands Act (SLA), which requires the qualification of subdivision offerings primarily for the protection of purchasers of homes in subdivided lands. That qualification process is accomplished through appropriate disclosures of material information to prospective subdivision homebuyers. The disclosures are made in a document called a “Public Report,” which is developed and produced by DRE based on information submitted by the subdivision developers.

We have received numerous questions over the years concerning the mandate, operation, framework, application, and substantive and procedural requirements of the SLA, and wanted to provide answers to those questions in a clear, wide-ranging, and beneficial document. We believe that the authors of this guide, whom I wish to thank for their exceptional work, have met that goal and more. In addition to providing comprehensive, informative and easy-to-read materials on the SLA, there is important and significant information on common interest developments (in which millions of Californians reside), homeowner associations, the Subdivision Map Act (which is the California enabling statute under which cities and counties enact local laws controlling the “subdivision” of land within their jurisdictions), and a variety of other issues pertaining to residential subdivisions in California.

Because the DRE also oversees the California Real Estate Law and safeguards and promotes the public interests in real estate matters, we also wanted to develop, along with and in conjunction with the more comprehensive manual, a stand-alone *Residential Subdivision Buyer’s Guide* that focuses entirely on subdivision issues for consumers. That document will be available as a separate resource manual for real estate consumers. We hope that consumers peruse *A Guide to Understanding Residential Subdivisions in California*, and read the *Residential Subdivision Buyer’s Guide* and the DRE booklet entitled *Living in a Common Interest Development* (all of which will be available for no fee on DRE’s website - www.dre.ca.gov) when considering the purchase of a home or unit in a residential subdivision in California.

In ending, I want to express my appreciation to all of those who contributed to the planning, research, writing, editing, and production of *A Guide to Understanding Residential Subdivisions in California* (and the specially consumer-focused *Residential Subdivision Buyer’s Guide*), and my hope that each reader of the guide(s) will find something of value.



Wayne S. Bell
Real Estate Commissioner, State of California

ACKNOWLEDGEMENTS

We would like to acknowledge the individuals and organizations that made the development and publication of this monograph possible.

Wayne Bell, California Real Estate Commissioner, saw the need for this monograph, initiated the project, and participated in the manuscript reviews. Sandra Knau, DRE Licensing Program Manager, was involved at every stage of the project from inception to completion. The following members of the DRE staff reviewed the monograph and generously gave their time to make contributions to its accuracy: Wes Jigour, Jeff Mason, Chris Neri, Tom Pool, and Shelly Wilson.

We are also indebted to Bruce Inman for his contribution to the legal accuracy of the monograph and Editor Mallory Leone who contributed to readability and consistency.

Elizabeth Perez, Graphic Designer from the College of Continuing Education at Sacramento State (CCE), provided expert assistance in the design of the figures, illustrations and created the cover design. She also designed the Residential Subdivision Buyer's Guide published separately. Scott A. Holliday, Graphic Specialist from CCE, provided graphic formatting and layout of the publication. Project Manager Susan Gonzalez, also from CCE, guided the different phases of the project from planning to production with great enthusiasm, dedication, and professionalism.

We greatly appreciate the contributions made by each of these individuals and we thank them for their dedication and excellent work.

TABLE OF CONTENTS

About the Authors	<i>i</i>
Foreword	<i>iii</i>
Acknowledgements	<i>iv</i>
Overview	1
What is a Subdivision?	2
Common Interest Developments	2
How Common are Common Interest Developments?	3
Why Common Interest Developments?	3
AB 32 – Global Warming Solutions Act	5
SB 375 – Sustainable Communities and Climate Protection Act	7
DRE Administration of the Subdivided Lands Act	7
The Role of the DRE in the Subdivision Process	8
The DRE Does Not Exercise Land Use Authority.	9
The DRE Does Not Exercise Authority Over the Affairs of HOAs	9
Background for Understanding California’s Subdivision Process	10
Subdividers, Developers, and Homebuilders	10
Title Records	10
Title Insurance	11
Land Use Restrictions	11
Essential Residential Services and Quasi-Governmental Associations	12
Ownership Interests	14
Common Area	15
Subdivisions – Ownership Form vs. Physical Form	16
Attached Housing and Subdivision Types	16
Detached Housing and Subdivision Types	17
Maintenance Responsibility	17
Developer Preference for Single-Family Detached Homes to Attached Housing	18
Marketing Concerns.	18
Expertise	20
Construction Defect Liability	20
Common Interest Developments of Single-Family Detached Homes	21
Distinctions of Subdivision Types	21
Standard Subdivisions	21
Common Interest Developments	22
Homeowners Associations	27
When Required	27
Formation	28
Budget	29
Assessments	29
Operating Expenses and Reserves	29
Other Responsibilities	30

TABLE OF CONTENTS (cont.)

The Housing Development Process	30
Duration of the Development Process	31
The Real Estate Cycle and the Supply-Demand Gap	31
Ex Ante Analysis and Project Delays	33
Factors Affecting Project Duration	33
Project Development Overview	35
Predevelopment Stage	35
Feasibility Analysis	36
Internal Factors	37
External Factors	39
Land Acquisition and Land Financing	39
Feasibility Period	39
Title Conditions	40
Purchase Price and Payment of the Purchase Price	40
Tentative Map and Land Use Entitlements	41
Tentative Map Process	41
Satisfaction of Conditions of Approval	42
Project Design	42
Approval of Subdivision Improvement Plans	43
Final Map Approval and Recordation	43
Financing During the Predevelopment Stage	43
Development/Construction Stage	43
Selling Stage	44
Legislation Related to Subdivisions and the Subdivided Lands Act	45
Regulations of the Real Estate Commissioner – Subdivisions	46
California Environmental Quality Act	46
Davis-Stirling Act	46
Subdivision Map Act	47
Subdivisions Subject to the Map Act vs. the SLA	48
Types of Maps – Tentative Map, Final Map, Parcel Map	49
The Mapping Process	49
Common Interest Developments under the Map Act	50
Maps for Common Interest Developments – “Vertical” vs. “Horizontal” Subdivisions	51
Phasing	53
Conversions to Common Interest Developments Under the Map Act	53
Comparison of the Subdivided Lands Act and the Subdivision Map Act	54
The Subdivided Lands Act	54
Subdivision Definition and Applicability of SLA	55
Exemptions	56
The Public Report	56
Issuance of Public Reports – Historical Data	58
The Public Report Application Process	58

TABLE OF CONTENTS
(cont.)

The Public Report Application	62
The Public Report Application Review	62
Purchase Money Handling	63
Completion of Improvements	63
Phasing/Annexation	64
Homeowners Association	65
Warranties and Guaranties	68
Issuance of the Public Report	68
Appendix A: Legislative History of the Subdivided Lands Act	73
Appendix B: Business and Professions Code – Timeline	79
Sources	89

TABLE OF CONTENTS (cont.)

List of Acronyms	87
-----------------------------------	----

List of Figures

Figure 1 - Distribution of Public Reports 1993-2012	3
Figure 2 - Public Reports Issued Annually By Type	4
Figure 3 - DRE Involvement in the Development Process	8
Figure 4 - Land Use Controls and Community Services	13
Figure 5 - Public Report Applications Detached vs. Attached	19
Figure 6 - The Real Estate Cycle	31
Figure 7 - The Development Pipeline	34
Figure 8 - The Residential Development Process	36
Figure 9 -The Scope of the Map Act vs. SLA	48
Figure 10 - Flowchart: Is a public report required?.	57
Figure 11 - Issuance of Public Reports by Report Type	59
Figure 12 - Issuance of Public Reports by Type	60
Figure 13 - Flowchart: Public Report Application Review Process	61
Figure 14 - Mandated Application Processing Timeframes	69

List of Illustrations

Illustration 1 - Condominium Ownership Areas	16
Illustration 2 - Typical Standard Subdivision	22
Illustration 3 - Planned Development	22
Illustration 4 - Community Apartment	23
Illustration 5 - Airspace Condominium	24
Illustration 6 - Detached Condominium	25
Illustration 7 - Stock Cooperative	25
Illustration 8 - Limited Equity Housing Cooperative	26
Illustration 9 - Tenancy in Common	27
Illustration 10 - Horizontal Subdivision	51
Illustration 11 - Vertical Subdivision	52
Illustration 12 - Detached Condominium	53

List of Tables

Table 1 - Ownership Interests by Subdivision Type	14
---	----

Real estate ownership is the greatest source of wealth for most Americans, and a home is the most valuable asset most will ever own. For many homebuyers, buying a home is a daunting and stressful process. A homebuyer considering a purchase in a new subdivision may not understand all of the significant aspects of owning a home in the subdivision and the rights and responsibilities that come with it. If the subdivision is a “common interest development,” such as a condominium, the homebuyer may be even less prepared to make an informed purchase decision since these types of developments tend to be more complex than a traditional subdivision of single-family homes.

The Subdivided Lands Act is a law that was created to protect purchasers of lots, units, or interests in new subdivisions. It is designed to protect consumers from misrepresentation, deceit, and fraud, and it requires prospective purchasers to be provided with a report containing material information about the lot, unit, or interest being offered as well as the rights and responsibilities that come with the property.

The purpose of this guide is to provide a practical understanding of the subdivision process in California by explaining the Subdivided Lands Act and related laws and how they relate to residential real estate development. The focus is on the Subdivided Lands Act; however, a general comprehension of residential development and other laws is necessary to understand the Subdivided Lands Act.

In order to gain complete understanding, the various types of subdivisions – standard, condominium, planned development, community apartment, stock cooperative, and undivided interest – will be described and discussed. However, the predominant types of subdivisions reviewed by the Department of Real Estate are standard subdivisions, condominiums, and planned developments.

OVERVIEW

In most cases, the value of real estate is not in the property itself – the soil, materials, improvements, buildings on a site – but rather the *rights* associated with the ownership of the property. The value of a home is greatly diminished if the owner does not have the right to transfer the title to someone else. An apartment building is of little value to its owner if the owner does not have the right to lease out the apartments. Thus, the value of real estate is due in large part to the property rights afforded and protected by the legal system. Under our legal system, ownership of real estate is said to be ownership of a bundle of rights. These rights include the right to use, lease, encumber, transfer (by sale or will), and exclude others.

All new development of housing in California must go through a legal process of subdivision in order for the developer to market and transfer the resulting subdivided interests. A requirement of this process that contributes to a properly functioning real estate market is that real property must be described in a formal way, i.e., an adequate legal description is required in transactions transferring real property rights. Creating an adequate legal description for subdivided property is a function of one of two laws governing subdivision development in California. This law is called the Subdivision Map Act (Map Act). The Map Act governs the legal and physical requirements of subdividing real property and the process by which cities and counties may approve subdivisions in their jurisdictions.

The second law governing subdivision development in California and the subject of this study is the Subdivided Lands Act (SLA). This law governs the process by which property, once it has been subdivided, may be initially marketed and sold to members of the public.

In addition to establishing the legal framework for transferring interests in real property, California’s subdivision laws have been adopted and amended over time in order to protect communities and homebuyers from potentially adverse impacts of subdivisions. New development can have a significant impact on communities, and thus, state law grants local governments the power to regulate the manner in which their communities grow. Consequently, the Map Act requires subdivision developers to obtain the approval of the local government in order to subdivide property. By placing conditions of approval on new subdivisions, local governments can ensure that new subdivisions are consistent with their own plans and regulations for growth and new development.

The primary purpose of the SLA is to protect homebuyers – purchasers and prospective purchasers of new subdivided interests – from misrepresentation, deceit, and fraud in the public sale, lease, or financing of “subdivisions.” As noted above, a home purchase is likely the largest investment a consumer will make. Because of the large amounts of money and the complexity involved in real estate transactions, the possibility of fraudulent or dishonest activity is increased. Subdividers, like sellers of any product, may also be motivated to withhold information that, if known, may lead to a lower value, may influence a buyer’s decision, or may ultimately negatively affect the buyer’s quality of life.

Similar to the bundle of rights described above, residential real estate must be provided with a bundle of services if it is to be habitable and if it is to provide a minimum quality of life to the resident. These services are usually provided by or under the jurisdiction of the local government and funded by property taxes and/or user fees. These basic services typically include the provision of vehicular access, water, waste removal, electricity, gas, telephone, and cable television to the property as well as the maintenance of such facilities. More broadly, municipal services include law enforcement, fire protection, education, etc., that residents of the property could utilize. The quality and sufficiency of these services also contribute to the value of the property.

While property owners are provided these rights and services, they are expected to fulfill the obligations associated with property ownership. In addition to paying property taxes and assessments, property owners are expected to live in accordance with local ordinances and to uphold the standards of their local community. That is, residents are expected not to be a nuisance to their neighbors and not to interfere with their neighbors’ enjoyment of their own property. Many residential subdivisions are subject to covenants, conditions, and restrictions (CC&Rs) as well as homeowners association rules that go beyond local ordinances and impose more accountability upon residents of these developments.

The primary purpose of the SLA is to ensure that buyers of homes within new subdivisions are provided adequate information on all matters affecting the property prior to making their purchase decision.

What is a Subdivision?

Virtually every home where the occupant has an ownership interest in the home was created by a subdivision of one form or another. Legal definitions and types of subdivisions are described later in this study, but a **subdivision** is simply the division or separation of ownership interests in real property. The two categories of subdivisions under the SLA are standard subdivisions and common interest developments (CIDs). A **standard subdivision** is one that results in entirely **divided interests**; i.e., the owner of the subdivided interest owns the entire interest (lot or parcel) exclusively with no common ownership of anything associated with it. A **common interest development** is one that results in all or part of the project being an **undivided interest**, i.e., two or more owners holding a single ownership interest.

Common Interest Developments

Due to a variety of factors, what is thought of as the “traditional home,” a single-family detached home on an individual lot on a public street provided with public services, is no longer traditional. Increasingly, housing developers have been offering alternative ownership options in subdivisions where infrastructure facilities are privately owned, where services are provided or enhanced by private entities and private restrictions on residents are more prevalent. These are features of CIDs. Consider a gated neighborhood of single-family homes with a private recreational center. The streets, gates, recreational facility, and other facilities are owned “in common” by the homeowners of the gated community, and they are responsible for their maintenance.

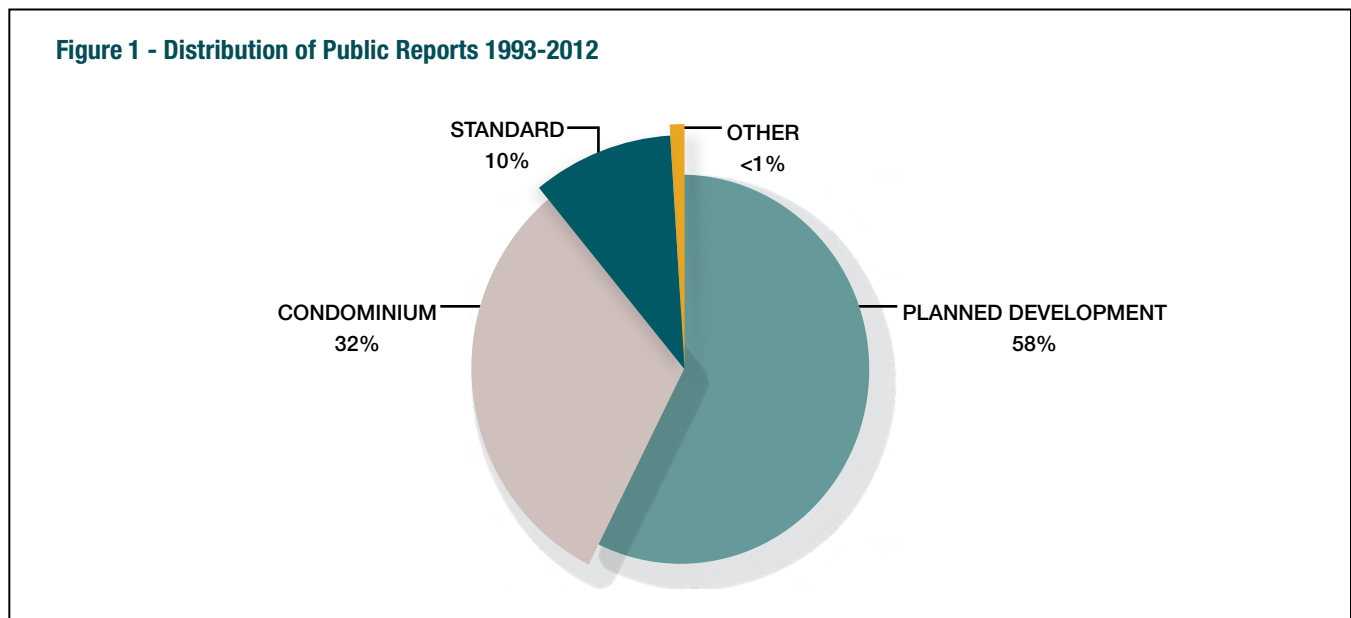
A condominium is a type of CID. It is a multi-unit housing development that may look like an ordinary apartment building, but is actually owned by multiple owners. In a condominium project each condominium owner owns a “unit” of airspace, which he/she occupies as his/her home, and an association consisting of all the condominium owners owns the land, the building itself, and other common areas of the property. Condominiums

are discussed further on page 23.

The Davis-Stirling Common Interest Development Act (DSA) is the state law that governs common interest subdivisions and the SLA cannot be understood without also understanding the DSA. This law requires CIDs to be managed by a formal association, referred to as a “homeowners association” or “HOA” (HOAs are defined and discussed further in following sections of this study). While the DSA does not regulate subdivisions per se – most of the DSA concerns the ongoing operation of HOAs – developers must form the association prior to offering interests in the subdivision to the public. Thus, compliance with the DSA is necessary in the development of common interest subdivisions.

How Common are Common Interest Developments?

It is estimated that as of 2012, 63.4 million, or 20 percent of all U.S. residents live in 323,600 CIDs nationwide. It is estimated that 14.3 million, or 38 percent of California residents live in 48,864 CIDs. According to California Department of Real Estate (DRE) data, the majority of applications for public reports processed since 1993 have been CIDs (condominium and planned development) as shown in Figures 1 and 2.



All of the project types listed are CIDs except for standard and mobile home projects,¹ and the number of CID applications has been almost 10 times the number of standard subdivisions.²

Figures 1 and 2 also illustrate the relative number of applications for the various types of CIDs. Few undivided interest, community apartment, stock cooperative, and limited equity housing cooperative projects have been developed in California, though the number of undivided interest applications was significant in the 2005 to 2009 period. The various subdivision types are defined and discussed in following sections of this study.

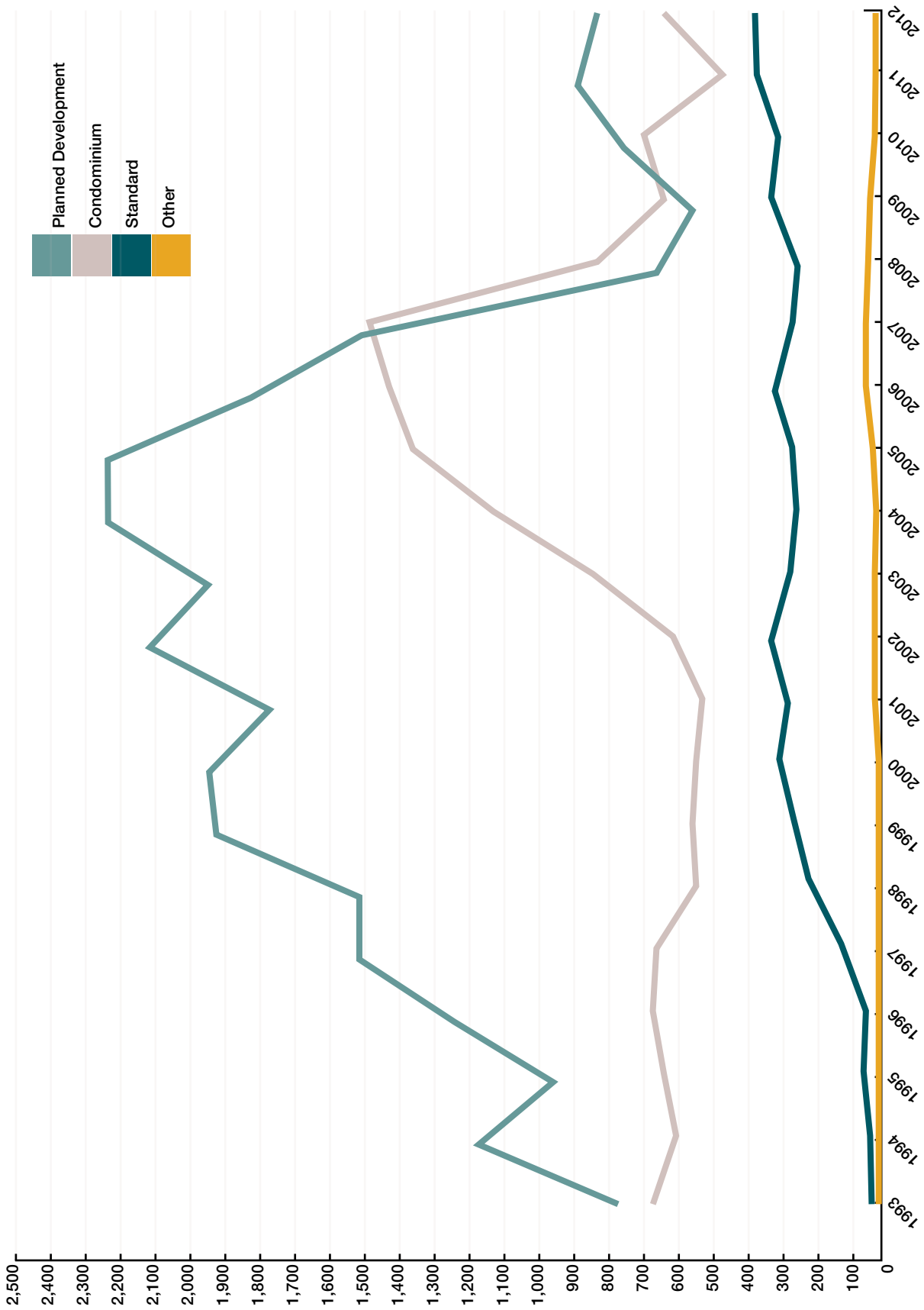
Why Common Interest Developments?

Development of common interest subdivisions in the U.S. has occurred since the mid-19th century. Historically, developers have been motivated to obtain higher values by selling private communities as exclusive, highly amenitized alternatives to the perceived negative aspects of urban housing. Homeowners within such private

¹ A public report for a mobile home project is required when the mobile home park is being converted to a park where mobile home spaces are owned separately.

² DRE data reflect only applications processed by the DRE. Section 11010.4 of the SLA exempts standard subdivisions meeting specific criteria from the public report process; no data is available on these projects but it is assumed to be a small number based on the specific criteria that must be met.

Figure 2 - Public Reports Issued Annually By Type



communities valued the security and local control afforded by the HOA. While these motivations continue today, CIDs have also become a response to the real or perceived failure of local governments to provide the level and quality of services demanded by homebuyers. Today, HOAs frequently assume responsibility for the maintenance of public facilities and supplement local law enforcement with private security.

In some cases, a project may be approved by the local agency with an ownership or maintenance requirement that outlives the developer's involvement in the project. For example, environmental mitigation measures and/or conditions of approval may require landscape areas or natural areas to be owned and maintained in perpetuity. In response, the developer may create a common interest in such areas to facilitate long-term maintenance.

Aside from the above factors, CIDs are necessitated by the development of higher density ownership housing. **Residential density** is calculated in terms of the number of dwelling units per acre of land.³ With a standard single-family home subdivision of a given parcel as a starting point, increasing the number of units increases the project's density. In practice, such increases are also accompanied by decreases in land areas dedicated to non-residential uses such as yard or open space areas, surface parking areas, and vehicular circulation. The practical limit for a single-family detached subdivision is approximately 30 dwelling units per acre, depending on the configuration and circulation pattern of a given site. Achieving densities higher than this requires housing units to be clustered, attached and/or stacked, leading to common ownership of walls, floors, etc. Such housing types are limited in their ability to provide exclusive open space areas such as would be provided with single-family detached homes with large yards. Thus, common open space or recreational facilities are often developed in these projects as amenities. Streets and driveways within denser projects often are designed to be narrower than the standard streets of the local agency, and in many cases, the local agency requires the streets to be privately owned and maintained by the project HOA.

Some developers develop higher density ownership housing to fill this niche in the homebuying market. Some developers seek to provide higher density as a means of allocating fixed development costs over a higher number of units in order to be able to sell homes at a lower price than competitors. Increasingly, all developers must respond to public policies favoring higher density housing such as California's AB 32 and SB 375 summarized below. Higher density development is believed by policy makers to be a means of mitigating certain negative environmental impacts such as global warming as explained in the summary of SB 375. Regardless of the motivation, the higher the density of ownership housing development, the more likely the development will need to be a common interest subdivision.

AB 32 – Global Warming Solutions Act

The Global Warming Solutions Act was adopted in 2006. It requires the California Air Resources Board (CARB) to implement regulations and market mechanisms designed to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020. The CARB is part of the California Environmental Protection Agency within the Executive Branch of the state government. The CARB's regulations and mechanisms for implementing AB 32 will impact all regulated industries including agriculture, energy, manufacturing, and transportation. Residential development is not directly regulated by the CARB, yet the legislation is expected to have a significant impact on residential development as described below.

In 2008 the CARB approved a Scoping Plan designed to achieve the mandated 2020 emissions reductions. The Scoping Plan presents GHG emission reduction strategies that combine regulatory approaches, voluntary measures, fees, policies, and programs. Reduction strategies are expected to evolve as technologies develop and progress toward the state's goal is monitored. Thus, the Scoping Plan sets forth the outline of California's strategy to reduce GHG emissions on a statewide basis.

³ Gross density is the number of units per gross acre of land, while net density refers to the number of units per net acre of land, the acreage of land after subtracting for street rights of way, easements, open space, and portions of the property that are otherwise considered undevelopable. Note that there is not a standard methodology for calculating net density, and the methodology will vary by planning jurisdiction.

The measures that will affect residential development include:

- Energy Efficiency: Building and energy codes are likely to be revised to require greater energy efficiency in new construction.
- Regional Transportation: Local agencies are likely to revise their land use and zoning plans to implement sustainable regional transportation plans designed to reduce GHG emissions from vehicles (see SB 375 discussion below).

The process of residential development will also be affected by analyses required under the California Environmental Quality Act (CEQA) which is described further on page 46. AB 32 in effect recognized GHG emissions as an environmental impact under CEQA by statute. In order to provide clarity to lead agencies when performing CEQA analysis, SB 97 was adopted in 2007. SB 97 required the Office of Planning and Research (OPR) to produce revised CEQA guidelines for the feasible mitigation of GHG emissions or the effects of GHG emissions as required by CEQA including, but not limited to, effects associated with transportation or energy consumption. The law also requires the OPR to periodically update the guidelines to incorporate new information or criteria established by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006.

As noted above, CARB does not directly regulate residential real estate development. Real estate development projects fall under the jurisdiction of 35 local air districts. These agencies are county or regional governing authorities that have primary responsibility for controlling air pollution from stationary sources. They are governed by boards consisting primarily of elected officials and are professionally staffed. Air districts issue permits and monitor new and modified sources of air pollutants to ensure compliance with national, state, and local emission standards. They also ensure that emissions from such sources will not interfere with the attainment and maintenance of ambient air quality standards adopted by CARB and the U.S. Environmental Protection Agency.

A residential developer's interaction with air quality regulations occurs through the land use entitlement process. Pursuant to CEQA, the local agency must analyze a project's impact on the environment, including impacts on air quality, prior to approving the project. Impacts on air quality from the typical residential development project may be created in various ways including emissions from vehicles and equipment during construction, fugitive dust from earth moving and demolition, emissions of volatile organic compounds from construction materials, and emissions from equipment and vehicles once construction is completed and the housing is occupied.

If a discretionary project is approved and it is found to have a significant impact on air quality, the local agency will approve the project either: 1) conditioned upon its compliance with mitigation measures that are determined to reduce the impacts to a less than significant level, or 2) with a statement of overriding considerations in order to balance the significant environmental impact the project will have, even after the implementation of mitigation measures, with competing public objectives. The local agency will typically rely on the local air district to provide the environmental impact mitigation measures as conditions of approval. The developer then must implement the mitigation measures as part of the project. The local agency and/or the air district are then responsible for ensuring that the developer implements the mitigation measures.

In the case of ministerial entitlements, the local agency typically consults with the local air district prior to issuing permits for demolition, grading, etc. In some cases, the air district may issue a permit to the developer.

SB 375 – Sustainable Communities and Climate Protection Act

The Sustainable Communities and Climate Protection Act was adopted in 2006 as a means of reducing transportation-related emissions as contemplated by AB 32.

SB 375 directs the CARB to set regional targets for each metropolitan planning organization (MPO) in the state. An MPO is an agency responsible for planning, programming, and coordinating federal highway and transit investments in urbanized areas. Examples of these agencies are the Sacramento Area Council of Governments, Southern California Association of Governments, and the Metropolitan Transportation Commission (nine-county San Francisco Bay Area). The intent of the law is for local governments, as represented by regional agency boards, to be involved in developing effective plans to achieve regional targets.

Under SB 375, CARB, in conjunction with each MPO, develops GHG emission reduction targets for the automobile and light truck sector for the MPO. Once that target is set, each MPO must develop a “sustainable communities strategy” (SCS) as part of its regional transportation plan that will set forth a development pattern to achieve the reduction target approved by the CARB. The SCS does not supersede a local government’s land use authority. SB 375 created an exemption from CEQA for local transit-oriented residential projects that are consistent with the applicable SCS as an incentive.

It is anticipated that the implementation of AB 32 and SB 375 will lead to higher density residential development in the future due to the methodologies employed by urban planners. Emissions from cars and light trucks are one of the largest sources of greenhouse gas emissions. Emissions from motor vehicles are correlated to the number of vehicle miles traveled (VMTs). VMTs are an indicator of the travel levels on the roadway system by motor vehicles and are derived from traffic volume counts and roadway lengths. Transportation planners attribute fewer VMTs to higher density residential development. Therefore, sustainable communities strategies put forth by local agencies call for higher density development as a means of achieving the reductions called for by AB 32 and SB 375.

DRE Administration of the Subdivided Lands Act

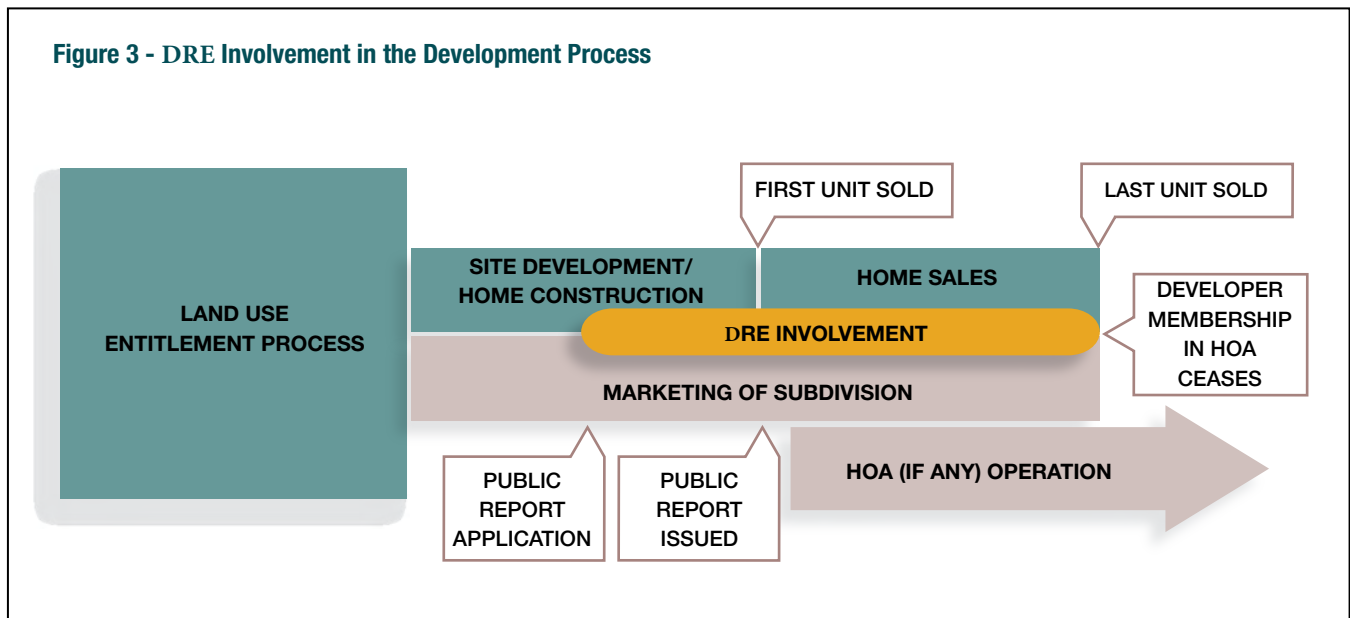
The California Department of Real Estate operates within the executive branch of the state government. The California Real Estate Commissioner is appointed by the Governor and serves as the chief executive of the DRE. The Commissioner is responsible for administering and enforcing the California Real Estate Law, the SLA, and the Vacation Ownership and Time-Share Act. The California Real Estate Law is codified in Part 1 of Division 4 of the Business and Professions Code (BPC), Sections 10000-10580, and is concerned primarily with the licensing of real estate professionals and regulating the activities they engage in. The Commissioner is also empowered to promulgate regulations (Title 10 of the California Code of Regulations), which have the force and effect of law. It is the Commissioner’s responsibility to enforce these laws in a manner that achieves maximum protection for real estate consumers. In administering the laws and regulations, the Commissioner is expected to exercise judgment impartially, with fairness to both consumers and the real estate industry.

The Commissioner has the authority to issue “desist and refrain orders” or issue citations with fines up to \$2,500 to stop activities that are in violation of the SLA or the real estate law. In many cases, licensed real estate professionals sell subdivision interests. In these cases the Commissioner exercises authority over both the subdivider and the licensee. For example, disciplinary action may be taken against the developer of the subdivision for violations of the SLA while a separate action may be taken against the licensed broker/sales person(s) employed by the developer for violations of the real estate law. In enforcing the provisions of the real estate law, the Commissioner has the authority, if supported by evidence, to hold formal hearings to decide issues involving a licensee or a license applicant. Such hearings may result in the suspension, revocation, or denial of a real estate license.

To enforce the SLA, the Commissioner may need to pursue action against the violator in civil court. BPC 10081 of the real estate law provides that “whenever the Commissioner believes from evidence satisfactory to him that any person has violated or is about to violate any of the provisions of the law, he or she may bring an action in the name of the people of the state of California in the superior court of the state of California against that person to enjoin him or her from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.” Violations of the SLA are punishable by fines of up to \$10,000, by imprisonment of up to one year, or both.

The Role of the DRE in the Subdivision Process

The DRE is responsible for administering the SLA. Such administration generally consists of reviewing applications for public reports and issuing public reports. The DRE's activities are only a small part of the subdivision development process. Figure 3 illustrates that part of the subdivision process involving the DRE.



Through the development process, there are many areas of interaction between the developer and the public, which may lead to conflict between the developer/project and the general public, homebuyers, and/or homeowners within the project:

- The land use entitlement process involves a public hearing process whereby the local agency approves the subdivision project.
- The environmental review process allows for public comment on the potential environmental effects of the project.
- Construction of the project, which may impact nearby residents, is permitted and monitored for compliance by the local agency.
- The developer may fail to complete project improvements or fail to complete the improvements in the manner anticipated by the various parties.
- After the project is completed and sold by the developer, conflicts commonly arise between individual HOA members and/or HOA board members.

Consequently, members of the public often contact the DRE regarding matters that arise during the development process.

All of the above matters fall outside the jurisdiction of the DRE. The DRE's role in the overall development process is best understood as that of a consumer protection agency whose authority is limited by statute. The DRE seeks to protect consumers from misrepresentation, deceit, and fraud in the initial public sale, lease or financing of subdivisions and to ensure that the initial prospective purchasers receive adequate information about the subdivision interest. Toward this end, the public report application requires a substantial amount of information to be submitted by the subdivider.

The DRE's involvement begins when an application for a public report is submitted and ends once the developer conveys the last lot or unit in the subdivision covered by the public report. The DRE has jurisdiction over a subdivider only during the time that the subdivider is marketing homes in a subdivision that is subject to the SLA. The DRE also has jurisdiction over real estate licensees performing sales activities for such subdivisions. The DRE does not have authority over other professionals involved in the development and home buying process such as title insurers, escrow companies, attorneys, or appraisers.

In addition to the review above, the DRE also seeks to ensure that adequate provisions are made for the completion of essential improvements. The DRE first assesses the project for essential habitability conditions such as water supply, sewer disposal, and location relative to natural hazards, etc. If public improvements have not been completed when the public report is issued, the DRE ensures that adequate performance security has been provided to the local agency. Ensuring that public subdivision improvements are complete is the primary responsibility of the local agency under the Map Act. For privately owned common improvements, the DRE requires the subdivider to make completion arrangements for such improvements until a notice of completion is recorded and homebuyers and HOAs have been protected from the filing of mechanics liens. The DRE may accept a completion bond for these improvements.

The DRE Does Not Exercise Land Use Authority

Pursuant to the Map Act and other state laws and local ordinances, the local agency has land use authority and is responsible for ensuring that the subdivision complies with local development standards and that adequate provisions are made for the completion of public improvements. The DRE does review the local agency's documentation of land use approval, such as conditions of project approval, as part of the DRE's subdivision public report application process. The DRE may rely upon and disclose inspection reports, findings, and statements of third parties such as the project engineer or contractor and/or various local agency officials. The DRE may question unusual development arrangements where it appears the development plan may conflict with the city-/county-approved plans, approval conditions, or ordinances and may seek local jurisdiction confirmation of changes to approved maps, plans, and conditions. Ultimately, the DRE issues a public report based upon the representations and documentation presented by the subdivider in the subdivider's application for a public report (referred to as the developer's "notice of intention").

The DRE Does Not Exercise Authority Over the Affairs of HOAs

Of primary concern in the DRE's review of CIDs is the manner in which common improvements will be owned, operated, and maintained. This review includes the assurance provided by the subdivider that improvements will be completed and the manner in which ownership of the improvements will be transferred to the HOA. As required by law, the developer forms an HOA to own, operate, and maintain the common improvements in perpetuity. The DRE reviews HOA formation documents and HOA management documents including the bylaws, operating budget, CC&Rs, and the provisions for transfer and control of the residential subdivision interest(s) and common area(s) to the purchasers (members) and the HOA. The DRE reviews proposed agreements and contracts between the subdivider (and/or third parties) and the HOA that are contemplated by the subdivider prior to issuance of a public report. The DRE is not able to intervene in contractual matters between an operating HOA and third parties such as a surety or vendor.

The DRE's application review process occurs before the HOA is functioning. The DRE does not have jurisdiction under the SLA to intervene in the affairs of the HOA such as mediating an operating HOA dispute regarding member compliance with CC&Rs, or a homeowner assessment delinquency with their HOA. The DRE does not have jurisdiction over the financial affairs of an operating HOA and generally cannot compel a specific budget adoption once an HOA is in operation. To the extent possible, DRE may disclose significant conditions or obligations that a homebuyer or an HOA is responsible to satisfy such as city/county approval conditions; environmental mitigation measures; and other significant restrictions or policies such as affordable housing programs.

BACKGROUND FOR UNDERSTANDING CALIFORNIA'S SUBDIVISION PROCESS

Subdividers, Developers and Homebuilders

Throughout this study, the term “developer” is used generically to mean the party who acquires land, subdivides it, installs site improvements, builds homes, and sells the homes to homebuyers, all of which constitutes the housing development process described in detail on pages 30-44. This term is also used generically to refer to the “subdivider” as that term is defined by the Map Act and the SLA. However, it should be noted that in practice it is common for different parties to perform the role of the developer at various stages of the development process. A *speculator* is an investor who purchases land that is expected to be in the path of development and whose goal is to sell the land when it has appreciated in value. A speculator often is not active in moving the property forward for development but relies mostly on improving market conditions to generate profits. A *land developer* acquires land and actively works to develop the property by moving it through the entitlement process and/or installing site improvements. As such, the land developer is the party that pursues the legal subdivision of property under the Map Act (the subdivider as defined by the Map Act). A homebuilder is one who builds homes on improved lots and sells them to homebuyers. In some cases, a homebuilder may perform the function of the land developer by acquiring entitled land and installing the site improvements him/herself. Nevertheless, as the seller of subdivision interests, the homebuilder is almost always the party that applies for the public report (the subdivider as defined by the SLA), even though the homebuilder may not have been the party responsible for creating the legal subdivision under the Map Act.

Title Records

One of the first acts of California's legislature was to adopt a recording system by which evidence of title or title interests could be collected and maintained. *Title*, in the context of real estate, is an ownership interest in real property. The purpose of the recording system is to inform persons planning to purchase or otherwise deal with real property about the ownership and condition of the title. Recordation by the County Recorder gives *constructive notice* of title matters to purchasers of real property, which, to the extent a document is properly recorded, presumes that purchasers and lenders have been given notice (whether or not they have been given actual notice) of such documents affecting the subject property. This system was designed to protect innocent purchasers and lenders against secret sales, transfers, or conveyances and from undisclosed encumbrances/liens. The overriding purpose of this system is to allow the title to the real property to be transferable, and this system is essential to the efficient functioning of real estate markets and the development process.

In large part, California's subdivision laws are concerned with preserving the integrity of the title of real property when the property is subdivided and, once subdivided, that there is adequate disclosure of various matters affecting the property to the purchaser of the subdivided interest. A written instrument called a grant deed transfers title. One of the essential elements of a valid grant deed is that the property is properly described. Ensuring that real property is properly described after it is subdivided is also one of the purposes of the Map Act.

A type of encumbrance common to real estate transactions in California is a *deed of trust*. A deed of trust is a security instrument, or a pledge of real property as collateral for a financial obligation such as a promissory note (loan) used to purchase a home. A deed of trust is similar to a mortgage, which is common to other states and is generically referred to as a mortgage. A home loan is often referred to as a mortgage when, in actuality, the mortgage is the pledge of the property as collateral for the loan, not the loan itself.

When a document is recorded, the priority of the rights established by the document is determined by the chronological order of recording. For example, a mortgage is superior in priority to that of another mortgage recorded the following day (or hour or minute). In this example, the mortgages are referred to as a first mortgage and second mortgage based on the priority of the liens. In the event of alienation (voluntary or involuntary transfer of the property), the mortgage lien holders are entitled to enforce their rights to the property based on the priority of their liens. The interests of lower priority documents are said to be *subordinate* to those of higher priority documents.

Title Insurance

Real estate transactions typically involve large sums of money, and purchasers and lenders run the risk of loss due to matters discovered after the property is purchased that may adversely affect title. It is impractical for purchasers and lenders to search county records themselves, and thus title insurance companies are relied upon to conduct this search on their behalf. In real estate transactions, escrow is the process by which a third party facilitates the transfer of property. The escrow holder follows the instructions of the buyer, seller, lender(s), and any other parties who have an interest in the transaction. In California, the title insurance company or an independent escrow company may perform the escrow function.

Prior to the transaction closing, the title insurance company will provide the parties with a *preliminary title report* of documents in the public records that affect the subject property. The report includes the name of the owner, the type of estate held, the legal description of the property, and a list of exceptions to insurance coverage. With the preliminary title report, the insurance company is indicating its willingness to insure the property title, excluding those items listed. Thus, it behooves those acquiring an interest in a property to carefully review these exceptions to determine how their use of or interest in the property may be affected.

Title insurance is intended to protect owners and lenders from loss or damages they may incur due to matters adversely affecting the title that were not disclosed by the title company prior to closing. Because title companies are liable under insurance policies issued, they are expected to be thorough when conducting reviews of public records that may affect title, when recording documents, and when managing the escrow process on behalf of their clients. Consequently, a title insurance company is involved in every stage of the subdivision process. Developers rely upon the title company to provide accurate legal descriptions and title information when purchasing property, when processing subdivision maps under the Map Act, when processing public reports under the SLA, and when transferring property to others. Much of the DRE's review and final public report will be based on information obtained from or referenced in the preliminary title report.

Land Use Restrictions

All real property is subject to restrictions on its use, and ensuring adequate disclosure of such restrictions is a major purpose of the SLA. The two categories of restrictions are public and private. *Public restrictions* include zoning and building codes that are concerned with the health, safety, welfare, and morals of the community. Restrictions, such as the types of uses that occur on property, heights of buildings, setbacks from property lines, etc. are found in these regulations. Public restrictions typically do not appear in public records unless they are coincidentally referred to in a recorded document. The main reason for this is that public restrictions, such as those found in the zoning code, apply to all properties within the subject city or county and are not specific to individual parcels. Residents are expected to comply with public restrictions as they do with other laws of the community. They are also expected to contact the local planning or building department when considering changes in their property.

In addition to complying with restrictions pertaining to the use of and conduct on their property, all homeowners are expected to use and maintain their properties according to the standards of the community. Residents may not interfere with their neighbors' ability to enjoy their property and they must not create a nuisance. A public nuisance, according to state law, is anything that is: 1) injurious to health, 2) indecent to the senses, 3) unlawfully impeding free use of the streets, or 4) obstructing free use of property so as to interfere with the comfortable enjoyment of life or property. As a practical matter, nuisance laws and zoning codes can be difficult to enforce. Local code enforcement officials and police may be limited, either by resource allocation priorities or procedural requirements, in the actions that they can take to effect compliance. Homeowners may pursue civil action (such as small claims court) to recover damages they have suffered as a result of the nuisance, but even success in court may not solve the problem. Furthermore, a homeowner's conduct or activity may not rise to the level of a nuisance, but still may lead to frustration among neighboring homeowners. Local governments can do little to prevent clutter, poor appearance, or bad taste. For example, a homeowner failing to maintain his/her yard as often as he/she should, a homeowner installing a large satellite dish or other equipment, or a homeowner parking a large recreational vehicle on the street are common sources of irritation in some neighborhoods.

Private restrictions are those that are placed on a property by the property owners. Such restrictions may be found in individual deeds or in a separate recorded document. When subdivisions are developed, CC&Rs may be placed on the property by the developer either voluntarily or in order to comply with regulations such as the DSA. The title of the document will often appear as "The Declaration of Covenants, Conditions, and Restrictions for [Subdivision Name]" and may be referred to as simply "the declaration." A covenant is a promise to do or not to do something and it signifies an agreement. A condition is a qualification of the grant of interest, i.e., the interest is being granted with the expectation that the condition will be met by the owner or the grant will be terminated.⁴ A restriction restricts the free use of the land by the owner.

Developers often use CC&Rs to enhance long-term values and to provide controls that go beyond the local agency's controls and powers. CC&Rs "run with the land." That is, the rights and obligations contained in them remain with the land, regardless of ownership, and pass from deed to deed as the land is transferred from one owner to another. CC&Rs are in effect a contract among the property owners, who are subject to them, by which they agree to abide by them. There need not be an HOA associated with the CC&Rs, i.e., standard subdivisions can be and often are subject to CC&Rs as well. However, enforcement of CC&Rs is easier with an HOA, which usually has the power to impose fines, suspend the offending member's rights in the association, and deny access to common area amenities. Absent an HOA, homeowners would have to file a civil action in order to enforce the CC&Rs.

Essential Residential Services and Quasi-Governmental Associations

The private restrictions within a CID are enforced by the HOA of the CID and the common facilities within CIDs are owned by the HOA. In this regard, HOAs can be considered **quasi-governmental**. That is, they supplement, and in some cases substitute for, the facilities and services that may otherwise be provided by local governmental agencies (cities and counties).

Every residence must have adequate access via roadways, utility services (water, sewer, storm drainage, electricity, gas, and communications), access to public amenities (parks, recreation, education, etc.), and public safety (police protection, fire protection, etc.). The majority of these facilities are constructed and funded by developers, while ongoing services are funded by taxes, assessments, and user fees paid by residents of the community. In a sense, these facilities can be considered "common area" facilities in that they are owned in common and paid for by all of the members of the local community.

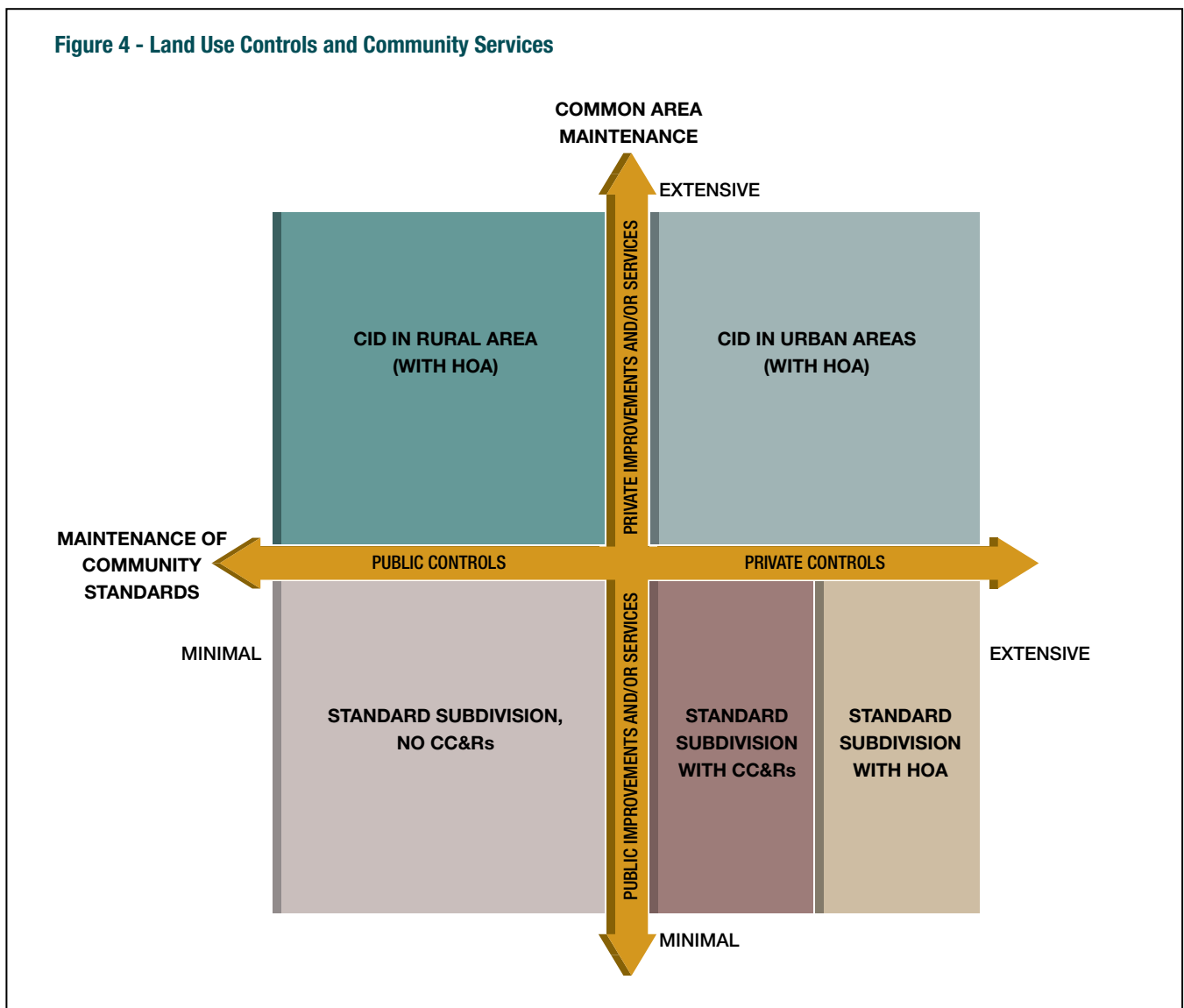
⁴ Although the traditional use of conditions in real property grants was sharply restricted by the adoption of Civil Code Section 885.010, the term "condition" has continued to be used in the title of the primary property-related document for common interest developments.

Note that local agencies derive their ability to fund residential services largely from property taxes and property-based assessments. Delinquent taxes and assessments can become liens on the property, which can be foreclosed upon by the taxing authority. The DSA vests HOAs with similar powers. HOAs are authorized to collect assessments to fund the operations of the association and to maintain association property. Delinquent assessments may accrue interest and penalties, and the association can seek a personal judgment and/or lien on the delinquent owner's property to recover delinquent amounts.

HOAs provide a governance mechanism to make up for the inability or limitations of local agencies to provide the level of service required by the developer and the successive homeowners. The developer of a subdivision may propose a subdivision containing a private recreation area for the exclusive use of residents, either because the public parks are inadequate or because the value of the homes in the subdivision will be enhanced as a result.

Other facilities or services may be treated similarly. For example, the HOA may decide to pay for private security in the subdivision, in addition to police services provided by the local agency.

It may be helpful to compare various subdivision types with regard to the controls residents are subject to in each. The various subdivision types are defined and described on pages 21-27. The matrix in Figure 4 compares various subdivision types on a continuum of controls for community standards and provision of services.



The horizontal axis represents the continuum of controls for maintaining community standards. The left side of the axis represents public controls, which may be limited to generic codes and ordinances and the enforcement of which may be limited. The vertical axis represents the continuum of controls for owning and maintaining the common areas of the subdivision, a term used generically to include public facilities. The lower portion of the axis represents projects where there are no privately owned common facilities, and the upper portion represents projects containing privately owned facilities, i.e., CIDs governed by HOAs.

This simple matrix demonstrates the relative controls of different project types. The type of project with the fewest number of restrictions would be a standard subdivision with no CC&Rs and with no HOA (southwest quadrant). The type of project with the most controls would be a CID in an urban area (northeast quadrant). A distinction is made between CIDs in rural and urban areas since a rural area would be expected to have fewer or less accessible public facilities and services compared to an urban area.

Ownership Interests

The SLA and the Map Act both deal with what are referred to as divided interests and undivided interests. **Divided interests** result from standard subdivisions – the owner of the subdivided interest owns the entire interest (lot or parcel) exclusively with no common ownership of anything associated with it. **Undivided interests** are the ownership interests in property held by two or more owners in common. Projects involving the sale of undivided interests are defined as **common interest developments**. As noted above, CIDs are the most prevalent type of residential subdivision developed in California today, and the DSA governs all aspects of CIDs.

Some common interest projects – planned developments and condominiums – result in the homeowners having both an undivided interest and a divided interest. (The SLA and DSA both refer to the divided interests in CIDs as **separate** interests.) Other common interest projects couple the undivided interest with an **exclusive right** to use a portion of the property rather than a separate ownership interest. Table 1 classifies subdivisions by the type of interest conveyed.

Table 1 - Ownership Interests by Subdivision Type

DIVIDED INTEREST	DIVIDED INTEREST + UNDIVIDED INTEREST		UNDIVIDED INTEREST + EXCLUSIVE RIGHTS		
STANDARD SUBDIVISION	COMMON INTEREST DEVELOPMENTS				
	PLANNED DEVELOPMENT	CONDOMINIUM	COMMUNITY APARTMENT	STOCK COOPERATIVE	TENANCY IN COMMON

A **grant deed** is the evidence of ownership in real property, which identifies the owner and the property that was conveyed to the owner when the property was acquired. A description of a divided interest, i.e., a separate lot with no associated undivided interest, will be contained in the legal description of the property. The evidence of an undivided interest will be found in the deed, in CC&Rs recorded against the property, or in the governing documents of the ownership entity. For example, the deed to property in a planned development or condominium project may contain a description such as “an undivided 1/x interest in and to the common area,” where “x” is the number of units in the subdivision. Exclusive rights are spelled out in an agreement separate from the deed to the property itself, and this agreement is not typically recorded.

Common Area

Common area is the property within CIDs owned or controlled by the HOA. The DSA has two separate definitions for common area.

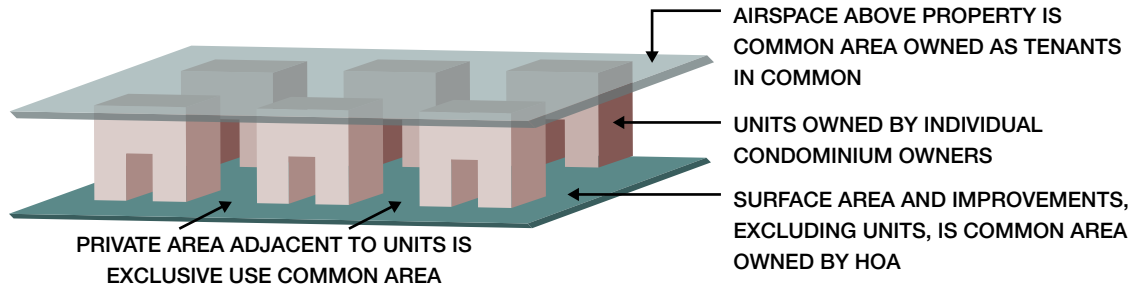
Civil Code Section 4095(a) defines common area as, “the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing.” Stated another way, common area is the separate parcel of real property that is not a condominium unit, lot, or apartment in a community apartment or stock cooperative. This definition applies to virtually all condominium projects, as a condominium project by definition consists of separate interests (i.e., the condominium units) and common area. A similar definition is applicable for community apartments and stock cooperatives.

For planned developments, however, Civil Code 4095(b) expands the definition to include portions of the separate interests (individual lots) which are subject to “mutual or reciprocal easements rights.” In other words, for a planned development, the common area need not be a separate legal parcel, in which case neither the HOA nor the lot owners would own fee title to any common area. For common area that consists of a lot, parcel, or other defined interest that is not a mutual or reciprocal easement, the common area may be owned either by an HOA itself or by all of the owners as tenants in common. Historically, most common area parcels were owned by all of the lot owners within a subdivision as tenants in common. Thus, a grant deed for a lot within a planned development would identify the separate interest lot, as well as a fractional interest in the common area parcel, which the lot owners would own together as tenants in common. However, because of the potential for direct liability associated with the ownership of common area, and the cumbersome process of obtaining all of the common area owners’ (and their lenders’) consent to grant an easement or to make a minor boundary line adjustment, many new subdivisions now have the HOA hold title to a subdivision’s common area parcels.

For condominium projects, condominium unit owners must own at least some portion of the project’s common area as tenants in common, as required by the DSA. As referenced above, this is problematic in that it imposes direct liability on the individual condominium owners. In order to shift this liability to the HOA, condominium developers have incorporated two types of common area into their projects. The first type is the common area owned by the association. The common area owned by the association would include all of the land and improvements within the project, which is also the property that could lead to any liability among the owners. The second type of common area is the area within the project that is owned as tenants in common as required by the DSA. This common area is designated as a three- dimensional area extending to the project boundaries but excluding the condominium units and the common area owned by the association. This type of common area is essentially a cloud of empty space over the project. Dividing the three dimensional space in this way meets the requirement of the DSA while attaching potential liability to the association instead of the individual owners. Such cloud common areas are facilitated by Section 66427 of the Government Code (the Map Act). When title to a condominium unit is conveyed, it is conveyed along with the undivided interest in the common area; actual title to the common area is not conveyed. The fact that property is common area does not preclude it from being designated for the exclusive use of one or fewer than all of the owners by grant of an easement. An easement is a right to enter and use another person’s real property within definable limits. The original owner retains ownership of the real property that is subject to an easement for all other purposes. An easement may be exclusive or non-exclusive, and is usually recorded within a specific agreement, a deed, or a deed restriction.

It is common in planned developments and condominiums for the HOA and individual owners to have easements over one another’s property. Often such easements are referred to as **exclusive use common area**. The DSA defines “exclusive use common area” as “a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.” Thus, private yard areas, driveways, parking spaces, etc., may be designated for the exclusive use of individual owners within the project, as shown in Illustration 1. In such cases the owner’s rights to the exclusive use common area would be found in the owner’s deed.

Illustration 1 - Condominium Ownership Areas



The DSA further clarifies that auxiliary improvements or facilities that are incidental to a separate interest – such as shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens, windows, or other fixtures, and telephone wiring – are automatically deemed to be exclusive use common areas allocated exclusively to that separate interest.

Subdivisions – Ownership Form vs. Physical Form

In comparing various types of subdivisions, confusion can arise between the terms used in subdivision regulations and the terms used in the vernacular of homeowners and homebuyers. For example, some consider a condominium an architectural style or housing type, when it is in fact a legal term defined by the DSA. This is in direct contrast to the term “townhome” which is an architectural style and not a legal term defined by the DSA.

Much like the term “townhome,” the phrase “planned unit development” or PUD is the source of significant confusion with respect to CIDs. There are no statutory definitions of townhome, or PUD within the DSA, despite the frequent use of these terms. What these terms all have in common is that they typically refer to an architectural style of multiple residences within a single building structure, where the residences are two or more stories, and are configured so separate residences are not above or below each other. These types of developments can be created as any type of CID (most commonly as planned developments or condominiums). Consequently, it is best to avoid these terms as they represent an architectural style and not a legal arrangement for a subdivision.

Furthermore, “planned development” as it is used under the SLA should not be confused with a zoning designation of “planned development” or “planned unit development” that is often used by local agencies. Local agencies may include such designations in their zoning codes as a means of providing flexibility in development standards as specified in the ordinance. Developments within such zoning may or may not be considered planned developments under the SLA depending on whether they meet the above conditions.

Attached Housing and Subdivision Types

There may be a tendency to think of CIDs as attached housing such as attached condominiums, yet most CIDs reviewed by the DRE consist of detached housing units, i.e., planned developments. Even some condominium projects consist of single-family detached homes. Thus, the legal subdivision type may not be discernible from simple observation of the physical improvements within the project. Among attached housing types, it is likely that there will be no discernible difference between a typical rental apartment complex (not a subdivision), a condominium project, a community apartment, and a stock cooperative.

A subdivision of attached homes may be one of five subdivision types:

- A community apartment
- A stock cooperative
- A common interest subdivision

-
- A condominium project
 - An undivided interest project (tenancy in common)

Detached Housing and Subdivision Types

Single-family detached homes continue to be the most prevalent type of ownership housing being built. To accommodate single-family detached homes, the subdivision must be one of four types:

- A standard subdivision
- A planned development
- A detached condominium
- A stock cooperative

Planned developments are the most prevalent type of subdivision reviewed by the DRE. Many planned development projects do not differ in appearance from standard subdivisions. Two single-family detached subdivisions may be identical in every way – number of lots, street layout, lot layout, etc., except in the matter of common ownership. If one of the subdivisions has any common area, the subdivision is considered a planned development and an HOA must be formed to own and maintain the common improvement, pursuant to the DSA. The following are common examples or situations requiring single-family subdivisions to be planned developments.

- The project has private streets owned and maintained by the HOA. There are a number of reasons for a project to have private streets. If the project is gated or public access is otherwise prohibited, the local agency will not typically own and maintain the street. If the street design proposed by the developer does not meet the minimum local standard, e.g., street width, the local agency may be unwilling to own and maintain it. If the street design exceeds the local standard, e.g., enhanced paving, the local agency may be unable to provide proper maintenance, thereby necessitating private ownership and maintenance.
- The project proposes private recreational facilities such as a recreation center, swimming pool, tot lot, nature areas, or trails.
- The project includes environmentally sensitive areas such as wetlands or a habitat for endangered species that must be maintained in perpetuity.

Maintenance Responsibility

One of the more confusing issues involving townhome or cluster type projects arises when maintenance responsibilities must be divided between individual owners and the HOA. These projects may be condominiums or planned developments, which make broad generalizations regarding ownership and maintenance of the residences, as well as the role of the HOA, somewhat subdivision-specific. With the exception of DRE regulation 2797, the DRE relies upon policy considerations when reviewing a proposed subdivision's HOA maintenance responsibilities with respect to the exterior siding and roofs of the residences. The DRE's general policy, based upon DRE's "reasonable arrangements" regulatory authority, generally permits individual owner maintenance of shared roofs and exterior siding in halfplex and triplex configurations where each lot or unit contains a single residence, which is attached to another residence on one or both sides, provided the total number of residences is three or fewer.

DRE regulation 2797 permits a subdivider to design and document a subdivision with multiple residences in close proximity to each other so that the individual owners are responsible for the exterior maintenance of their residences, and the HOA is only responsible for the maintenance of the shared roofing system for the cluster of residences.

Where the cluster or multiple residences are designed with individual roofing systems serving each residence and are architecturally delineated consistent with the property boundaries for each residence, the DRE may permit individual owner maintenance of the entire residence, including the roof, provided the residences are structurally independent and separately insurable.

Developer Preference for Single-Family Detached Homes to Attached Housing

Single-family detached homes have been and continue to be the most prevalent construction type of housing built in the U.S. and in California.

- According to the 2010 census, 56.4 percent of the housing units in California were single-family detached units while 23 percent were attached units within buildings of five or more units.
- Periodic National Association of Realtors® surveys show that the majority of home sales consist of single-family detached homes. For example, in 2007, 82 percent of homebuyers surveyed reported purchasing a single-family detached home.
- According to National Association of Home Builder (NAHB) surveys, homebuyers and homeowners prefer detached housing to attached housing. The NAHB's 2012 survey, *What Homebuyers Really Want*, found that 71 percent of survey respondents preferred a single-family detached home versus 10 percent who preferred single-family attached homes.

According to DRE data, from 1993 to 2012, approximately 68 percent of the applications processed were for detached subdivisions.⁵ Figure 5 shows the annual public report applications from 1993 to 2012.

While the single-family detached housing type has remained the predominant housing type, housing density has increased over past decades. According to the Public Policy Institute of California, the state's housing density is 35 percent above the national average and rising. Housing in California has become denser since the 1970s for a variety of reasons.

A primary reason for the increase in density has been the high cost of land. Land values increase with housing prices relative to the supply of developable land. As housing prices and land prices have increased, developers have developed housing on smaller and smaller lots and housing and subdivision types where housing structures can be separately owned. Note that a common feature of planned development projects is that individual unit structures are separately owned while site improvements are owned in common.

Based on the above, it is apparent that developers favor building single-family homes of any density so long as they remain detached, as opposed to a building density that requires units to be attached. There are several reasons that this may be so.

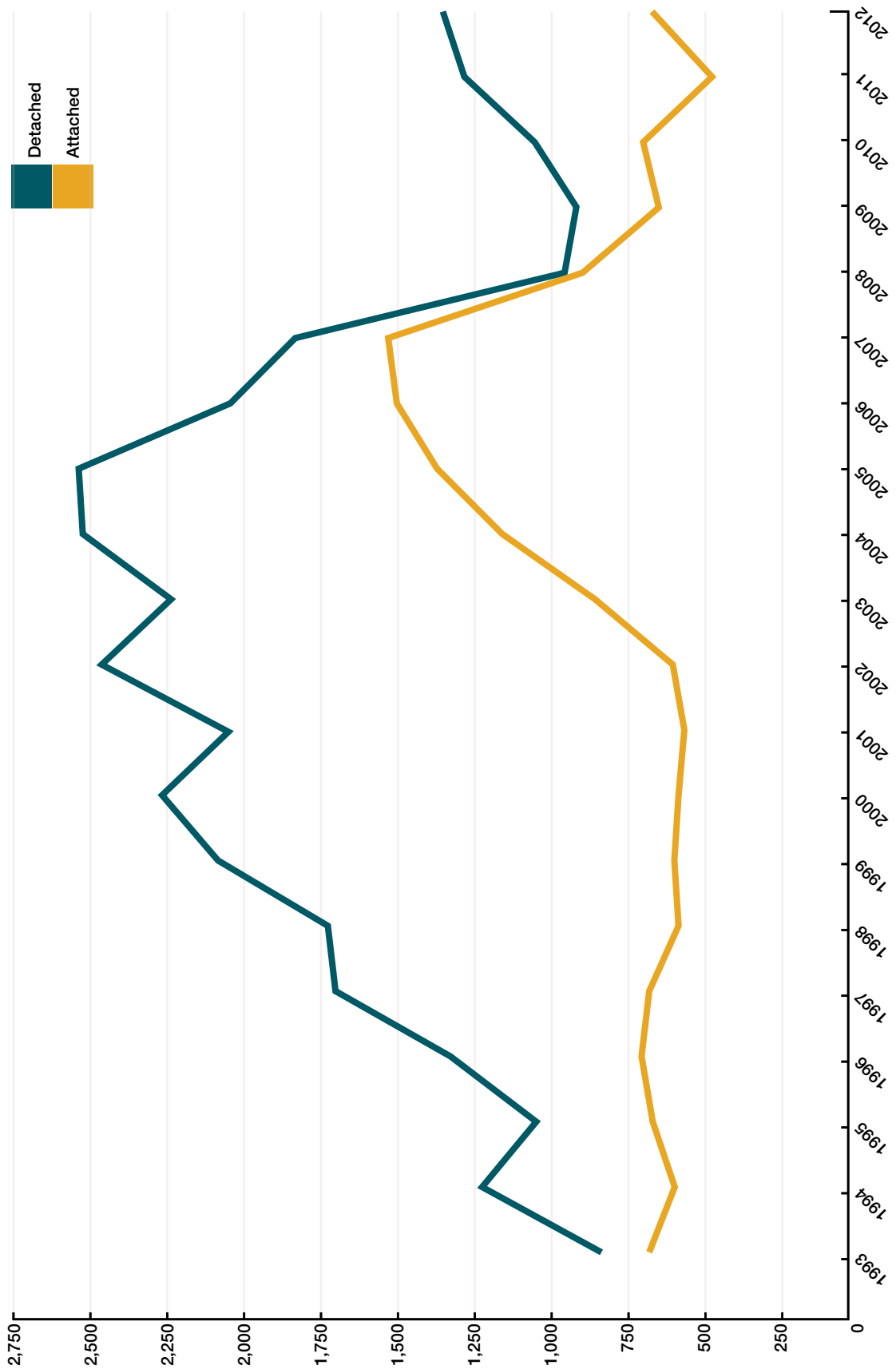
Marketing Concerns. First, with the exception of homes in dense urban environments where there is little alternative to attached housing, single-family detached homes are considered more marketable than attached homes due to consumer preference. Other things being equal, there is a larger pool of buyers seeking to purchase single-family detached homes rather than attached housing types. Higher sale values of single-family homes compared to attached condominiums bear this out.

Second, single-family detached homes provide the developer with the ability to manage market risk better than with attached housing. In building a subdivision of detached homes, a builder typically will build the project in small phases of homes one at a time rather than building all of the homes in the subdivision at once. This allows the builder to make changes in the housing product as homes are built and sold in response to the market acceptance of the homes. If certain aspects of homes are unpopular, the developer can modify such aspects in the future. The nature of attached housing, where all homes usually must be built at once, makes design changes much more difficult once construction has started.

Third, the requirements of home mortgage providers also pose a marketing challenge. In order to maximize the potential for sales, a builder will work to ensure that all homes conform to the conditions of mortgage insurers – Fannie Mae (FNMA Federal National Mortgage Association), Freddie Mac (FHLMC, Federal Home Loan Mortgage Corporation), and FHA (Federal Housing Administration). These agencies require each attached condominium project to be pre-approved as a whole before they will insure homebuyer loans. Additionally, and more significantly,

⁵ Figure includes standard subdivisions and planned developments but does not include detached condominiums; the number of housing units (vs. the number of applications) by subdivision type is not available.

Figure 5 - Public Report Applications Detached vs. Attached



each agency requires a percentage of condominium units to be pre-sold prior to any mortgages being insured. FHA requires at least 30 percent of the total units to be sold prior to endorsement of a mortgage on any unit. FNMA/FHLMC requires that at least 70 percent of the total units in the project (or at least 70 percent of the sum of the subject legal phase and prior legal phases) be conveyed or must be under contract to purchasers (other than the developer or his/her successor) who will occupy the units as their primary residences or second homes. Detached condominium projects (defined on page 24) are not subject to these presale requirements.

Expertise. Fourth, developers tend to focus on the housing product types with which they have expertise. Given the choice between developing what they know versus building a product type that is more complex (attached housing), they will choose to develop single-family homes. Construction of attached housing is more complex than construction of detached housing, and compliance with building codes is similarly more complex.

Construction Defect Liability. Fifth, concerns about higher construction defect liability with attached housing causes many developers to avoid building housing where an HOA owns portions of residential structures. The DSA permits an HOA to file a construction defect lawsuit against a builder for any claims if the HOA owns or maintains the defective improvement, or if the HOA owns or maintains an improvement that is integrally related to any improvement owned or maintained by the HOA.

Residential improvements are near and dear to each of the residents living in them, and any perceived defect is likely to have a constant emotional impact on the resident. Compare the impact of residents living under a leaky roof to the impact of residents living with a pothole in a common area or even a leaky roof in a recreational building of a planned development. The latter examples are much less inconvenient, and the motivation to sue is much lower as well. Furthermore, site improvement defects are likely to be easier to correct and are subject to more accepted, objective standards.

An association of similarly affected individuals who are already financially organized and prepared to fund the cost of litigation by means of the association can make the decision to litigate easier. Costs of litigation are more easily borne by the association compared to an individual homeowner because of the association's power to assess its members to pay the costs and because these costs can be spread over a larger number of individuals. Association board members also may be pressured as a result of their fiduciary duties to the association to act on behalf of affected homeowners. In some cases, the board may act on its own, without the explicit consent of the members, subject to the provisions of the association's governing documents.

The potential liability of a builder under construction defect laws is significant. In the current legal environment, a homebuilder is generally considered to be the manufacturer of a product. As such, builders are held liable for defects in their projects similar to other manufacturers. Generally speaking, there is a 10-year statute of limitations for latent defects (defects that are not readily visible) and a four-year statute of limitation for patent defects (defects that are not readily discoverable or apparent) within which the homeowner has to sue for damages due to construction defects. A typical construction defect lawsuit not only will involve the developer, but also the developer's contractor and/or subcontractors, and design professionals involved in the project. Defending such suits usually falls to the insurance company of the defendants. As a result, insurance for such projects by each of the parties may be difficult or costly to obtain compared to non-HOA projects or planned developments where only site improvements or non-residential structures are owned in common.

The California legislature has attempted to address the construction defect litigation issue with the adoption of SB 800, the "Right to Repair" law (Senate Bill 800, SB 800, California Civil Code Sections 895-945.5). The law addresses construction defect legislation and warranties for all newly constructed residential property intended to be sold as individual units. It does not apply to condominium conversions.

Prior to SB 800 there was no statutory definition of what constitutes a "construction defect," thereby providing an opportunity and significant latitude for plaintiffs to convince a judge that their particular problem was a construction defect by the builder. SB 800 sought to address this by setting forth a set of standards for the major

buildings systems of a home. While these standards have provided further clarification of what defines construction defects, some ambiguity remains in that the law states: “to the extent a function or component is not addressed by these standards, it shall be actionable if it causes damage.” This “catch-all” provision opens up a builder to possible litigation for problems not addressed and there is no clear definition of “damage” for this section.

Common Interest Developments of Single-Family Detached Homes

While developers may prefer or only be willing to build single-family detached homes, thereby avoiding common ownership of residential structures, other factors may dictate that the project be a CID (which requires an HOA) rather than a standard subdivision. Projects that have common recreation facilities, private streets (such as gated communities), private utilities, or other privately owned facilities must have an HOA to own and maintain these facilities, and will need to be developed as planned developments or site condominiums (defined on page 24).

The need for a project to be a common interest subdivision is driven by the temporary nature of the developer’s involvement, which ends once the last subdivision interest has been conveyed. Thus, if any improvements are to be privately owned in perpetuity, an entity must be in place to own and maintain the improvements. This can occur by design, e.g., private recreational facilities, can result from a condition of project approval imposed by the local agency, or can result from the developer proposing an improvement that is beyond the willingness or capacity of the local agency to maintain.

All projects having an HOA are not necessarily CIDs. In some cases, a developer may voluntarily establish an HOA in order to enhance the value of the homes within the subdivision, even though the HOA is not required by the DSA. For example, a developer may form an HOA as a means of providing long-term architectural controls or enforcing other community standards. HOAs may provide a more effective governance and enforcement mechanism than can be provided by local governments or than can be provided by CC&Rs without an association.

Distinctions of Subdivision Types

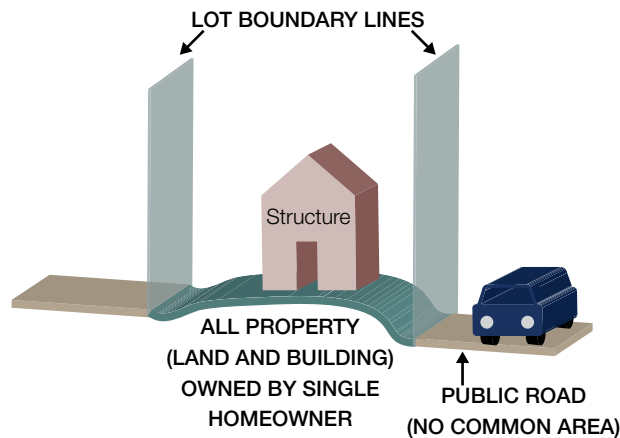
This section describes the various subdivision types covered by the SLA. Please note that some of these subdivision types, though provided for by the law, are rarely developed in California. According to DRE data, planned developments are by far the most common type of new subdivisions. From 1993 to 2012, 58 percent of the subdivision applications processed by the DRE were planned development, 32 percent were condominiums, and 10 percent were standard subdivisions. Meanwhile, relatively few stock cooperative, community apartment, or undivided interest subdivisions have been developed.

Standard Subdivisions

In processing applications for public reports, the DRE distinguishes between standard subdivisions and common interest subdivisions. A standard subdivision (Illustration 2) is one in which the owner has exclusive ownership of a particular lot or parcel and which provides no common or mutual rights of ownership among the owners of the lots or parcels. Typically, lots within a standard subdivision are served by public streets, although access to lots within some standard subdivisions is provided by private road easements rather than publicly owned streets. A standard subdivision would be one that meets the definition in BPC 11000 of the SLA and none of the definitions of the other sections; i.e., the subdivision is not a common interest subdivision.

BPC Section 11010.4 of the SLA exempts standard subdivisions from the public report requirements of the SLA if: 1) the subdivision is within the boundaries of a city with completed residential structures and with all other improvements necessary to occupancy completed or with financial arrangements determined to be adequate by the city to assure completion of such improvements (such as provided by the Map Act); and 2) purchase money is handled as set forth in BPC Sections 11013.2 or 11013.4, i.e., buyer funds are deposited into a neutral escrow depository until close of escrow or an alternative handling procedure is approved by DRE. Thus, the SLA implies that consumer protections in subdivisions that meet these criteria are adequate.

Illustration 2 – Typical Standard Subdivision

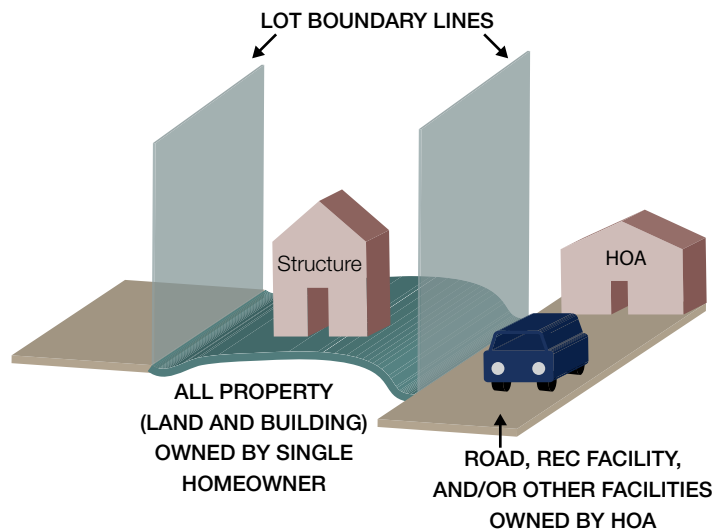


Common Interest Developments

A **common interest subdivision** is one in which the owner has exclusive ownership of a particular lot or unit combined with common ownership or beneficial use of certain areas and facilities that are owned jointly with other owners. The property owned in common is said to be an **undivided interest**, that is, none of the “bundle of rights” are exclusive to any one co-owner. No one co-owner may unilaterally use, mortgage, or transfer a portion or all of the property owned in common. The most common examples of common interest subdivisions are planned developments and condominiums. Less common are stock cooperatives and community apartments. These types of projects are further described below.

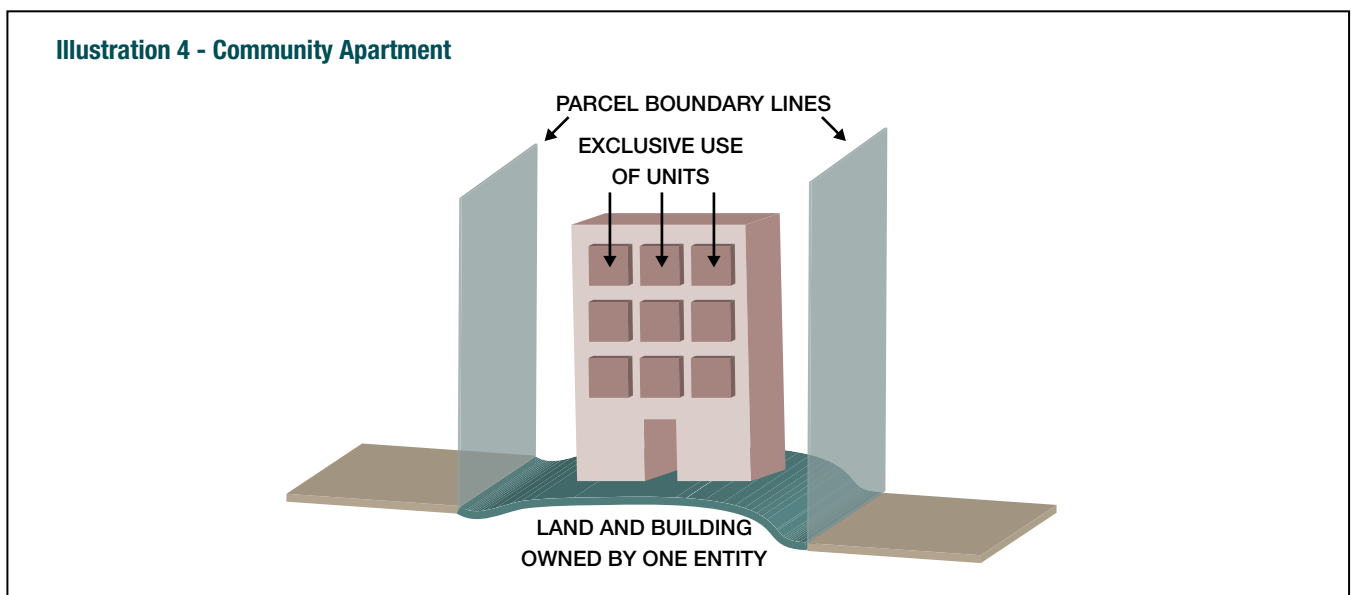
A **planned development** (Illustration 3) is a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features: 1) the common area is owned either by an association or in common by the owners of the separate interests who possess rights to the beneficial use and enjoyment of the common area; or 2) a power exists in the association to enforce an obligation of an owner of a separate interest, with respect to the beneficial use and enjoyment of the common area, by means of an assessment which may become a lien upon the separate interests in accordance with California Foreclosure Law.

Illustration 3 - Planned Development



Planned developments usually physically resemble standard subdivisions; i.e. they consist of detached homes on separately owned lots, and may not be distinguishable at all. The main difference is that planned developments contain property owned by an HOA. Common examples of planned developments include gated communities where streets must be privately owned and maintained since the general public is excluded from them; master planned communities or communities with private amenities such as swimming pools, clubhouses, lakes, nature areas, etc.

A **community apartment** project (Illustration 4) is one in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon. In a community apartment project, the apartment “tenant” has an ownership interest in the overall apartment complex in addition to having an exclusive right to occupancy of an apartment. The SLA applies to community apartment projects of five or more units/ interests, but it does not apply to the leasing of traditional apartments where one entity owns the land and building(s) and rents out units under the terms of residential leases. In these cases, the tenant has the exclusive right to occupancy of an apartment but not an ownership interest in the property.



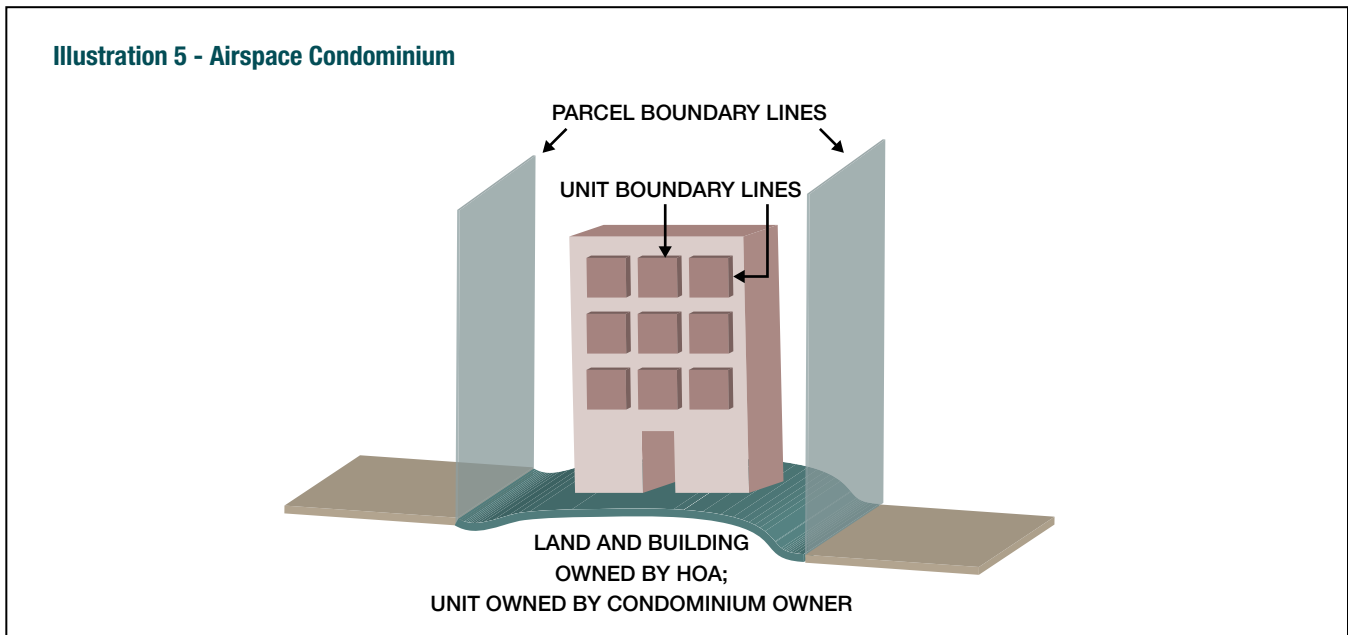
Although there are exceptions, a community apartment project must also comply with the requirements of the Map Act.

A **condominium** is not a building type but a legal form of ownership and a type of subdivision. There are two components of property ownership required for condominiums – an undivided interest and a separate interest.

The **undivided interest** is the ownership interest in real property held in common among condominium owners, i.e., the common area. The portion(s) of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. Thus, every deed conveying a condominium must contain a fraction (or percentage) of common ownership in some form of real property.

The separate interest is a three-dimensional space called a unit, which has legally described boundaries shown on a recorded map or recorded condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to: 1) boundaries described in the recorded final map, parcel map, or condominium plan; 2) physical boundaries, either in existence or to be constructed such as walls, floors, and ceilings of a structure or any portion thereof; 3) an entire structure containing one or more units; or

4) any combination thereof. In addition, an individual condominium within a condominium project may include a separate interest in other portions of the real property. An airspace condominium is shown in Illustration 5.



In recent years, projects known as *detached condominiums* or *site condominiums* (Illustration 6) have begun to be developed. These types of projects are not explicitly defined by the SLA, but these types of projects would be considered condominiums under the SLA. A site condominium combines elements of the planned development and condominium subdivision types. A site condominium is a subdivision of single-family detached homes with the following features:

- There are no shared buildings or building features.
- The project is encumbered by a declaration of condominium covenants or condominium form of ownership.
- Each condominium unit consists of the entire home structure as well as the site and airspace, which are not considered to be common areas or limited common areas.
- Insurance and maintenance costs of the unit are totally the responsibility of the unit owner.
- Any common assessments collected are for amenities outside of the footprint of the individual unit boundaries.

The primary motivation for developing a site condominium project rather than a planned development has to do with compliance with the Map Act. Depending on the entitlements previously granted for the site, a developer may be able to forego the tentative map/final map process otherwise required for a single-family home subdivision (a significant undertaking), and proceed to record a condominium plan to accomplish the legal subdivision pursuant to Government Code Section 66427 (the Map Act). Changes to a condominium plan are generally accomplished more easily than changes to a recorded map.

A *stock cooperative* (Illustration 7) is a development in which a corporation is formed for the purpose of holding title to improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners' interests in the corporation are evidenced by a stock certificate or a membership certificate. Thus, the deed to the property will reflect ownership by the corporation, and the corporation's information about the corporation's structure and management will be found in the articles of incorporation and bylaws. Separate documents such as occupancy agreements, leases, subscription agreements, and house rules will address individual ownership and associated rights.

Illustration 6 - Detached Condominium

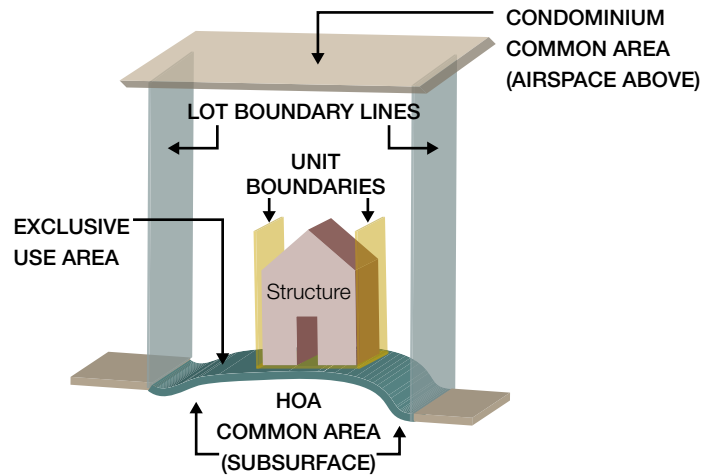
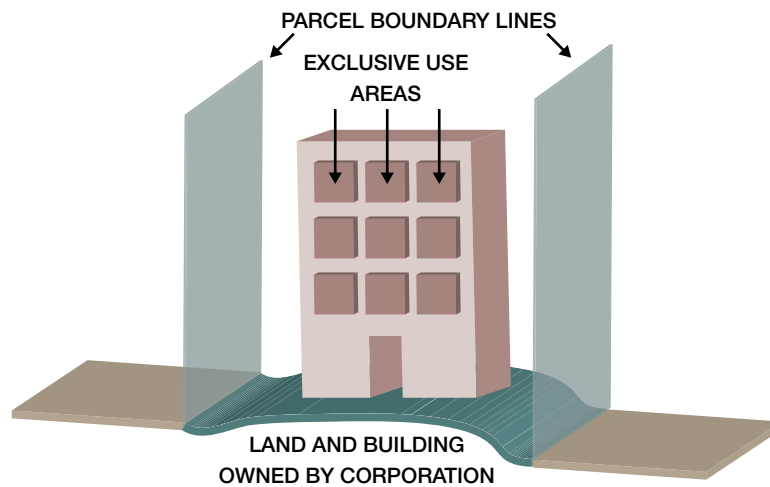


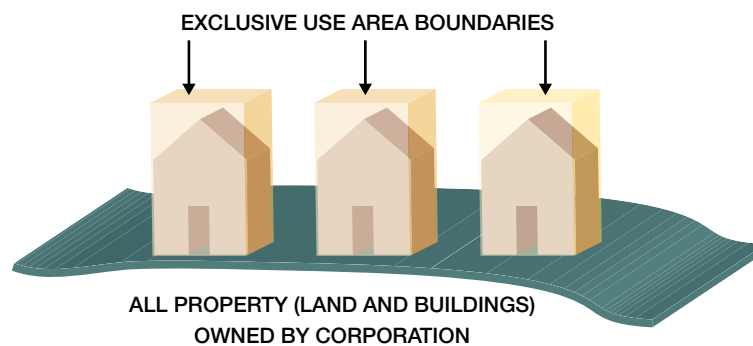
Illustration 7 - Stock Cooperative



A stock cooperative differs from a community apartment project in several ways. First, the entity holding title under a stock cooperative is a legally formed corporation. A community apartment project need not be owned by a corporation and title may be held in any manner, e.g., joint tenancy, tenants in common, partnership, Limited Liability Company, etc. While a community apartment project consists of residential apartments, the type of property owned by a stock cooperative may be apartments, single-family detached homes, or non-residential property. Note that the owner's exclusive use under a stock cooperative is for a portion of the property, not necessarily a unit. For example, although uncommon, a residential property may be divided into use areas such as rooms rather than units. Similarly, portions of undivided land may be allocated among members of the stock cooperative.

The SLA explicitly excludes a limited-equity housing cooperative from the definition of a stock cooperative, meaning that offering an interest in such a cooperative would not require a public report. A **limited equity housing cooperative** (Illustration 8) is a type of stock cooperative where each owner has a less than proportionate share of ownership of the project; such a project typically would be developed by a nonprofit housing developer with government funding. Limited equity cooperatives are usually developed as a means of providing affordable housing where the shareholders would enjoy advantages over tenants of conventional rental situations.

Illustration 8 - Limited Equity Housing Cooperative



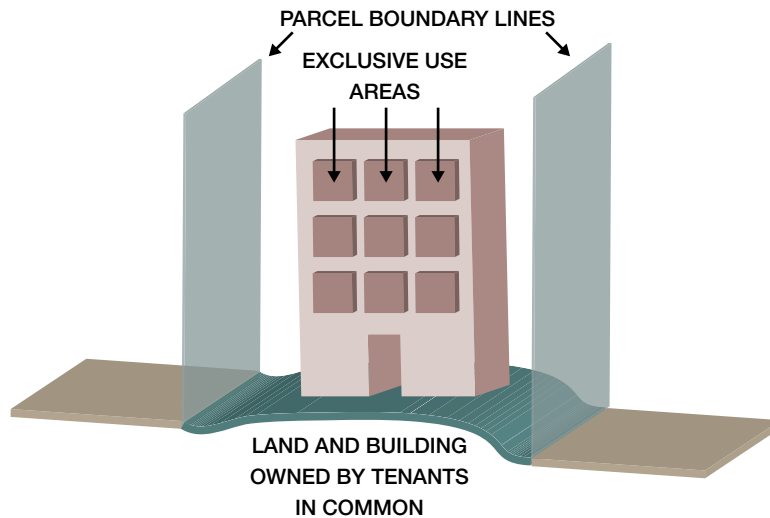
BPC Section 11000.1 of the SLA defines a type of subdivision called, somewhat paradoxically, an undivided interest subdivision. Such a subdivision consists of five or more **undivided interests** in real property where each interest has an associated right of exclusive use or right to generate income from a portion of the property. Note that although these types of subdivisions are similar to other common interest subdivisions, they are not common interest developments as defined by the SLA or the DSA.

Title to real property is often held by multiple owners where the ownership interest is undivided; that is, none of the individual owners has an exclusive right to possession nor claim any specific portion for him/herself alone. This most often occurs when a husband and wife own property together. An undivided interest subdivision occurs when exclusive rights are divided among five or more parties, referred to as a tenancy in common (TIC) subdivision (Illustration 9). Distinctive of TIC ownership is the right of survivorship belonging to each co-owner, i.e., the successor of each owner may acquire the owner's interest upon the owner's death. This compares to joint tenancy where the co-owner's interest automatically transfers to the surviving joint tenant(s).

In recent years, TICs have been formed to co-own apartment projects where each co-owner has the exclusive right to use or lease out a particular unit. This generally has occurred in higher cost areas as an alternative to higher cost single-family homeownership. TICs are not subdivisions subject to the Map Act.

Formation of a TIC does not require the recordation of any documents or approval by local agencies. Thus, a TIC structure may be preferred to a condominium or stock cooperative for a given property, both of which would be subject to the Map Act. TICs may offer the individual owners tax advantages similar those associated with single-family and condominium ownership; however, individual owners may find it difficult to finance their ownership interests.

Illustration 9 - Tenancy in Common



An undivided interest subdivision is exempt from the SLA if the interests:

- Are held or to be held by persons related to one another by blood or marriage
- Are to be purchased and owned solely by 10 or fewer investors meeting stated criteria (“sophisticated investors”) as approved by the Real Estate Commissioner
- Are created as the result of a foreclosure sale
- Are created by a valid order or decree of a court
- Have been expressly qualified as required by securities laws

Homeowners Associations

A **homeowners association** is a “nonprofit corporation or unincorporated association created for the purpose of managing a CID.” Most HOAs are organized as nonprofit corporations, i.e., nonprofit mutual benefit corporations pursuant to Sections 7110-8910 of the California Corporations Code. Nonprofit mutual benefit corporations exist to serve their members and are not charitable organizations.

When a lot, unit, or parcel in a CID is transferred, membership in the association is automatically transferred with it. Membership in the association cannot be separated from the property ownership. Evidence of membership in the association is the title to property encumbered by the declaration, which describes association membership.

An HOA has the powers enumerated in its governing documents (the articles of incorporation, bylaws, and declaration further described on page 28) as limited by the Corporations Code, and are similar to the powers of other types of corporations. Most significant are the powers of the corporation to enter into contracts, assume obligations, and levy dues and assessments on its members. Similar to other types of corporations, associations are governed through or at the direction of their boards of directors who have broad authority to govern. The general purpose of associations is to maintain the common areas on behalf of the membership and to enforce the governing documents.

When Required

The DSA requires all CIDs to be governed by an HOA. Thus, any planned development, condominium, community apartment, or stock cooperative (of five or more units) must have an HOA. The developer usually determines whether an HOA will be formed as part of a project early in the development process, when the project is conceptualized and the type of ownership interests to be offered is determined.

Formation

As a practical matter, the HOA only becomes active once the first home transfers to a homebuyer, yet HOA formation usually occurs well in advance of offering the first home for sale. Pursuant to the DSA, an HOA may be incorporated or unincorporated. An incorporated HOA is formed by filing *articles of incorporation* with the Secretary of State. The DSA requires HOAs for CIDs to have certain specific provisions beyond the minimum provisions required for other corporations. When properly filed, the association is formally recognized as a corporation by the state of California. An unincorporated HOA is formed when the developer signs the articles of association. Although commonly overlooked, unincorporated associations are required to file a “Statement of Common Interest Development” with the California Secretary of State. The only specific reason for having an unincorporated association is to avoid California Franchise Tax Board minimum corporate tax of \$800 per year, which is applicable to commercial CIDs and those mixed use CIDs, which do not qualify for tax-exempt status. Incorporated associations have statutory tort and contract liability protections for association members and corporate directors and are considered more broad and comprehensive than the common law protections afforded to unincorporated associations.

The developer controls the new HOA, with the developer’s appointed representatives serving as the initial officers and board members of the association. DRE regulations require all HOAs to permit the election of at least one board member by the votes of the consumer- purchasers of the lots or units within the HOA, with elections taking place no later than six months following the first conveyance of a lot or unit within the HOA.

The bylaws are the rules for conduct of the internal affairs of corporations and organizations and are created at the time of formation. The bylaws address such matters as the appointment of directors, their number, term of office, qualifications, powers, and duties. The bylaws also prescribe when and how meetings are held, quorum and voting requirements, and other matters essential to the basic operation of the association.

The board of directors is responsible for managing the affairs of the association on behalf of all members in order to preserve, enhance, and protect the value of the CID. Board members must deal in good faith and exercise reasonable care in executing their duties. The primary responsibility of the board is to ensure that the association’s assessments are collected, its bills are paid, it is operated efficiently, and violations of its rules are addressed. It is common for the board of directors to contract with a professional management company to run the day-to-day affairs of the association; nevertheless, the board is ultimately responsible for the management of the association. The board’s responsibilities are specified in the declaration (CC&Rs), bylaws, the Corporations Code and the DSA.

The *Declaration of Covenants, Conditions, and Restrictions*, sometimes called “the Master Declaration,” “the declaration,” or CC&Rs, is a document recorded against the subdivided property by the subdivider, who is referred to as “the declarant.” The declaration describes the rights and obligations of the property owners/association members within the subdivision and the association itself. The declaration runs with the land, that is, the rights and obligations contained in the declaration remains with the land, regardless of ownership, and pass from deed to deed as the land is transferred from one owner to another. As such, CC&Rs are considered “equitable servitudes,” which means that justice in the legal process will be administered according to fairness. Buyers of property subject to CC&Rs are presumed to accept them, having received constructive notice of them when they decided to purchase the property. The declaration may be amended as specified in the declaration, typically by majority or super majority vote of the membership.

CC&Rs are typically supplemented by *rules*, which further set forth the rules and regulations by which the members of the association are expected to live. The rules can be thought of as an extension of the declaration, but are beyond the scope of the formal declaration document. They are used to interpret and clarify the administration of the HOA. For example, the declaration may set forth the ways in which a clubhouse building may be used, but the rules would set forth the allowable hours of use, behavioral requirements while using the facility, etc. Another example would be that of design guidelines. The declaration typically will include a set of design guidelines or standards as well as the establishment of a design review committee, but the rules would further delineate the

specific application process, the application submittal requirements, etc. Rules are adopted by the HOA board and are changeable by the HOA board, subject to the provisions of the bylaws and the declaration.

Budget

Operation of an HOA is a significant financial enterprise. According to Levy, Erlanger and Company, CPAs, in 2012 there were 48,864 associations in California with annual revenues estimated to total \$10.4 billion. Consider a hypothetical 200-member association whose members pay \$300 per month in assessments. The annual revenues for this enterprise would be \$720,000 per year. According to Levy, the estimated average annual revenue for an association in California is \$210,000.

Also significant is the quasi-governmental power of associations to collect funds from its members. The DSA empowers associations to impose late fees and interest on delinquent assessments, allows the association to seek a personal judgment and/or a lien on the delinquent member's property for amounts owed plus attorneys' fees and costs, and allows the association to foreclose on the lien.

Assessments. The HOA budget consists of revenues, operating expenses, and reserves. The HOA may have up to five sources of revenue. **Regular assessments**, or monthly dues, are the amounts collected from members on a regular basis to fund day-to-day operations and the reserves of the association. **Special assessments** are charges levied to pay for extraordinary costs such as for a major repair, replacement, or new construction of common area property, or for an unanticipated expense that cannot be covered by regular assessments. **Reimbursement assessments** are charges paid by members to cover damage they have caused to common area. Depending on what is allowed by the governing documents, *fin*es may be levied against members as a penalty for rule violations. The governing documents also may allow the association to charge **user fees** for special use of association property. User fees are charges paid by members or non-members to utilize an amenity owned or controlled by the HOA.

The DSA contains specific provisions regarding how assessments are determined, how they are noticed, how they may be increased, and how they are adopted, as well as limitations and procedures for special assessments. It also contains specific provisions regarding budget procedures and how delinquent assessments may be collected. A powerful collection tool of associations is their ability to file a lien against a delinquent member's property and to foreclose on the lien if necessary. Foreclosure by a mortgage lender will eliminate a lien for amounts owed to an HOA because HOA liens are subordinate to the first mortgage lender's lien (see page 66); however, pursuant to Civil Code Section 5700(b) of the DSA, the HOA has the ability to seek a monetary judgment against the homeowner personally, after foreclosure. The "one action rule"⁶ regarding liens/foreclosures and direct legal action does not apply to HOA assessments.

Operating Expenses and Reserves. When the budget is prepared, the amounts necessary for daily operation and long-term reserves for maintenance and replacement are determined based on the level of service the association is both required and willing to pay. Although the DRE is not involved in the management of HOAs, the DRE is very much involved in the formation of associations of new CIDs. As such, the DRE has established a standardized format for association budgets with five categories of costs as follows:

- Fixed costs: Taxes, insurance, filing fees
- Operating Costs: Utilities, goods and services, cleaning, and maintenance
- Reserves: Replacement and major maintenance of facilities such as painting, roofing, lighting, carpet, pool, furniture, and paving
- Administration: Legal, accounting, and management
- Contingency: Allowance for expenses exceeding budgeted amounts or shortfall in revenues

⁶ California Code of Civil Procedure Section 726 is commonly known as the "one-action rule" because it requires any deficiency judgment to be sought in the same action as the foreclosure. This section also requires the creditor to foreclose and sell the real property security before obtaining a judgment on the debt.

The DRE makes two resources available to assist developers and their consultants in preparing budgets for approval by the DRE as part of the public report application process. *Operating Cost Manual for Homeowners Associations* and *Reserve Study Guidelines for Homeowners Association Budgets* are publications available from the DRE providing detailed guidelines and cost data for budget preparation.

Other Responsibilities

Management of the financial matters of the association is a large part of the job of the board of directors. This includes preparing the budgets and financial statements of the association, paying taxes and assessments on association property, contracting and paying for goods and services for the common areas including facilities and interests of the association such as insurance, and enforcing of the governing documents regarding dues and assessments.

The other main responsibility of the board is to enforce applicable provisions of the governing documents. This may include enforcing rules and modifying them as necessary, initiating and executing disciplinary proceedings against members for violating provisions of the governing documents, and holding elections and filling vacancies as required by the governing documents.

Specific powers of and limitations on the board will be included in the governing documents.

THE HOUSING DEVELOPMENT PROCESS

As mentioned above, the provisions of the SLA and the public report application process come into play toward the end of the overall subdivision development process. That is, the developer applies for a public report from the DRE just prior to the time that the developer begins marketing homes to the public. Yet at that time the majority of the development work has already been done. The DRE staff in effect reviews documentation of the developer's work through its application review. Thus, a basic understanding of the entire development process is necessary for a fuller understanding of the SLA.

Residential real estate development is considered a process because it is a linear, sequential series of actions designed to transform land, labor, and raw materials into places for people to live. It is a process that is well suited for the critical path method of project management and modeling.⁷ Many of the tasks in the process cannot proceed until precedent actions have been completed. For example:

- A subdivision map cannot be approved until the environmental analysis required by CEQA has been completed.
- A subdivision map cannot be recorded and become of legal effect until conditions of approval have been satisfied.
- Building permits typically cannot be issued until the subdivision map has been recorded and the site improvements serving the homes have been installed.
- Homes cannot be sold until they have been approved for occupancy and a final public report issued (if required).

Thus, a typical development project will be managed according to a critical path schedule, designed to complete critical activities as expediently as possible. Meanwhile the developer will work to perform non-critical activities simultaneously so as to minimize the overall duration of the process. For example, during the time a developer is seeking approval of a subdivision map by the local agency, he/she will be conducting market research for homes to be built in the subdivision and seeking financing for the construction of the project.

⁷ The "critical path method" is a project management technique developed by Morgan R. Walker of DuPont and James E. Kelley, Jr. of Remington Rand in the 1950s. The technique involves: 1) listing all activities that must be completed from the beginning to the end of the project; 2) organizing the activities sequentially based on dependency on other activities; 3) assigning timeframes to each activity; and 4) identifying each activity as critical or non-critical. Critical activities are those that make up the longest path, the longest path being the critical path. Management efforts are focused on minimizing the length of the critical path, meanwhile completing non-critical activities within the schedule of the critical path.

Duration of the Development Process

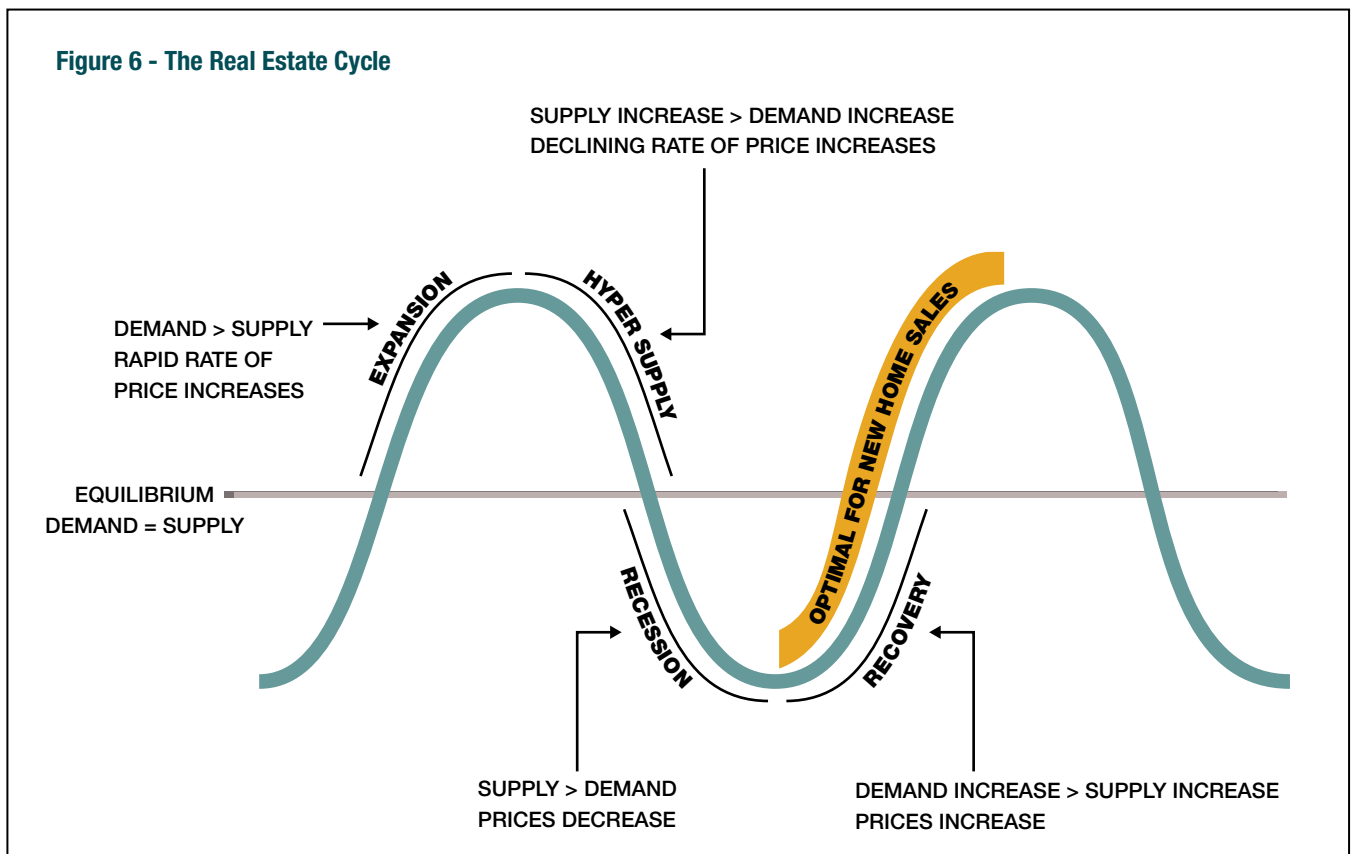
One of the most important and most challenging tasks for the developer is to manage and account for the duration of the development process in his/her business plan. The duration of the development process – from the acquisition of raw land to the sale of the last home in the subdivision – can be unpredictable and quite lengthy. Extended project duration often is the determining factor in whether or not the project is successful.

The Real Estate Cycle and the Supply-Demand Gap

The difficulty of a project's duration is best understood by first understanding the real estate cycle. The experience of the housing market of the early 2000s and the downturn and corresponding recession of 2007-2009 illustrate the volatility of real estate prices. This experience reinforced the fact that real estate prices are represented not by an ascending straight line, but more accurately by a sine wave varying over time.

The level of home sales and prices vary with changes in supply and demand. New supply is driven by housing developers who base their decisions to build new housing on the inventory and price of existing housing, the costs of developing new housing, the competition from other new housing, and expectations about the future of these and other economic conditions. Changes in housing demand occur due to changes in economic, demographic, and psychographic factors. Economic factors include things such as wealth, income, and the cost and availability of credit (interest rates), which would enable a home purchase. Housing demand is driven by household formation among consumers who exhibit the key demographic characteristics of homebuyers, such as age, household size, ethnicity, etc. Psychographic factors are those psychological factors that contribute to the home purchase decision such as consumer confidence, the “wealth effect,” and views of homeownership as an investment.

Changes in supply and demand are represented by a graph of the real estate cycle as shown in Figure 6.



The cycle is divided into four stages based on the relationship of the supply and demand for new homes. “Equilibrium” is that theoretical point in the market where demand equals supply, i.e., the number of new homes built and sold is exactly enough to meet the demand for new homes at any point in time. At equilibrium, if a builder could instantaneously increase or decrease production to meet demand, prices would remain stable because production would be just enough to meet demand.

Of course, it is not possible for the developer to have perfect knowledge of all demand and supply factors and, thus, it is not possible for production to be controlled in this manner. The duration of the development process – from raw unentitled land to homes available for sale – extends over several years. This leads to a frequent gap between supply and demand that tends to exacerbate the crests and troughs of the real estate cycle. Consequently, to meet today’s demand for new homes, the development process for a project must have been started several years ago. To the extent there is an insufficient supply of land in the pipeline (see Figure 7), there will be a shortage, resulting in upward pressure on home prices. As more housing is developed to meet market demand, the likelihood of overbuilding is increased as supply may continue to increase even when market demand recedes. The developer’s best prospect for success in such an environment is to begin and end a project in one cycle with the majority of home sales occurring on the upward part of the cycle. Thus, the longer the duration of the project, the more the project will be subject to a downturn in the cycle.

Peculiar to the “expansion” and “hyper supply” stages of the cycle shown in Figure 6 is the prevalence of condominium conversions. In many geographic areas, attached housing serves as a “substitute product” for detached housing. That is, as prices for single-family detached homes rise during the expansion stage, demand for lower priced alternatives such as condominiums increases. While developers may seek to develop new condominium projects to meet demand, the conversion of rental apartments to ownership condominiums during such periods may be appealing due to: 1) a perceived disproportionate difference between the cost of rental apartments and projected sale prices of the apartments converted to condominiums; 2) a potentially shorter and simpler land use entitlement process compared to new construction; and 3) a less extensive and less intensive construction process since improvements are already in place. An increase in condominium conversions may be viewed as an indicator of the expansion stage of the cycle as it moves toward the hyper supply stage.

The above factors make the quality of the unit delivered to the buyer and the quality of the common area delivered to the HOA of primary concern to homebuyers and to the DRE. Converters are likely able to acquire older and lower quality apartments at a lower cost with more perceived profit potential than newer or higher quality apartments. Older and lower quality apartments are also likely to require corrections and improvements that go beyond typical cosmetic improvements necessary to attract homebuyers. In addition to exterior improvements that are visible and somewhat obvious, such as roofing, siding, paving, and landscaping, nonvisible improvements such as infrastructure, mechanical, electrical, and plumbing systems may require significant rehabilitation or updating. The DRE’s HOA budget review and acceptance process requires condominium converters to submit reserve studies that estimate the funds necessary for the HOA to take over the project’s maintenance responsibilities; however, condominium converters often are not long-term owners of the property prior to conversion, and therefore do not have direct knowledge of a project’s true maintenance or operational costs. Thus, there are limits to the amount of disclosure and the reliability of budget estimates for conversion projects. Consequently, homebuyers may be surprised by actual property needs and increases in assessments to address such needs after the developer’s obligation to pay assessments pursuant to Regulation 2792.9 has expired.

The “recession” stage of the real estate cycle is a challenging environment for the developer, homebuyers (particularly in CIDs or attached housing projects), and HOAs. The market downturn of 2007 highlighted problems that can arise in projects where HOAs are involved. DRE regulations (specifically Regulation 2792.9) require a subdivider to assure the availability of funds or sources of funds for the early stages of an HOA’s operations. When the downturn occurred, the response of developers of single-family detached homes was to simply stop building homes as sales slowed. Developers of attached homes had less flexibility in that structures containing multiple units

were completed where only one or a few units in the structure were sold. Thus, a large inventory of unsold homes was created when sales programs were suspended. Often, the subdivider or the subdivider's lender following a foreclosure on the construction loan, rented out the unsold units. These rentals, combined with the rentals by investor-owners that purchased foreclosed homeowners' units, led to percentages of non-owner occupied units that exceeded limits established by FHA, Fannie Mae, and Freddie Mac project qualification for mortgage financing. The poor health of the HOAs due to the foreclosures also affected qualification by these agencies. Potential owner-occupant buyers were thereby precluded from obtaining traditional financing for these types of projects.

The recession caused many homeowners to default on their mortgage loans and HOA assessments leading to foreclosure by the first mortgage lender. When a lender forecloses on a separate lot or unit, any HOA lien for unpaid assessments is eliminated due to the mortgagee protection clause of CC&Rs (discussed on page 66), which causes HOA liens to be subordinated to the first mortgage lien. Upon foreclosure, the lender becomes obligated to pay HOA assessments from that point forward. The loss of revenue from defaulting homeowners prior to lender foreclosure took a toll on many HOAs. Such losses were exacerbated by extended default periods, as lenders were slow to actually complete the foreclosure process. HOAs that maintained and provided property insurance for individual lots or units – the cost of which is a significant portion of the entire budget and significantly higher than HOAs that only provide for insurance and maintenance for common areas – were impacted even more.

HOAs were unprepared for the unprecedented high number of foreclosures during the recession, and they were unable to adequately address the extraordinarily high assessment delinquency and default rates within their communities. Many initially wrote off the delinquent assessments following a lender's foreclosure, closed the books on the defaulting accounts, and made up the funding shortfall by increasing the HOA's annual regular assessments. Later, they began seeking monetary judgments from defaulting homeowners, assigning those debts to third party collection companies and agreeing to accept only a portion of any debt collected.

Ex Ante Analysis and Project Delays

The duration of the development process requires a developer to make decisions based on expectations of what conditions will be several years into the future. Such feasibility decisions are based on many assumptions made very early in the process. Making this analysis even more critical is the fact that development projects require large amounts of capital to be invested for long, potentially indefinite, periods of time. A project likely will require the developer to invest substantial resources years in advance of actually realizing any revenue or profits. The price paid for the property, obligations made to lenders, and returns promised to investors, among other decisions, are committed to well in advance of actual home sales and project completion. Once invested, capital is not easily recovered, particularly if the project performs worse than expected. Unlike income-producing investments, which provide cash flow to the investor throughout the investment period and, at the end of the investment period when the asset is sold, the return on investment in a for sale residential project is provided solely at the end of the investment period. Meanwhile, funds are tied up in a very illiquid asset.

If the project schedule extends beyond what was anticipated by the developer, the developer will incur additional costs. The longer the duration of the project, the greater the risk of costs being greater and/or revenues being lower than projected. Government regulations, building codes, and development fees and exactions tend to increase over time leading to increased costs of compliance. Tentative maps and other permits have expiration dates by which certain conditions must be met. An extended schedule increases actual land holding costs (interest accrual, property taxes, property maintenance costs, job overhead) and increases the risk of such things occurring.

Factors Affecting Project Duration

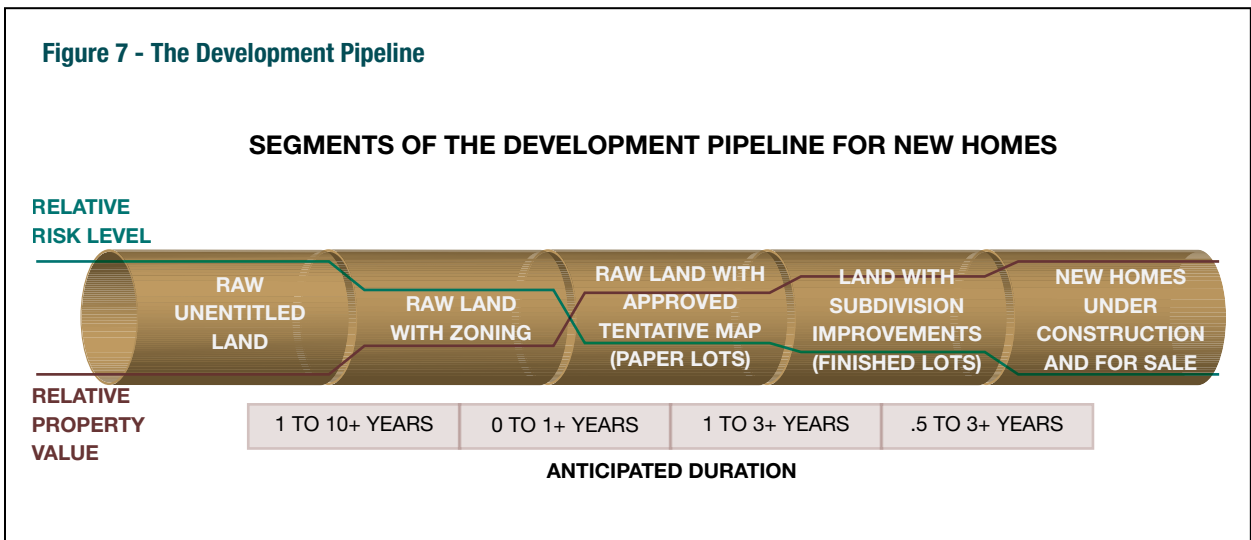
The duration of the process is affected by a variety of factors:

- The land use entitlement and permitting process is necessary for the project. The status of the entitlements of raw land can vary greatly from having no right to develop, such as under agricultural zoning where the land may need to be annexed by a municipality, to a property of "paper" lots, where a tentative map has

already been approved but no further development has occurred. Many variables will affect the duration of the entitlement process such as:

- Whether the required zoning is consistent with the local agency’s land use plans
- Whether the land requires federal and/or state permits under the Clean Water Act or Endangered Species Act and if so, what type of permit is required
- The local agency’s processing procedures and timeline
- The CEQA process required
- Whether the project is controversial

As a result of the above variables, at any given time there is a supply pipeline of developable lots at various stages of the development process as illustrated in Figure 7.



One of the biggest risks associated with the development process is *entitlement risk*, i.e., the risk that the discretionary land use approvals needed to develop the project are not obtained with conditions that allow the project to be feasibly developed in the anticipated timeframe. The closer in time and in regulatory procedure the land is to being able to pull building permits and sell homes, the less the project is subject to variations in the market cycle. Consequently, land becomes more valuable as it gains entitlement approvals. In this way, the segmentation of land supply leads to specialization in the development industry; e.g., land developers may focus on buying land, entitling it, and selling it to homebuilders. A homebuilder may, and frequently does, forego entitlement risk by choosing to purchase land only after it has been approved with all land use entitlements in place.

- The size of the project: The larger the project, the longer it will take to install subdivision improvements and the longer it will take to sell all of the homes in the subdivision. Larger projects are typically phased in order to manage costs and to better match development costs to projected sales. Even with phasing, larger projects are challenged to meet the rate of sales at any given time. For example, assume that subdivision improvements are installed for a phase of 100 lots where sales of homes occur at an average rate of four homes per month. It would take 25 months for the phase to sell out. The developer is susceptible to downturns in the market during that time.
- The complexity of the project: Projects requiring installation of major “off-site” improvements such as large or extended utility lines or street improvements, or major infrastructure improvements, relocations, demolitions, etc. take longer to design and to construct.

-
- The developer's financial readiness to proceed: Depending on the developer's individual circumstances, a developer may not have the financing immediately available to proceed with development of the project.
 - Seasonality and weather: Construction is seasonal. Due to unfavorable weather conditions and governmental regulations related to environmental quality, construction can only efficiently occur during certain times of the year, generally April through October depending on actual weather conditions. Project delays can easily cause a construction season to be missed, leading to even longer project delays. Home sales are also seasonal. The traditional homebuying season is from February to September. Of course home sales occur year-round, but more sales occur during these months due to school schedules and more favorable weather. Project delays may cause the developer to miss the opportunity to sell homes during the peak season.
 - Market conditions: As discussed above, market conditions vary and will determine how long it will take to sell all homes in the subdivision.

Project Development Overview

Successful real estate development requires both vision and execution. Vision involves the conceptualization of the project to be developed on a given site taking a variety of factors into consideration, well before actually bringing homes to market. Such factors include:

- **Site and location factors:** What offsite amenities are available? Based on surrounding and nearby land uses, is the property a good site for housing? If so, what housing type is best suited for the site? What design is appropriate given the features and constraints of the site? What on-site amenities should be offered? What scope of off-site and on-site improvements will be necessary to build housing on the site?
- **Market factors:** What type of product should be built on the site? What features should be offered? At what price can homes be sold? Given market demand, how many homes can be sold and how long will it take to sell all of the homes in the project?
- **Financial factors:** How much will it cost to develop the project? Is it financeable given the level of returns? What is the pro forma financial performance of the project?
- **Regulatory factors:** What approvals are necessary to be able to develop the site? How long will it take to obtain approvals? Is approval possible within the investment horizon? What are likely conditions of approval of the project?

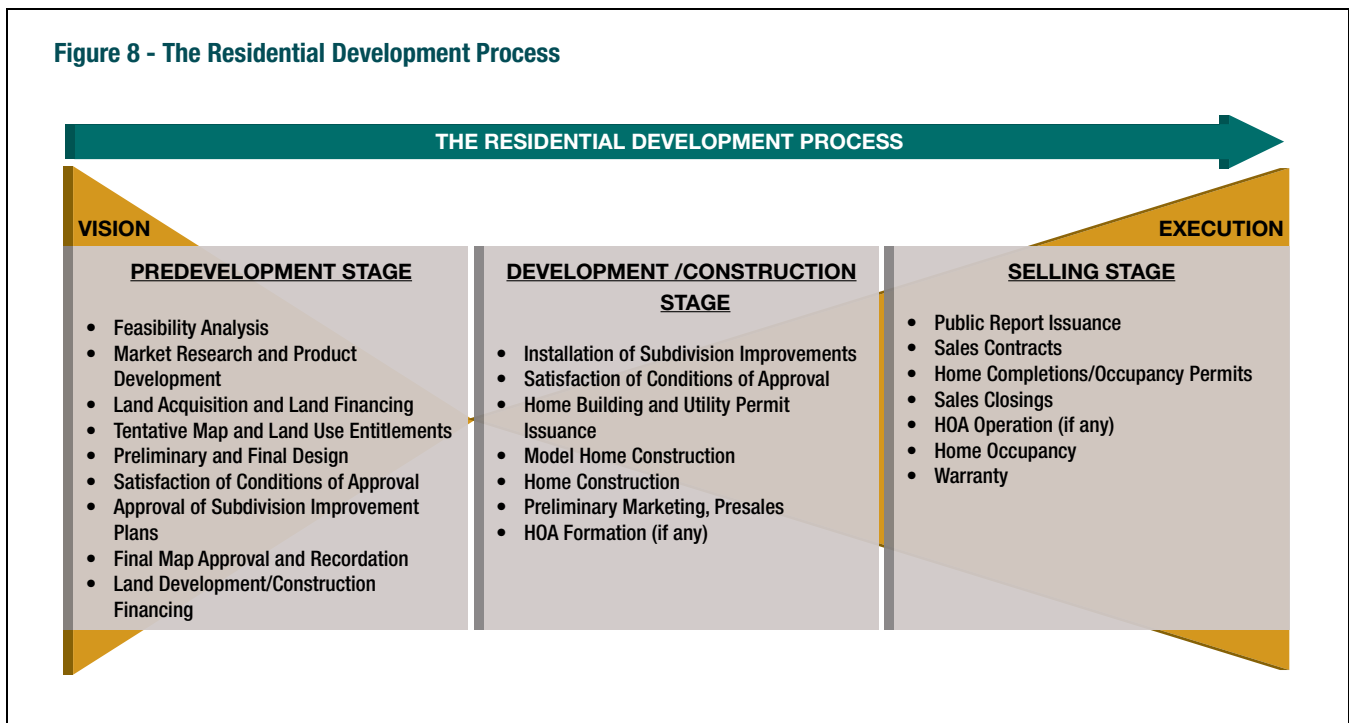
Analyzing the site for these and other factors will lead to a preliminary definition of the project. Once the project concept has been defined, it must be executed. That is, the project, starting from no more than a drawing on paper, must be developed and advanced through a complex process of regulations and procedures to prepare it for construction, and then it must be constructed, marketed, and sold to the public.

Between the initial vision and final execution of a project there are many tasks and activities that must be completed in order for the project to be developed. This process can be broken down into three stages – predevelopment, development and construction, and selling – as summarized in Figure 8.

Predevelopment Stage

The predevelopment stage is the period from when the project is first considered to the time that construction commences on the site. The first task of the developer is to find a site that is suitable, marketable, and feasible for new housing. In conducting a search for potential development sites, a developer will narrow the search by determining the housing type to develop, the geographic market area, and other specific criteria from the developer's business plan. In addition to identifying sites by drive-by surveys, real estate brokers may assist in the search, and developers may conduct research at local planning departments to find developable sites. Prior to selecting a site and beginning to negotiate a purchase and sale agreement of a site, it is likely that the developer will have considered and analyzed several sites for development.

Figure 8 - The Residential Development Process



Feasibility Analysis

Once potential sites have been identified, the developer will begin to conduct simple feasibility analyses on the sites. Various levels of feasibility analysis will be conducted during the course of any project. The first level of analysis may be referred to as “quick and dirty,” “back of the envelope,” or “back of the napkin” analysis, indicating the preliminary and cursory nature of the analysis. Prior to expending significant resources or contacting the seller of a property, the developer will generate a simple financial analysis using estimates and assumptions based on the developer’s experience, e.g., the number of units that can be built on the site, sales values, development costs, etc. If the preliminary analysis is promising, the developer will proceed with more detailed analyses to further validate the preliminary feasibility of the project and to determine the purchase price and other terms to offer the seller of the property.

The essence of a feasibility analysis is to quantify and project the timing of all the costs of development and the anticipated revenues from the project. If projected revenues exceed the total cost (including the costs of financing) so that an adequate profit can be earned by the developer, the developer will proceed with the project. This *pro forma* analysis is the basis for many decisions that are made throughout the development process. In order for the developer to actually proceed with the project, he/she must raise the funds necessary to complete each stage of the project. In order for the project to be successful, the assumptions made in the pro forma analysis must prove out.

Accurately quantifying and projecting costs and revenues is an extremely difficult task. Not only do the physical costs of development need to be estimated, but the timing of costs and revenues need to be projected as well. Underestimating costs and/or overestimating revenues will lead to an unsuccessful project. Overestimating costs and/or underestimating revenues will likely lead to the developer failing to proceed with what otherwise would be a successful project, i.e., the developer’s offer to buy the property, the price of which is based on the developer’s projections, will likely be rejected by the land seller who may otherwise accept a higher competing offer.

Once the initial project pro forma has been established, it serves as the main management tool for the developer. Integrated into the pro forma are the project schedule, the project budget, the projected cash flow (sources of cash from equity, debt financing, and home sales, and uses of cash for project costs), and measures of the financial performance of the project. The project pro forma will be updated periodically, particularly as needed to account for significant changes in the market or budget or in anticipation of presentation to lenders or investors.

In analyzing a site for residential development, the developer will analyze two categories of factors: internal factors (factors related to the site itself) and external factors (how the property relates to other land uses and amenities that are important to homebuyers).

Internal Factors. Internal factors are those that are unique to an individual site and integral to its development. Internal factors ultimately increase or decrease the value of the site in the marketplace. This site analysis is primarily concerned with the cost of development. With raw land, there are a myriad of factors that must be analyzed with regard to the developability of the site and the associated cost of development.

- **Existing conditions:** In analyzing the site for feasibility of development, the developer must understand the current and previous uses of the site. Previous uses of the site may be an indicator of the possibility of contamination on the site or of improvements that may remain on the site that may be costly to remove. Existing conditions include site drainage, soil conditions, topography, and vegetation on the site. Drainage conditions of the site will determine the extent of grading necessary and the scope of storm drainage improvements necessary to adequately manage storm water runoff from the site. Drainage conditions may indicate the presence of wetlands or vernal pools, which require permits from regulatory agencies in order to be filled with soil. Other natural conditions such as habitat for endangered or threatened species may be subject to federal, state, and/or local regulations. If such regulations apply, the approval and compliance process for these permits must be analyzed (see Land use entitlements and tentative map). Attractive natural conditions may lead to a decision to preserve them and incorporate them into the development plan. The developer will also verify the status of the property with regard to flood hazard by reviewing the flood risk designation for the property as determined by the Federal Emergency Management Agency (FEMA). This designation is a basis for determining whether the property is developable, and whether flood insurance will be mandatory for future homeowners. A flood insurance requirement and the rates homes in the project will be subject to may affect the marketing of homes in the subdivision. The properties of soils, the depth of groundwater, and bedrock on the site must be taken into consideration when designing and installing improvements for the site. The developer will employ a specialized civil engineer, called a geotechnical engineer, to provide design recommendations for grading, street improvements, building foundations, etc. Failure to properly consider soil conditions can lead to the failure of the improvements themselves and liability to the developer.
- **Potential for environmental contamination:** The Comprehensive Environmental Response, Compensation, and Liability Act is a federal law, the effect of which is to impose liability on any owner or lender on property that is contaminated with materials defined as hazardous, whether the owner or lender caused the contamination or not. In order to minimize liability under this law, developers will hire a consultant, typically a geotechnical engineer or an engineer specializing in such matters, to conduct an environmental assessment on the property. The environmental assessment includes a review of current and historic conditions on the site and the area surrounding the property, and public records to assess the likelihood that the site is affected by contamination from hazardous materials. Various levels of analysis may be done, including actually analyzing soil samples on the site, depending on the likelihood that the site has been contaminated. If contamination is found, and to the extent the developer wishes to proceed with the project, the developer will need to remove the contamination or remediate it to a level acceptable to relevant regulatory agencies.
- **Off-site improvements necessary for development:** Off-site improvements are extraordinary improvements or improvements outside the boundaries of the site itself that must be constructed to serve the project. Examples of off-site improvements are major utility facilities, extensions of utility lines, or road improvements to connect and serve the property to adequate infrastructure. A developer will employ a civil engineer, working in conjunction with the local agency's public works or engineering department, to determine the scope and cost of off-site improvements necessary to develop the project. The analysis of off-site utilities will also include a determination as to whether the project will be allowed to connect to

existing utilities based on the capacity of existing systems and the physical and financial requirements to connect.

- **Vehicular access:** How automobiles will reach the site is a primary consideration in any development. In addition to the connection(s) to the existing roadway network, the design of streets, the size and amount of traffic, and future connections to surrounding undeveloped property must be assessed. Depending on the development context, the developer may want to consider access to alternative forms of transportation such as transit, bicycle, and pedestrian connections.
- **On-site improvement necessary for development:** Essential utilities for residential development are storm drainage, sanitary sewer, water, electricity, gas, and communications (telephone, cable television). The relative cost of these facilities from one subdivision to another will vary based on the requirements, standards, and specifications of the utility service provider, whether the facilities will need to be oversized to serve development beyond the subject property, and whether site conditions require extraordinary design or construction measures to be employed.
- **Title issues affecting site development:** The preliminary title report is essential to the developer's site analysis. The title report provides the legal description used to delineate the legal boundaries of the property on the planning and engineering documents and is ultimately the legal basis for the new subdivision. The title report will also list encumbrances such as easements on the property that may impose physical constraints on site development. Any such encumbrances that will remain on the property post-acquisition and postdevelopment will be plotted on planning and engineering documents, prior to the new project being laid out.
- **Land plan lot/unit yield:** Once the project boundaries, encumbrances, topography, and significant natural features have been plotted, the land planner (land planner, architect, or civil engineer) will lay out the site based on these conditions and the project criteria provided by the developer. In some cases, these conditions may dictate the housing type to be developed. For example, a site with steep topography and/or areas of significant natural features may lead to a project where homes are clustered together in order to avoid these areas rather than a more spread out project that would require more extensive and destructive grading operations. In planning the site, the development team will consider the existing zoning ordinance and other land use regulations affecting the site; however, the development team likely will generate a plan for a project that they believe is best for the site irrespective of zoning, with the intent of seeking a change in zoning to accommodate the project. The land planning process most likely will be an iterative process based on feedback from various members of the development team.
- **Entitlements necessary for development:** Once the development team has arrived at a preliminary design for the project, the developer will ascertain what entitlements will be needed in order to develop the project by discussing the project with the planning department of the local agency. It is at this time that the subdivision type to be developed – standard, planned development, condominium, etc. – will be determined. At a minimum, compliance with the Map Act will be required, which usually means the processing of a tentative and final map. Other entitlements such as a rezone, specific plan amendment, general plan amendment, variance, use permit, etc. may also be required. Once the entitlements needed are determined, the developer will assess the likelihood and the timing for actually obtaining the entitlements. To the extent the developer views the entitlement process as problematic, either prior to submitting an entitlement application to the local agency or after, the developer may make changes in the project design in order to resolve any anticipated problems.
- **Fees and exactions required for development:** Local agencies have broad authority to impose fees and exactions on real estate development projects. For example, state law authorizes local agencies to require developers to dedicate land for parks or other public purposes as a condition to project approval. Impact fees are routinely charged to the project to mitigate the impact of new development on public facilities and

services such as parks, schools, utilities, roadways, government administration, police, fire, etc. The developer will want to accurately estimate these fees in order to create the development budget for the project.

• **Title issues affecting future ownership:** In addition to title matters affecting the physical development of the site, the developer will review and assess the impact of title matters that will affect future homebuyers such as the level of property taxes and assessments on the property. The type of subdivision to be developed – standard, common interest, etc. – will be determined from the project design. If the project is to be a CID, the developer will estimate the level of assessments that will be required of future homeowners. All such issues will affect the marketing of the subdivision interests.

External Factors. External factors are those that are related to the site’s location, and analysis of these factors is primarily concerned with the value of the project after development, i.e., the home prices that can be achieved for the project. It is commonly understood that the value of real estate is related to its proximity to desirable (or undesirable) land uses as is indicated by the cliché, “location, location, location.” For residential real estate, these locational factors include proximity to employment centers, schools and their quality, transportation, retail services, and amenities such as parks, open space and recreational facilities. The developer will assess the adequacy of these services in determining sales prices for the project. Other factors that may be detrimental to the project are its proximity to certain land uses such as industrial, agricultural, or airport facilities. Such factors may become disclosure items in the public report and/or in the developers marketing materials. Perhaps the most significant external factor to be analyzed is competition. The developer’s projected sales prices will be established based on how his/her project compares to similar projects.

Land Acquisition and Land Financing

The result of the preliminary feasibility analysis and pro forma is the price and terms the developer will negotiate for the land purchase. The initial proposal often will be contained in a “letter of intent” outlining the basic business terms of the purchase and sale of the property, which may or may not be binding. Once the basic terms have been agreed to, a formal purchase and sale agreement will be prepared and signed by the parties. Purchase and sale agreements for land are similar to other real estate purchase agreements and will vary in complexity.

The typical structure of a purchase and sale agreement (or option agreement) provides the developer-buyer a certain amount of time to examine the property before committing to buy it (the feasibility period, due diligence period, or option period) and then an additional amount of time to close escrow on the property. Once a formal binding agreement has been executed, the developer has “site control,” which means the seller is legally obligated to sell the property under the terms of the contract while the developer has the ability to cancel the transaction subject to the terms of the agreement. Depending on the status of the land and the land use entitlement process necessary for development, a developer will try to negotiate terms that correspond to the development process, in order to minimize his/her investment as long as possible and until the “entitlement risk” of the project has been reduced as much as possible.

There are several structural provisions and terms that are of utmost importance to the developer. These provisions are described below.

Feasibility Period. The feasibility period may also be referred to as the “due diligence” period or “option” period. Once the contract is signed, the developer will put up an earnest money deposit, usually in an escrow account, toward the purchase of the property. The purchase contract defines the feasibility period as the time from the execution of the contract to a certain date, which typically can range from 30 to 90 days or longer, depending on the nature of the property and proposed project. Like any other provision of a contract, the contract can be amended to extend the feasibility period subject to the agreement of the parties. The developer has until the expiration of the feasibility period to decide to proceed with the purchase. If the developer decides to proceed with the purchase, the deposit will become non-refundable subject to the performance of the seller’s obligations under the contract. Should the developer fail to close escrow pursuant to the terms of the contract, the seller is entitled to the deposit. Should the developer decide not to purchase the property during the feasibility period, the developer will cancel the

contract and the developer is entitled to a refund of the deposit with no further obligation to the seller.

The feasibility period is a critical period for the developer to analyze all aspects of the property and its suitability for the developer's proposed use. In addition to the earnest deposit, the developer will begin incurring significant costs during this period for consultants such as architects, land planners, civil engineers, environmental engineers, soil engineers, attorneys, and market analysts.

Title Conditions. At the close of escrow, the contract will require that the seller deliver title free of all liens and encumbrances except as agreed upon by the parties. The seller will typically specify the exceptions listed on the preliminary title report that will remain on title. Because such items may affect the manner in which the property may be developed, the developer must review title matters thoroughly to determine that the project can be developed as anticipated. Note that the standard title insurance only covers the buyer for matters in the public records. If the title company failed to disclose a matter in the public records to the buyer, the title company would be potentially liable for damages incurred by the developer. However, it is possible that a significant title matter may not show up on title. For example, there may be no recorded documentation of easements, leases, or rights of others to use the property that would be evident from a physical inspection of the property. A physical inspection of the property may lead to the discovery of an access road, utility line, or encroachment such as a fence benefiting an adjacent property. An inspection also may lead to the discovery that someone is actually living on or using the property with or without permission of the owner. Rights of "squatters" or lessees such as those using the land for grazing or agricultural purposes may not show up in title records. To protect the buyer's rights against such situations, the buyer must insist that the property be vacant at the close of escrow, and the buyer will also obtain an extended coverage title policy to protect against such unrecorded matters. In order to receive this coverage, the title company will require a physical inspection and a formal detailed survey of the property.

Purchase Price and Payment of the Purchase Price. The price paid for the property can be a major factor in the success of the project. Hence, the developer's pre-acquisition due diligence should be exhaustive in analyzing and verifying the projected costs and revenues to ensure that the price is appropriate. In addition to the price, the manner in which the price is paid will be important to the developer. The terms of the purchase and sale agreement are often used as a means of risk management by the developer. The feasibility period and deposit structure described above is an example of this type of risk management. The longer the feasibility period, the lower the amount of the deposit, and the longer the escrow closing period, the lower the risk to the developer and the higher the risk to the seller. For real estate development projects, developers may seek to have closing, and even the expiration of the feasibility period, dependent upon the satisfaction of certain conditions that are critical to the developer's project, such as approval of the project by the local agency or procurement of the financing necessary for the project. The parties also may negotiate that the purchase price be paid in installments. For example, after the initial deposit and at or after the end of the feasibility period, additional non-refundable deposits may be structured and/or the seller may accept a portion of the purchase price in the form of a promissory note from the developer with payments made in specified installments after closing. Such a structure approximates an option contract structure, a traditional risk management tool, but there may be financial repercussions to the developer for a failure to perform, depending on the requirements of the contract.

In order to close escrow, the developer must have the funds available in order to complete the payment of the purchase price. If the developer does not have his/her own funds or does not wish to use his/her own funds (for risk management purposes), several sources of funding may be available. The landowner may be willing to accept payment in the form of a promissory note as mentioned above. Debt financing may be available, but the availability and favorability of the terms of such financing for unimproved land varies with market conditions. A common source of financing at the land acquisition stage is from equity investors. To raise equity investment, a developer will form a partnership with investors to acquire and develop the land. The equity investors are technically owners of the property, as opposed to lenders, but the developer typically is the manager of the partnership.

Tentative Map and Land Use Entitlements

The term “land use entitlement” refers to the development or use rights appurtenant to any property. Real estate development is subject to many federal, state, and local regulations. At the federal level, laws such as the Clean Water Act and the Endangered Species Act come into play if there are wetlands or if there is a habitat of endangered species on or near the property. The process of obtaining necessary permits to develop property subject to these laws can extend over several years.

The state of California has adopted several laws over the years affecting real estate development, but most of these laws are applied at the local level (the SLA being a notable exception). Many of these laws involve environmental regulations. In addition to the Map Act and the SLA, the CEQA and various state regulations concerning air quality and water quality must be complied with through the development process.

The most direct control of land use and development occurs at the local level because permits for development are issued by the city or county in which the project is located. Typically, conditions or provisions from state and federal laws are incorporated into approval documents by the local agency. Residential land use entitlements include but are not limited to the appropriate general plan designation, specific plan designation (if any), zoning, subdivision map, grading permit, building permit, and occupancy permit.

Land use entitlements are categorized as being either discretionary or ministerial. **Discretionary** entitlements are those that require judgment or deliberation when the local agency decides to approve or disapprove the entitlement. **Ministerial** entitlements are those that are approved by the local agency as a matter of course, so long as they comply with all applicable statutes, ordinances, or regulations by which government approval are given. Land use entitlements that require adoption or amendment of a law, such as a rezone, which is an amendment to the zoning ordinance, must be approved by the legislative body, the city council (city), or board of supervisors (county) of the local agency. Approval of non-legislative entitlements may be delegated to the planning commission or other body of the agency.

Because of governmental involvement in development, the approval process is political and can be controversial. The land use entitlement process requires several opportunities for public comment and public hearings, and decision makers tend to be responsive to public concerns. If a project is approved, it will be approved with “conditions of approval,” which must be met in order for the development to proceed. Thus, from the developer’s perspective, it is not enough for a project to be approved; it must also be approved with conditions acceptable to the developer. If conditions of approval make the project too costly or they cannot be met within the developer’s required timeframe, the project will become infeasible. The timing of approvals varies by jurisdiction and the type, size, and complexity of individual projects. The length of the process may be further extended as a result of interaction between the developer, the local agency, and the community at large, which may lead to changes in the project itself. The application process often involves the local agency requesting additional or clarifying information from the developer, which may add to the overall schedule.

Tentative Map Process. The essential land use entitlement for a residential subdivision is approval of a “tentative map.” A tentative map is a planning document specified by the Map Act, and approval of the tentative map is a discretionary entitlement. The tentative map must be approved as a first step in a two-step subdivision process delineated by the Map Act. The second step is approval of the “final map,” which is a ministerial entitlement, i.e., the final map will be approved by the local agency so long as it conforms to the tentative map, the conditions of approval, and other applicable ordinances and regulations.

The tentative map shows the design of the proposed subdivision including information such as topographic conditions, street alignment and width, proposed grades, alignment and width of easements and rights-of-way for utilities, minimum lot dimensions and area, etc. In addition to the map drawing itself, the application package usually requires other supporting information such as an application form, environmental questionnaire, property photos, title information, application fees, etc.

Once the application package has been submitted to the local agency (typically the planning department), the local agency will review the application package for completeness and distribute it to various agency departments

and other agencies (utility providers, school district, etc.) for review and comment. A request will be made to the applicant for incomplete, missing, or additional information needed to complete the application.

Upon determining the application is complete, the agency conducts the analysis required by CEQA (defined on page 46) and the agency's own policies and procedures. As the application is analyzed, the local agency usually interacts with the applicant to clarify and resolve issues that may arise through the analysis. Upon completion of all analyses, the agency prepares a report recommending approval, conditional approval, or disapproval. The report, including the CEQA analysis, is then scheduled for a public hearing or hearings. Prior to taking action on the application itself, the local agency must formally certify that the CEQA analysis has been done properly. The local jurisdiction will not normally approve a tentative map unless the proposed design and improvements conform to the applicable general and specific plans, including acceptable population density, physical suitability, and health and environmental considerations. After final action is taken by the local agency, both the developer and the public may appeal the action within a specified timeframe. After the expiration of the appeal period, the application is considered approved.

Tentative map approval is a significant milestone in the development process, and is a point at which much uncertainty regarding the project has been removed. However, a tentative map expires unless a final map is approved prior to the expiration date. After the tentative map is approved, the developer will work toward final map approval by fulfilling all of the conditions of approval specified by the local agency. The most significant conditions to be fulfilled usually relate to the public improvements contemplated within the new subdivision. Prior to approval of a final map, the subdivider must design and agree to construct public improvements and dedicate land and easements to be used for public purposes. The developer must secure an agreement to make these improvements with a bond or cash deposit. Once all conditions of an approval have been fulfilled, the local jurisdiction will approve the final map. Once it is approved, it is transmitted to the County Recorder for recordation. Once recorded the legal subdivision of the property is accomplished.

Satisfaction of Conditions of Approval

Once the tentative map has been approved, the developer will proceed to work to satisfy the conditions of project approval. Such conditions will appear in the resolution(s) of the local agency approving the tentative map and other entitlements. The environmental document prepared for the project pursuant to CEQA also will contain "mitigation measures" that must be met by the project.

Typically, conditions of approval are written in such a way that they must be satisfied prior to a successive entitlement being approved. This provides the local agency sufficient power to ensure that the conditions are satisfied while the developer is still involved in the project, i.e., prior to conveying lots or units to homebuyers. Thus, the developer will satisfy conditions according to the sequence of entitlements that follow the tentative map – final map, building permit(s), and certificate(s) of occupancy. In some cases, conditions of approval and/or mitigation measures may address ownership or maintenance beyond the developer's involvement. In such cases the developer may be "forced" to develop the subdivision as a CID if he/she were not inclined to before, whereby the HOA assumes the long-term obligations imposed by the mitigation measures and/or conditions of approval.

Project Design

A project will go through a variety of changes and refinements from the time that the project is conceptualized until the time it is actually constructed. In some cases, the project may be modified after construction has begun or after units have been sold, usually in response to market conditions.

A distinction should be made between the design of the subdivision (lots and site improvements) and the design of buildings to be built on the lots. For a subdivision of single-family detached homes, the subdivision design occurs mostly independent of the home design. When designing site improvements for such subdivisions, the civil engineer will provide for utility connections and grading of home sites sufficient for typical homes to be built in the project. If the subdivision will have public streets and improvements, the standards and specifications of the local agency will dictate the design of site improvements. The design of private streets may be less restricted in many ways but it still must comply with the applicable standards of the local agency. The more dense the project and the more unique the

buildings to be built in the subdivision, the more coordinated the design effort must be between the civil engineer and the building architect. Following a critical path schedule, the developer will typically focus first on the design of site improvements since they must be approved and constructed prior to the approval of building plans and construction.

Design professionals divide the design process into three stages: schematic design, design development, and construction drawings. **Schematic design** is the stage at which conceptual drawings are produced, and represents the project scope, scale, and relationship of design elements to each other and to the site itself. The goal of schematic design is to work out the highest level feasibility issues of the site such as the number of units to be built, the size and massing of buildings, circulation patterns, etc. The **design development** stage is where the project concept is further defined with more precise details of the improvements to be built. The sizes of buildings and site improvements, the preliminary design of systems, compliance with applicable codes, etc. are worked out in this stage. The **construction drawing** stage is where the project concept is incorporated into technical drawings, which demonstrate compliance with all applicable codes as evidenced by the signature of the agencies responsible for administering such codes, and enables the project to be constructed according to the plans.

The tentative map submittal represents the culmination of the preliminary design process and typically would represent the equivalent of the schematic design and a portion the design development stages. Developers are averse to proceeding with design until the tentative map is approved because until that time, there remains the possibility that changes in the project design will be imposed by the local agency.

Approval of Subdivision Improvement Plans. Many of the conditions of approval apply to details of subdivision design and must be satisfied prior to the approval of a final map, which accomplishes the legal subdivision of the property. Satisfaction of these conditions is evidenced by the approval of the subdivision improvement plans, which are the construction drawings for all of the public improvements of the subdivision and/or the improvements that the local agency checks for code compliance. Typical improvement plans will show the grading of the site, the installation of “wet” utilities – storm drain, sanitary sewer, and water – street paving including sidewalks and gutters, and streetlights.

A standard condition of approval is that public improvements be constructed and dedicated to the local agency prior to the approval of the final map. Rarely does this occur in practice. Instead, the Map Act allows the developer to enter into an agreement to construct the improvements after map approval, with the agreement backed by a security instrument such as a payment and performance bond. Doing this allows the developer to proceed with the legal subdivision of the property, an important milestone in the developer’s business plan, while providing the local agency a mechanism to ensure that the public improvements actually get built.

Final Map Approval and Recordation. Once the improvement plans have been approved, subdivision agreement signed, improvement security posted, and other relevant conditions have been satisfied, the local agency will schedule the approval of the final map by the legislative body. Although approval of the final map is ministerial, approval and recordation of the final map is a major milestone in the subdivision development process. Recordation of the final map creates the subdivided interests that the developer can begin marketing, subject to the requirements of the SLA. Recordation “perfects” the subdivision; i.e., the discretionary land use entitlement process has been completed, and much of the risk associated with land use entitlements has been removed from the project. The developer’s construction financing will typically be tied to the recordation of the final map so that the loan will not close or be disbursed until after the final map is recorded.

Financing During the Predevelopment Stage

Predevelopment costs typically are funded from the developer’s equity sources – the developer’s own funds or funds from partner-investors. As the project progresses through the development process, the developer will seek financing for the development and construction stage of the process.

Development/Construction Stage

The development/construction stage is that period when the site improvements and the first homes in the subdivision are constructed and when the builder’s sales program begins. Once the predevelopment stage has been

completed, the development project becomes more akin to a typical manufacturing process and it becomes subject to project management procedures similar to those used in other industries. When construction commences, the developer grades the site, installs utilities, and installs street improvements according to approved improvement plans, all the while complying with relevant conditions of approval and mitigation measures related to construction. On the construction side, the developer is primarily concerned with cost and schedule management. Ultimately, the developer wants to deliver homes just in time for the home to be sold and closed. The developer does not want to have a standing inventory of finished homes due to the carrying costs associated with such inventory. The combination of sales absorption – how fast homes sell – and the prices at which they sell relative to actual development costs, determine if the developer’s primary goal of meeting or exceeding the expectations set by the project pro forma is met.

As site improvements are installed, the developer seeks to begin construction on homes as soon as possible, and locating the model home complex and the first set of production homes are key decisions.

Given the developer’s critical path schedule, the developer will want to start construction on the model homes and the first phase of homes as soon as possible, simultaneous with the construction of site improvements, if possible. Homes are typically built in phases or releases of a small number of homes rather than all of the homes in the subdivision at one time, except in the case of smaller subdivisions. This helps to guard against the risk of poor sales, allows the developer to gauge other aspects of the market such as whether prices are too high or too low, and to refine design elements for future homes to be built in the subdivision. Construction lenders also typically limit the amount of funding provided for a phase of homes, requiring contracts for those homes to be signed before providing funding for additional homes.

In addition to requiring satisfaction of conditions of approval and payment of fees pertaining to building permit issuance, the local agency will typically require adequate water for fire suppression and paved emergency vehicle access to the site before it will issue the first building permit(s). In order to accommodate the developer’s schedule, some local agencies will issue building permits in advance of subdivision improvement completion, particularly for model homes. However, few local agencies will grant occupancy permits, until subdivision improvements have been adequately completed.

The model home complex is an important part of the developer’s marketing program, and the developer seeks to build the model home at a location with good visibility and near the most attractive features of the site. Often a new homebuyer must enter into a purchase contract prior to the home being completed or, in some cases, having been started. In such situations, the model home complex allows the buyer to better visualize and physically experience the living environment of the new home. It is the builder’s best opportunity to market through effective merchandising and the utilization of professional sales people.

To the extent that no sales can occur until the final public report is obtained for the project, obtaining the report is a critical milestone in the builder’s sales program and the overall project schedule. The developer is best served by beginning the application process as early as possible, immediately after filing the final map and completing the other requirements of the “minimum-filing package.” The project CC&Rs should be drafted and an HOA, if any, must be formed at this time and should be formed as early as possible so as to satisfy minimum filing requirements.

In order to maximize the number of presales – the number of sales prior to construction of homes actually being completed – the developer will likely want to apply for a preliminary public report, which will allow the developer to market the subdivision and accept reservations prior to a final public report being issued.

Selling Stage

The selling stage of the development process begins with the issuance of the conditional or final public report by the DRE. The selling stage overlaps with the development/construction stage in that early marketing efforts often coincide with construction activities.

In a sense, the application requirements of the public report are a compendium of the developer’s work on the project. The DRE reviews information related to the physical condition of the property, title condition, conditions

of approval, and matters for disclosure to homebuyers. Such information is readily available to the developer since it was generated through the course of the development of the property. New effort on the behalf of the developer is required to form the HOA, produce the project CC&Rs, produce contract documents, and various arrangements related to common area and the association. The public report application review is discussed in further detail in the section on the SLA on pages 56-68. It is beneficial to the developer's critical path schedule to complete the documents required for the application submittal as soon as possible after land use entitlements have been approved. The developer may wish to apply for a preliminary or conditional report described in the SLA section.

The typical home sale occurs when a homebuyer signs a sales contract. The contract is often signed in advance of the home being completed. Once the home is completed as evidenced by a certificate of occupancy or final inspection by the local agency, the homebuyer has a certain period of time to inspect the house and note any corrections that need to be made. The home sale then closes escrow, at which time title is conveyed to the homebuyer, and the homebuyer becomes a member of the HOA. Interaction between the builder and the homebuyer may continue regarding warranty items – defects in the home to be corrected by the builder – and through the HOA as long as the builder is a member of the association.

LEGISLATION RELATED TO SUBDIVISIONS AND THE SUBDIVIDED LANDS ACT

California statutes are contained within 27 different codes that have been adopted by the state legislature since 1867. The SLA, which is part of the BPC, refers to seven other codes:

- The Health and Safety Code (Section 18214 at 11000)
- The Government Code (Sections 66424 et al., Map Act at 11000 et al.)
- The Corporations Code (Section 25000, at 11000.1; Section 25100 at 11003.2; Sections 7312 and 25113 at 11010.8)
- The Civil Code (Section 783 at 11004.5 et al.; Section 1351, the Davis-Stirling Act, at 11003 et al.; Section 817 at 11003.4; Section 1102.6 at 11010; Section 3482.5 at 11010l; Section 51 at 11010.5)
- The Code of Civil Procedure (Section 1018 at 11007; Sections 415-417 at 11019)
- The Public Resources Code (Section 21000 at 11018.14)
- The Penal Code (Section 1170 at 11020 et al.)

Most of these references are inconsequential to the substance of the SLA, but several of these laws are integral to the operation of the SLA. Several provisions of the California Government Code and the California Civil Code relate to the SLA. In fact, it would be difficult to understand or comply with the SLA without having a general understanding of these related statutes.

The Government Code, of which the Map Act is a part, is the compilation of laws governing how the state and local governments will function. Thus, it would be expected that the scope of the Map Act would be broad, covering basic functions and general operations of various governmental agencies.

The Civil Code, of which the DSA is a part, governs the general obligations and rights of citizens of California. In the case of the DSA, it governs the rights and obligations of members of homeowners associations. The SLA also refers to the Civil Code in defining a Limited Equity Housing Cooperative, which is exempt from the SLA under certain conditions.

The BPC, of which the SLA is a part, governs the interaction between government, businesses, and consumers. It is the BPC that authorizes the office of the Real Estate Commissioner, who is responsible for the enforcement of the SLA and other real estate regulations.

The Corporations Code is referenced in the SLA in the context of determining whether the subdivision or subdivider falls under the securities provisions of the Code. The DSA references the section of the Corporations Code relating to nonprofit corporations.

Regulations of the Real Estate Commissioner – Subdivisions

The Regulations of the Real Estate Commissioner are codified in Chapter 6 (Real Estate Commissioner) of Title 10 (Investment) of the California Code of Regulations. The Commissioner's Regulations consist of 36 Articles. Article 12 addresses subdivisions in Sections 2790-2804. These regulations are the basis on which applications for public reports are reviewed and issued by DRE staff.

California Environmental Quality Act

CEQA, California Public Resources Code Sections 21000-21177, was adopted in 1970. The law requires government agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. Approval or issuance of land use permits or entitlements for private projects is an action that requires analysis under CEQA. Some agency actions are exempt from CEQA either statutorily or categorically. Statutory exemptions are actions approved by the legislature within the law itself such as maintenance activities, emergency projects, and planning and feasibility studies. Categorical exemptions are actions that fall within a class shown to have no significant impacts such as specified activities related to existing facilities, certain replacement or reconstruction projects, and normal operations. Unless a project is exempt from CEQA, the local agency must perform some level of analysis under CEQA resulting in either a "negative declaration" or an "environmental impact report."

A subdivision is considered a project under CEQA; therefore the analysis required by CEQA must be performed prior to approval of the project. CEQA uses the term "lead agency" to define the agency that has the principal responsibility for carrying out or approving a project. In general, the local government agency approving the subdivision is the lead agency, and thus, it is incumbent upon the local agency to satisfy the requirements of CEQA when approving a subdivision.

When the DRE issues a public report, it is in a sense issuing a permit for the developer to sell interests in the subdivision. It is therefore important to consider how CEQA applies to public reports. CEQA uses the term "responsible agency" to define a public agency with discretionary approval authority over a portion of a CEQA project, which would seem to apply to the DRE's role in the subdivision process. However, BPC Section 11018.14 of the SLA explicitly states the Commissioner (DRE) is not a responsible agency, and that receipt by the Commissioner of a copy of an environmental impact report or negative declaration shall be conclusive evidence of compliance with that act for purposes of issuing a subdivision public report. Thus, the local agency's CEQA compliance satisfies the DRE's obligations under CEQA, and documentation of such compliance would be submitted to the DRE as part of the public report application package.

Davis-Stirling Act

The DSA was adopted as California Civil Code Sections 1350-1378 in 1985. On August 17, 2012, Assembly Bills 805 and 806 were signed into law. AB 805 relocated the DSA to Civil Code 4000-6150, and AB 806 updated references within other statutes to the new Civil Code Sections. These laws became effective January 1, 2014.

The DSA defines common interest subdivision types – condominiums, planned developments, community apartments, and stock cooperatives. Various laws, including the SLA and the Map Act, refer to the DSA for such definitions. The DSA also contains definitions for various terms used in subdivision development and HOA governance. These definitions are noted in other sections of this study.

The DSA specifies governance requirements for CIDs – condominiums, cooperatives, and planned developments. Under the DSA, a CID must be managed by an HOA, which may be either incorporated or unincorporated. Incorporated associations are affected by the Nonprofit Corporation Law. Most HOAs are incorporated as nonprofit mutual benefit corporations.

Most of the DSA concerns the ongoing operation of HOAs while the SLA and the DRE's activities under the SLA are concerned with the *formation* of HOAs and the operation of the HOA during the period of developer involvement. As noted above, it is common for homeowners in CIDs to contact the DRE with regard to issues that arise after the developer is no longer involved, but this is beyond the authority of the DRE. The DRE reviews the legal framework of all new CIDs to ensure compliance with the SLA as part of the public report application process, before homes are offered for sale to the public. Once sales have commenced, the DRE's jurisdiction is limited to the subdivider's obligations under the public report, which does not include intervention in association disputes.

The DSA is discussed throughout this study as it pertains to the subdivision and public report processes.

Subdivision Map Act

Generally speaking, compliance with the Map Act is the starting point of compliance with the SLA. That is, a property must be legally subdivided before it can be marketed to the public, and marketing subdivisions to the public is the subject of the SLA. Much of the information submitted to the DRE as part of a public report application is dependent on completion of the Map Act process such as the subdivision map, title information, legal descriptions, conditions of approval, etc. Therefore, the Map Act is covered in some detail in this section.

The Map Act is codified in Division 2 (Subdivisions) of Title 7 (Planning and Land Use) of the California Government Code, Sections 66410-66499.58. The Map Act consists of eight chapters: Chapter 1: General Provisions and Definitions; Chapter 2: Maps; Chapter 3: Procedure; Chapter 4: Requirements; Chapter 4.5: Development Rights; Chapter 5: Improvement Security; Chapter 6: Reversions and Exclusions; and Chapter 7: Judicial Review.

The Map Act is the law that governs the legal process of subdividing real property in California. California's first subdivision law was adopted in 1893. The Map Act was originally adopted in 1907. The modern form of the law generally resulted from amendments adopted in 1929 and 1937. The chronology of the Map Act precedes the SLA by just a few years. The SLA was initially adopted in 1921 with many of its subdivision controls adopted by amendment in 1933.

The Map Act is a logical extension of the recording system. The subdivision process is the mechanism by which new interests in real property are created. The law establishes the procedures by which marketable title can be created. Before real property can be transferred between private parties such as between a developer and a homebuyer, the property must be legally subdivided. Government Code Section 66499.30, subdivisions (a), (b), and (c) enforces the requirement of map approval by prohibiting the sale, lease, or financing of property until compliance with the Map Act has been obtained, typically by the recordation of an official map for the subject property with the County Recorder.

Students of real estate learn that before real property is transferred, it must also be properly identified. This identification is accomplished by referring to a valid legal description of the property. The three main types of legal descriptions are "metes and bounds," "township and section," and "recorded map" (sometimes referred to as lot, block, and tract). A recorded map legal description is the end result of compliance with the Map Act.

Although the Map Act is a state law, it vests regulatory and legislative authority with the local agency (the city or county, if the project is in an unincorporated area) within which the project is located. The Map Act specifies the requirements that must be met for the local agency to approve a subdivision, but the law also empowers the local agency to impose requirements of its own. Major objectives of the Map Act are to coordinate a subdivision's design with the community's development plans and to insure that the subdivider will properly complete the areas dedicated for public purposes so they will not become an undue burden upon the taxpayers of the community.

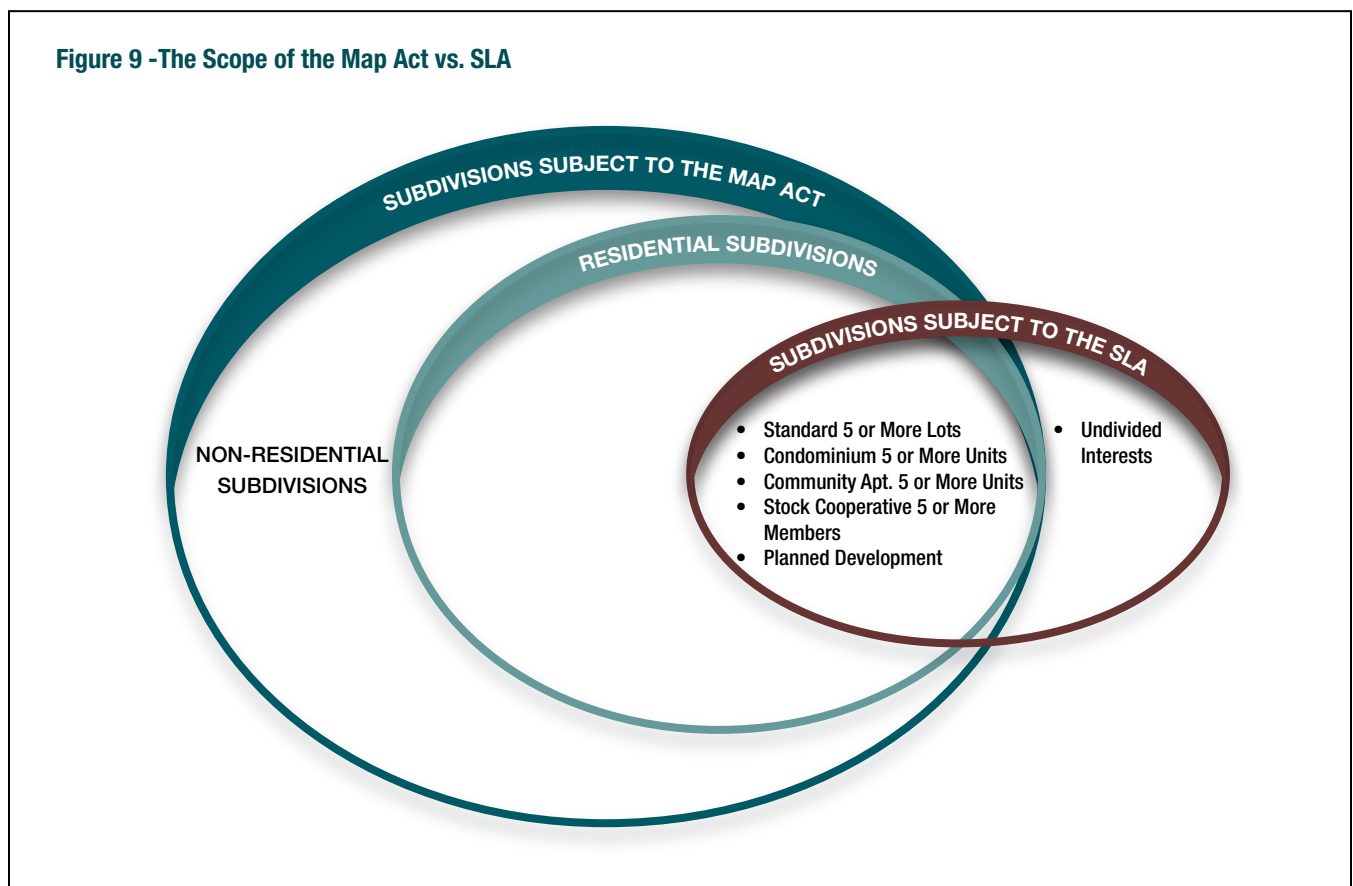
In approving subdivisions, the local agency must find that the proposed division of land complies with the requirements of the Map Act and local ordinances. Such requirements address land area, improvement design, floodwater drainage control, improved roads, sanitary disposal facilities, water supply availability, environmental protection, and other conditions.

Subdivisions Subject to the Map Act vs. the SLA

Government Code Section 66424 of the Map Act defines a subdivision as “the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, or financing, whether immediate or future.” This includes condominium projects, community apartment projects, and stock cooperative conversions as these types of projects are defined in the DSA.

In defining “subdivision” in BPC Section 11000, the SLA explicitly states that the definitions in the SLA shall in no way modify or affect the definitions of projects that are subject to the Map Act (Government Code Section 66424), and thus, there are no conflicts between the definitions contained within each law. However, there are differences in the applicability of the laws to certain types of subdivisions.

Not all subdivisions subject to the Map Act are subject to the SLA, and not all subdivisions subject to the SLA are subject to the Map Act (see Figure 9). The applicability of the Map Act to various types of subdivisions that are subject to the SLA is further described below. One type of subdivision regulated by the SLA that is not subject to the Map Act is an “undivided interest” subdivision as defined in BPC Section 11001.1 of the SLA. Avoidance of the Map Act requirements and process is an advantage to developers of these types of projects. DRE review of such subdivisions would be expected to be more thorough since the DRE would not have the benefit of local agency review and approval of the project.



The SLA distinguishes between subdivisions of four or fewer interests and of five or more interests. Subdivisions of four or fewer interests are exempt from the SLA. The Map Act similarly distinguishes between subdivisions of fewer than five lots or parcels and subdivisions of five or more parcels. Subdivisions of four or fewer interests are not exempt from the Map Act; however, the Map Act establishes different procedures for such subdivisions as described further below.

The scope of the Map Act is broader than the SLA in that it is concerned with all types of subdivisions, not just residential. The mapping approval process is also more time consuming and complicated than the SLA's public report process. The mapping process always precedes the public report process since a subdivision must have been in compliance with the Map Act before interests can be legally sold.

Types of Maps – Tentative Map, Final Map, Parcel Map

The Map Act requires that every landowner proposing to subdivide property obtain approval of a subdivision map, which itself must comply with other local ordinances and regulations such as the local general plan and zoning code. Most local agencies have a local ordinance that implements and supplements the Map Act. Local regulations typically have minimum design standards relating to lot sizes, street widths, improvements that must be installed, etc.

There are two types of subdivision maps: a **parcel map**, which is limited to a division resulting in fewer than five lots (with certain exceptions), and a **final map** (also called a tract map), which applies to a division resulting in five or more lots. A third map called a **tentative map** is the predecessor of a final map. A parcel map and applicable procedures are generally considered “minor” subdivisions compared to tentative and final maps.

Government Code Sections 66426 and 66428 of the Map Act specify whether a tentative and final map or a parcel map is required. Government Code Section 66426 requires a tentative map and final map:

A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in Section 783 of the Civil Code, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where any one of the following occurs:

(a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the legislative body.

(b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.

(c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the governing body as to street alignments and widths.

(d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.

(e) The land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2.

(f) A parcel map shall be required for those subdivisions described in subdivisions (a), (b), (c), (d), and (e).

A parcel map is required for those subdivisions described above. Government Code Section 66428 of the Map Act specifies that a parcel map is required for subdivisions when a final or parcel map is not otherwise required, unless the preparation of the parcel map is waived by the local ordinance pursuant to other sections of the Map Act. Simply put, a parcel map is required whenever a tentative map and final map are not required pursuant to the Map Act or local ordinance.

The Mapping Process

A developer proposing a subdivision that creates five or more lots or parcels must submit an application to the local agency for approval of a tentative map. The tentative map is a schematic drawing that shows the layout of the proposed subdivision along with all other information the local agency deems necessary such as ownership information, lot dimensions, street widths, topographical information, drainage, and utility layout, etc. The application will consist of the map itself and other supporting documentation specified by the local agency.

Upon receiving an application for a tentative map, the city or county staff will examine the design of the subdivision to ensure that it meets the requirements of the general plan, the zoning ordinance, and the subdivision ordinance. An environmental impact analysis must be prepared as required by CEQA and a public hearing must be held prior to approval of the tentative map by the local agency.

If the local agency approves the map, it will approve the map with various conditions such as requirements to dedicate land and/or easements to the local agency for public purposes such as for streets, utilities, and parks; construct public improvements necessary for the subdivision and dedicate them to the local agency; pay impact fees; etc.

Approval of the tentative map and related land use entitlements is a significant milestone in the subdivision development process. It represents the culmination of a costly and time consuming process, and provides certainty to the developer as to what conditions will need to be satisfied in order to complete the subdivision and to sell homes within the subdivision.

However, a tentative map is not recordable and it has no permanent legal effect unless it is followed by the approval of a final map by the local agency. The approved tentative map will expire unless the final map is recorded, or is extended by the agency or by state law. Prior to expiration of the tentative map approval, the developer must fulfill all of the conditions of approval. Once the conditions have been fulfilled, the developer will apply for approval of a final map by the local agency. Once approved, the final map is filed with the County Recorder, and once recorded, the legal subdivision has been accomplished.

Conditions of tentative map approval typically require public improvements to be constructed; however, the Map Act enables the local agency to accept security such as payment and performance bonds from the developer, which allows the map to be recorded prior to construction of improvements. This is an important provision for the developer in that it allows the map to be recorded much sooner and prior to incurring greater costs. DRE review of the security provided to the local agency for completion of the public improvements is part of the public report application process.

The Map Act is less prescriptive regarding the processing of parcel maps than of final maps. Government Code Section 66463 specifies that the procedure for processing, approval, conditional approval, or disapproval and filing of parcel maps and modifications thereof shall be as provided by local ordinance. Thus, parcel maps may be subject to a similar approval process as a tentative map including a public hearing, depending upon the requirements of the local subdivision ordinance. Depending on the complexity of the parcel map or related issues, the local agency is likely to impose a less intensive review process for parcel maps, consistent with the presumed intent of the law regarding minor subdivisions. The CEQA process may also be less intensive. CEQA provides a categorical exemption for “minor land divisions.”

Common Interest Developments Under the Map Act

The Map Act applies to the same types of residential subdivisions as defined in the SLA – standard subdivisions, condominiums, community apartments, and stock cooperatives (including the conversion of residential property to condominiums, community apartments, and stock cooperatives). While the Map Act is silent about planned developments as defined in the SLA, these subdivisions must comply with the Map Act. BPC Section 11003 of the SLA defines planned development by reference to Section 1351(k) of the DSA (Civil Code Section 4175), which says:

“Planned development” means a real property development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

- a) Common area that is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.*
- b) Common area and an association that maintains the common area with the power to levy assessments that may become a lien upon the separate interests in accordance with Article 2 (commencing with Section 5650) of Chapter 8.*

Thus, the defining feature of a planned development is that there is an HOA that owns or maintains property. The existence of an HOA is not relevant to the Map Act. What is considered is the type and number of interests being

created. By the definition above, a theoretical minimum of three interests would be created – two separate interests and one common interest to be owned by the association. Therefore planned developments fall under the Map Act’s definition of a subdivision in Government Code Section 66424 and, at a minimum, a parcel map would be required to create the interests of the planned development.

As a practical matter, the typical planned development is a subdivision of more than four separate lots where some common facility such as a private street, utility, or recreation facility is owned by an association. Such subdivisions would be accomplished with the processing of a tentative and final map.

Civil Code Section 4095 of the DSA contains an important provision that directly impacts the SLA’s application to a subdivision. Under Civil Code Section 4175, a subdivision is a planned development if there is a common parcel owned by the HOA, or in common by the owners of the lots within the subdivision. If the common area is not a separate parcel, but consists only of mutual or reciprocal easements (typically, shared private driveways or private roadway easements over abutting parcels), then the subdivision is only a planned development if the HOA has the power to lien and non-judicially foreclose its lien pursuant to Civil Code Section 5650. Thus, a subdivision that includes no separate common area parcels and consists of lots served by private roadway easements would not be a planned development if the CC&Rs for the subdivision do not permit the HOA to lien and non-judicially foreclose its assessment lien. Consequently, if a subdivider created such a subdivision within a city, and provided the subdivider sold all lots with completed residences, the subdivision would be exempt from the final subdivision public report requirements of the SLA pursuant to BPC Section 11010.4.

Maps for Common Interest Developments – “Vertical” vs. “Horizontal” Subdivisions

Typical subdivision maps – standard subdivisions or planned developments – depict the lots or parcels in two dimensions, creating a **horizontal** subdivision (see Illustration 10). Condominium, community apartment, and stock cooperative projects are unique in that the subdivided interests to be conveyed most often involve a subdivision of space above the land, creating a **vertical** subdivision (see Illustration 11). Meanwhile, there may be no physical difference between these types of projects and other projects that are not subject to the Map Act or the SLA.

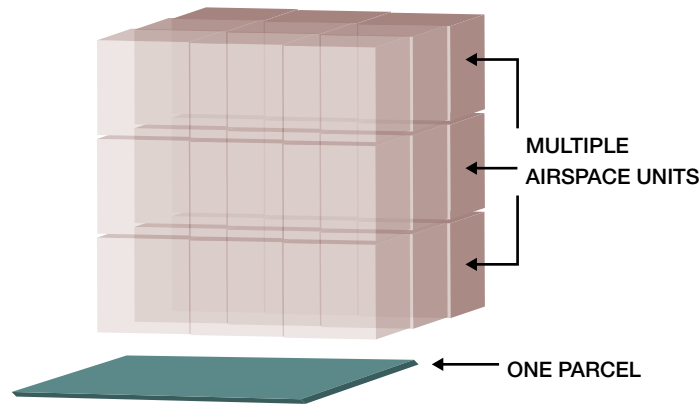
Illustration 10 - Horizontal Subdivision



To illustrate this, compare three hypothetical projects:

- Project A is a 100-unit apartment project to be built on a 5-acre parcel. The construction of a rental apartment project is not a subdivision under the Map Act or the SLA.
- Project B is identical to Project A, except it is proposed as a condominium project where an HOA will own the land and building structures and the airspace within each unit will be owned by individual condominium owners. Project B is a subdivision under the Map Act and the SLA.
- Project C is a conversion of Project A to a stock cooperative after it has been built. Project C is a subdivision under the Map Act and the SLA.

Illustration 11 - Vertical Subdivision

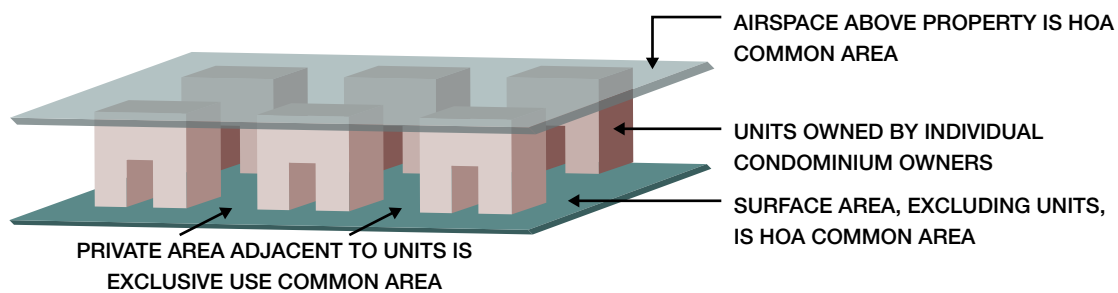


Although Project B will likely need to comply with different building code requirements, e.g., thicker common wall construction, etc., the physical improvements of all three projects will appear identical. The environmental impact on the local community whether the project is an apartment, condominium, or stock cooperative, would be expected to be the same. The difference between these projects is primarily legal.

The recognition that a vertical subdivision is a legal distinction rather than a physical one is contained in Government Code Section 66427 of the Map Act, which differentiates the local agency's authority to approve a two-dimensional map from a three-dimensional subdivision plan. The fact that a project is a condominium, community apartment project, or a stock cooperative should not be the basis for denying the project. The local agency is to consider the approval or denial of the project based on the parcels on the surface of the land; the agency may not deny a project based on the design or the location of buildings on the property so long as the design and building locations do not violate other local ordinances. Local agencies may consider building design and location in reviewing the project, but the basis of the review must be contained in the agency's other ordinances. The Map Act also does not preclude the local agency from adopting ordinances containing standards for vertical subdivisions. Some local agencies also recognize this by establishing a special application process for condominium projects that consists of a "tentative map for condominium purposes" or similarly titled permit. Nevertheless, Government Code Section 66427 allows the local agency to approve a condominium project's parcel map or final map without having to review the project's condominium plan and is often relied upon by condominium developers to streamline compliance with the Map Act. If the local agency has previously approved a parcel map or final map for the establishment of condominiums, then the subsequent recordation of a condominium plan is not considered a further subdivision so long as an HOA holds common property and the number of units does not exceed the number previously approved. This section is the basis for the development of "site condominium" or "detached condominium" projects, which replicate single-family detached subdivisions but have a "vertical" condominium ownership structure as illustrated in the diagram below (Illustration 12). These types of projects are not explicitly defined by the SLA, but would be considered condominiums under the SLA.

To the extent that interests in these vertical subdivisions are to be conveyed from one party to another, they need to be adequately described, just as lots in standard subdivisions do. Note that of these types of projects, only condominium projects have separately owned units. Other vertical projects give individual owners the exclusive right to use a unit or portion of the property. Condominium units are separately owned in fee and transferred by deed. Therefore, each unit must have an adequate legal description. The adequate legal description is accomplished by reference to a three dimensional map called a *condominium plan*. The definition of a condominium plan is found in

Illustration 12 - Detached Condominium



the DSA, which defines it as a description or survey map of a condominium project, which refers to monumentation on the ground, and containing a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest. Similar to a subdivision map, the condominium plan is a recorded document.

Units in community apartment and stock cooperative projects are not separately owned and are not transferred by deed. In community apartment projects, the entire apartment project is owned by one entity; individual “tenants” own the right to exclusive occupancy of a unit within the project but they do not own the unit itself. Similarly, in stock cooperative projects, a corporation owns the entire project, and individual “shareholders” own the right to exclusive occupancy in a portion of the project. In neither case is evidence of ownership a recorded deed in the names of the individual owners. Evidence of ownership rights would be found in the ownership entity’s management documents, which are not recorded. Note that undivided interest subdivisions are similar to the vertical subdivisions as described here, but they are not considered subdivisions under the Map Act. The evidence of ownership under an undivided interest subdivision will appear in the deed, which typically indicates the percentage ownership of each of the owners.

Phasing

The Map Act provides for project phasing in that it allows multiple final maps to be approved and recorded based on one approved tentative map. Thus, a developer may seek approval of a final map for only the number of units desired per phase, provided that the local agency’s conditions of approval are met as applicable to that phase. When a phased final map is recorded, the balance of the property yet to be mapped is shown as *remainder*. Subsequent maps will be a subdivision of the remainder parcel(s).

The Map Act also allows for the phasing of condominium projects pursuant to Government Code Section 66427(b). Section 66427(e) also permits the condominium plan to further subdivide the property subject to the plan into multiple legally separate divisions of real property, without needing any additional local agency approvals, provided the total number of condominium units established is not increased above the number authorized by the local agency when the parcel map or final map was approved. This subsection serves as the legal basis for the creation of a multi-phase condominium development within a single lot or parcel.

Conversions to Common Interest Developments Under the Map Act

The regulatory process for the conversion of an existing residential property such as an apartment building into a condominium, community apartment, or stock cooperative is similar to the process for a new construction project.

However, conversions are subject to additional provisions of the Map Act designed to provide some protection to residents of the project prior to conversion. These additional provisions require the developer to provide certain notices to residents regarding the developer's intent and the public hearing process, and to give residents certain purchase rights after conversion. The conversion of a community apartment or stock cooperative to a condominium may be exempt from the Map Act pursuant to Section 66412 of the Government Code.

Conversions are subject to the same public report requirement of the SLA that new construction projects are subject to. The developer will need to provide supplemental information as to the condition of the property. Additional disclosures will also be required as to the condition and defects of improvements.

Comparison of the Subdivided Lands Act and the Subdivision Map Act

Due to the similarity of their titles, confusion often arises between the SLA and the Map Act. The Map Act is much broader and more extensive in scope and regulatory authority than the SLA. The following summary is a comparison of the two laws across various factors:

- The SLA is part of the California BPC, which is primarily concerned with the conduct of businesses and individuals within the state. The Map Act is part of the California Government Code and contains the general laws of the state.
- The primary purpose of the SLA is consumer protection. The primary purpose of the Map Act is to establish the legal means by which property may be divided while preserving the integrity of property titles.
- The SLA vests regulatory authority with the Real Estate Commissioner and the Department of Real Estate, a state agency. The Map Act vests authority to approve the subdivision of real property with local agencies.
- The Map Act applies to all subdivisions of real property. Every project that is considered a subdivision under the SLA is considered a subdivision under the Map Act, except for undivided interests. The SLA primarily deals with subdivisions of five or more lots or separate interests.
- Compliance with the Map Act always precedes compliance with the SLA. To the extent the SLA applies, the subdivision must be created (recorded) before a final public report can be issued and binding purchase and sale agreements executed.
- Unless exempted, local agency approval of a subdivision is a project under CEQA, and the local agency is the lead agency. Issuance of a public report by the DRE is not a project under CEQA and the DRE is not a responsible agency under CEQA.
- The application and approval process under the Map Act may be uncertain, lengthy, and extensive. This is due to the quantity and quality of documentation that must be produced and mandatory review timeframes such as contained in CEQA. The application for a public report under the SLA can be accomplished in a relatively predictable, less discretionary period of time.

THE SUBDIVIDED LANDS ACT

The Subdivided Lands Act is codified in Chapter 1 (Subdivided Lands) of Part 2 (Regulation of Transactions) of Division 4 (Real Estate) of the California BPC, Sections 11000-11200.

California first enacted legislation regulating the sale and leasing of subdivided land in 1921. This legislation gave the Real Estate Commissioner authority to investigate and to issue public reports on the subdivision and sale of agricultural land for residential purposes. The Commissioner's authority was expanded to include regulation of business and residential subdivisions in 1933. The current structure of the SLA was adopted in 1943 when Division 4, Part 2, Chapter 1 (Subdivided Lands) was added to the BPC.

The focus of the regulation of subdivisions historically was to protect the public from fraud by requiring full disclosure by the developer to the Department of Real Estate (DRE) (changed to the Department of Real Estate (DRE) in 2013). The information gathered when the DRE processed subdivision applications was communicated

to prospective buyers or lessees through the publication and circulation of the public report. This approach was satisfactory as long as the subdivider did not promise to make substantial improvements to the property in the offering. However, by the early 1960s subdivisions were taking on aspects of self-governing housing communities; therefore, efficient organization and operation of the HOA to manage and maintain commonly owned or controlled property became an important factor that had to be addressed by the DRE when reviewing subdivisions applications. Thus, over the years, as shown in Appendix B, numerous additions, amendments, and deletions have been made to Chapter 1, also known as the Subdivided Lands Act (SLA). A detailed legislative history of the sections present in the SLA today is found in Appendix A.

The basic requirement of the SLA is the provision of a disclosure document called a **public report**. Any developer, defined as a subdivider by the SLA, offering to sell, finance, or lease an interest in real property within the jurisdiction of the DRE as prescribed by the SLA, must first obtain a public report from the DRE.

The SLA consists of three articles: Article 1: General Provisions (11000-11008); Article 2: Investigation, Regulation, and Report (11010-11023); and Article 3: Sales Contracts (11200):

- Article 1 contains the definitions of the types of projects that are subject to the SLA as well as exemptions from the SLA.
- Article 2 contains the application requirements and procedures for obtaining a public report. This section also lists exemptions and exceptions to the public report requirement.
- Article 3 consists of one sentence requiring every sales contract relating to the purchase of real property in a subdivision to set forth the legal description of the property, the encumbrances outstanding at the date of the sales contract, and the terms of the contract.

The primary purpose of the SLA is consumer protection – to protect homebuyers from misrepresentation, deceit, and fraud in the sale or lease of “subdivisions” to the public. The SLA contains the mechanism by which prospective homebuyers are provided sufficient information on material aspects of the subdivision interest. The SLA is concerned with the creation and marketing of *new* residential subdivisions. The SLA presumes that subdivision interests are being marketed to consumers whose intent is to use the property as a residence. The law contains certain exemptions for projects where this is explicitly not the case (listed below).

The DRE will not issue a public report unless the SLA’s standards as to fair dealing and suitability for intended use, referred to as “affirmative standards,” are met. These standards are further defined by the Regulations of the Real Estate Commissioner, the Map Act, and the BPC. Fair dealing refers to the consumer getting what is bargained for. That is, deposit money will be secure, off-site improvements described by the subdivider (roads, sewers, etc.) will be completed, and clear title will be conveyed. Suitability for residential use means that residents of the subdivision will be provided with essential services such as water for domestic use, adequate sewage disposal, and vehicular access.

The public report serves as a disclosure document providing significant consumer information about the project for which it is issued. Each prospective purchaser must be given a copy of the public report and must be given a chance to read it before a binding contract is signed. Thus, the public report can alert the consumer to any material or negative aspects of the offering. Although the DRE has some flexibility as to what information may be disclosed in a public report, the DRE has no flexibility in meeting affirmative standards because they are specified by statute. Obtaining a public report involves an application process with the DRE whereby the DRE is reasonably assured that the proposed project meets the requirements of the SLA. The application process is described in further detail on page 58.

Subdivision Definition and Applicability of SLA

The Map Act defines a subdivision as the division of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units.” Thus, a subdivision is simply the activity of creating new ownership interests in real estate where only one interest or fewer interests existed before. The SLA’s definition is similar to, but narrower than, that of the Map Act. BPC Section 11000

gives the general definition of a subdivision as “the improved or unimproved land or lands, wherever situated within California, divided or proposed to be divided for the purpose of sale or lease or financing, whether immediate or future, into five or more lots or parcels.” BPC Sections 11000.1 and 11004.5 add *undivided interest*, *planned development*, *stock cooperative*, and *community apartment projects* of five or more lots, units, or interests to the definition.

Note that all of the projects that are considered subdivisions under the SLA are subject to the Map Act except for undivided interest subdivisions. Therefore, developers of these types of projects must obtain approval from the local agency according to the procedures established by the Map Act and local subdivision ordinances and regulations. Undivided interest subdivisions are not subject to the Map Act and are subject only to the review process specified by the SLA.

Exemptions

The following is a summary of projects that are exempt from the SLA:

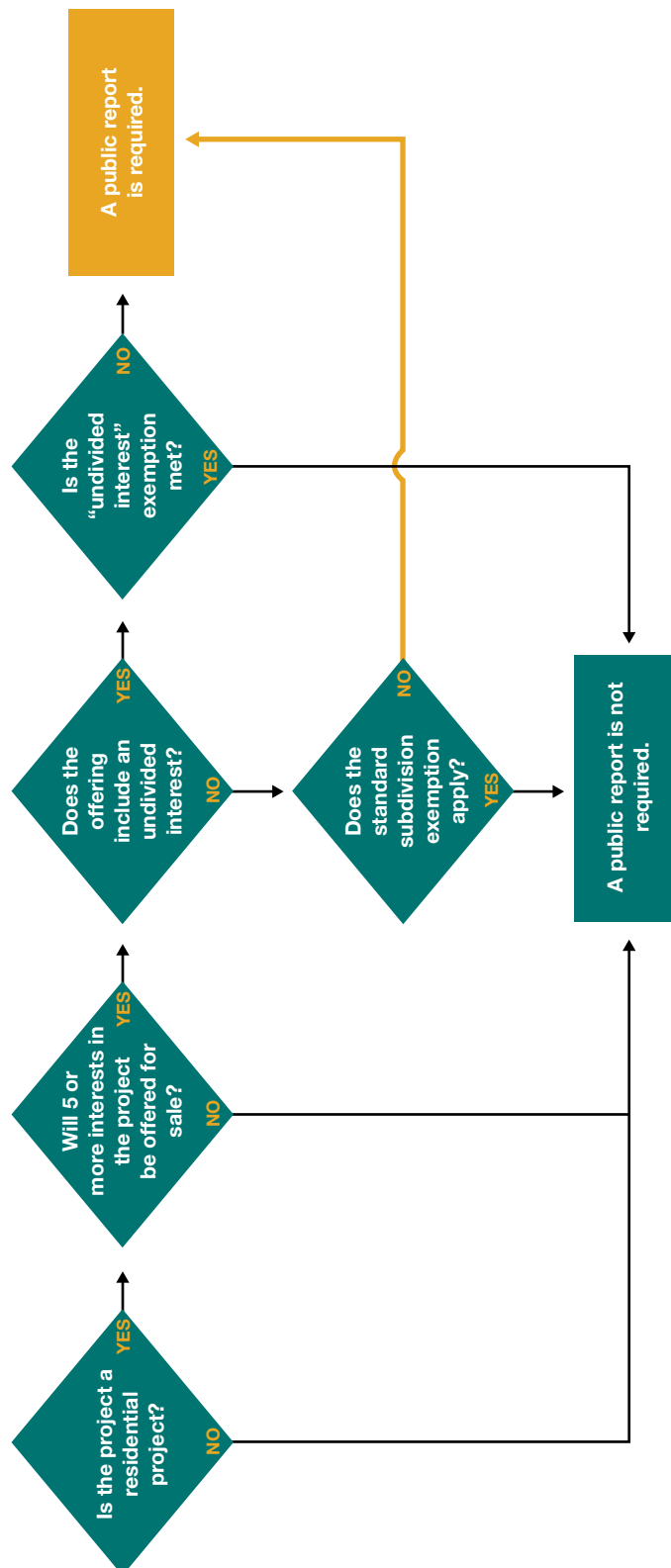
- Minor subdivisions: Subdivision, undivided interest, planned development, stock cooperative, and community apartment projects of fewer than five lots, units, or interests.
- Large parcel subdivisions: Projects containing parcels of no less than 160 acres described by government survey, unless the project is for the purpose of sale for oil and gas purposes.
- Commercial subdivisions: Projects limited to industrial or commercial use (by zoning or deed restriction).
- Standard subdivisions in cities: Non-common interest development projects located within a city, where all lots are completed with homes, where adequate security has been provided to the city to assure completion of the public improvements, and where certain purchase money handling procedures are followed, are exempt from the public report requirements of the SLA.
- Public agency projects: Subdivided land offered or proposed for sale, lease, or financing by a public agency.
- Nonbinding intents for conversions: Nonbinding expressions of intent as required by the Map Act for conversions to condominium, community apartment, or stock cooperative projects.
- Bulk transactions: Sale of lots parcels, or interests where they are intended to be further subdivided into five or more lots, parcels, or interests and the acquirer’s purpose is to engage in the business of constructing residential, commercial, or industrial buildings, or for the purpose of resale or lease of the lots, parcels, or other subdivision interests to persons engaged in this business and the requirements of BPC Section 11010.35 are met.
- Undivided interests: Created to be held by persons related by blood or marriage; to be purchased and owned solely by “sophisticated investors;” created as the result of a foreclosure sale; created by a valid order or decree of a court; or qualified pursuant by the issuance of a permit from the Commissioner of Corporations.
- Limited equity cooperatives: Limited equity housing cooperative or workforce housing cooperatives meeting all of the various conditions contained in BPC Section 11003.4.
- Fractionals: Time-share plans, exchange programs, incidental benefits, and short-term products. Such projects are subject to other regulations.

The Public Report

If a project is considered a subdivision for purposes of the SLA, any subdivider offering to sell or lease an interest in real property within the jurisdiction of the DRE as prescribed by the SLA, must first obtain a “public report” from the DRE, unless exempted from the public report requirement as stated above. A *public report* is a report issued by the DRE evidencing compliance with the SLA. The final public report is a form containing all of the disclosures the DRE deems necessary regarding the subdivision offering and directing attention to significant aspects of the offering. The information contained in the report is primarily information submitted to the DRE as part of an application (the “notice of intention”) by the subdivider and reviewed by DRE staff. The subdivider must print the final subdivision public report on the subdivision public report on white paper; hence, the report is commonly referred to as “white paper” or the “white report.”

Figure 10 illustrates the process for determining whether a public report is required for most subdivisions.

Figure 10 - Flowchart: Is a public report required?



In order to assist subdividers with preliminary marketing efforts, the DRE may issue a ***preliminary public report*** at the request of the developer, provided that the DRE believes it is reasonable to expect that the requirements of the final report will be met in due course. A preliminary report may be issued without all of the requirements of the final report being met, e.g., the tentative map has been approved, but the final map has not been recorded, unless the prospective purchaser would have an incomplete picture of the subdivision without such information. The subdivider must print the preliminary public report on pink paper; hence, the report is commonly referred to as a “pink paper” or the “pink report.”

With a preliminary report, the developer may accept nonbinding reservations, subject to the DRE's stipulations with regard to handling purchase money deposits, cancellation rights, etc.

Larger subdivisions are often developed and sold in phases over many months, years, or over an indefinite period of time, yet a final report must be obtained for the sale of every home in every phase. In such cases, a preliminary public report can be issued for the entire project with final reports being issued for each phase as they are developed. Once the final report is issued, the developer may convert the reservation to a binding purchase and sale agreement subject to the provisions of the final report. The preliminary report is valid for one year, but expires sooner if the final report is issued before that time, except if the report is an overall preliminary report and a final report is issued on a phase covered by the overall preliminary report.

At the request of the developer, the DRE also may issue a ***conditional public report***, which permits the subdivider to enter into binding contracts subject to satisfying certain specified conditions. The final report must be issued and delivered to buyers before closing can occur. The term of a conditional public report must not exceed six months, but the 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. The term may be longer for certain condominium projects. The subdivider must print the conditional public report on yellow paper; hence, the report is commonly referred to as a “yellow paper” or the “yellow report.”

Circumstances may arise that modify the above reports. California Code of Regulations 2800 provides a partial list of “material change” circumstances, which require the subdivider to notify the DRE and potentially amend the above reports. If, during the term of a final report, there are substantial changes in the subdivision offering resulting in the public report being outdated, an amended public report must be obtained. If a public report expires – a public report is valid for five years – it must be renewed prior to proceeding with subdivision sales. In either of the above situations, an interim public report may be issued, which would allow the developer to take non-binding reservations until an amended or renewed final report is issued.

Issuance of Public Reports – Historical Data

Not surprisingly, the issuance of all types of public report follows the general housing market. Figure 11 shows the number of reports of various types issued from 1993 to 2012, with a dramatic reduction in reports following the peak of the housing market in 2005.

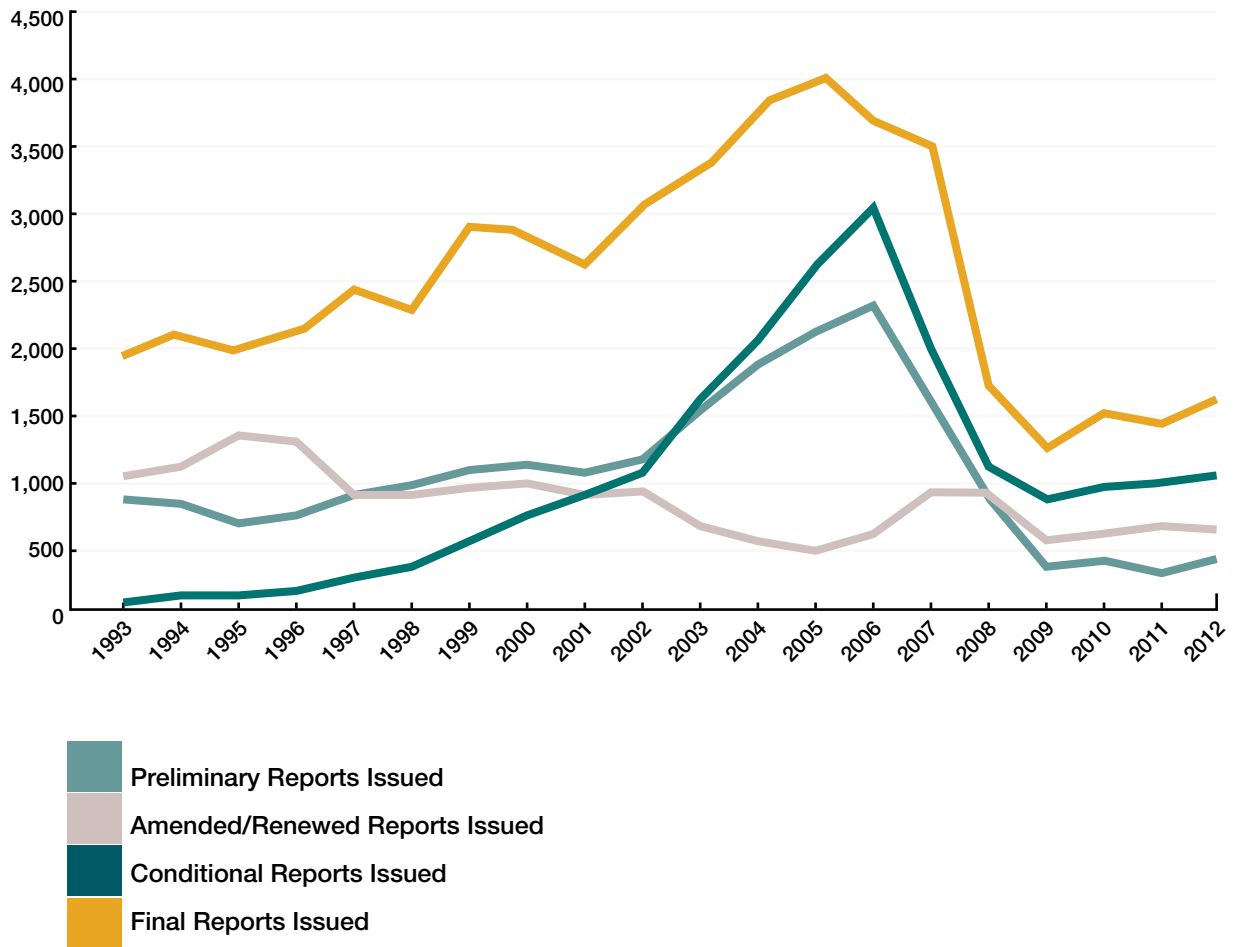
Figure 12 shows the percentages of reports issued compared to the number of final reports issued. The data indicate that developers came to rely on conditional reports more than preliminary reports over the past 20 years. This may be due to the fact that with a conditional report, the developer may enter into binding contracts prior to the final report being issued.

The Public Report Application Process

Public report application requirements are spelled out in BPC Section 11010 of the SLA, referring to a notice of intention and its contents. The notice of intention, the application forms, and the supporting documentation represent the application package submitted to the DRE.

Most developers assemble a team of professionals to prepare and manage the application process. The developer provides the project information such as ownership information and land use entitlement documentation. An attorney is typically required to produce and file legal documents such as the HOA formation and management

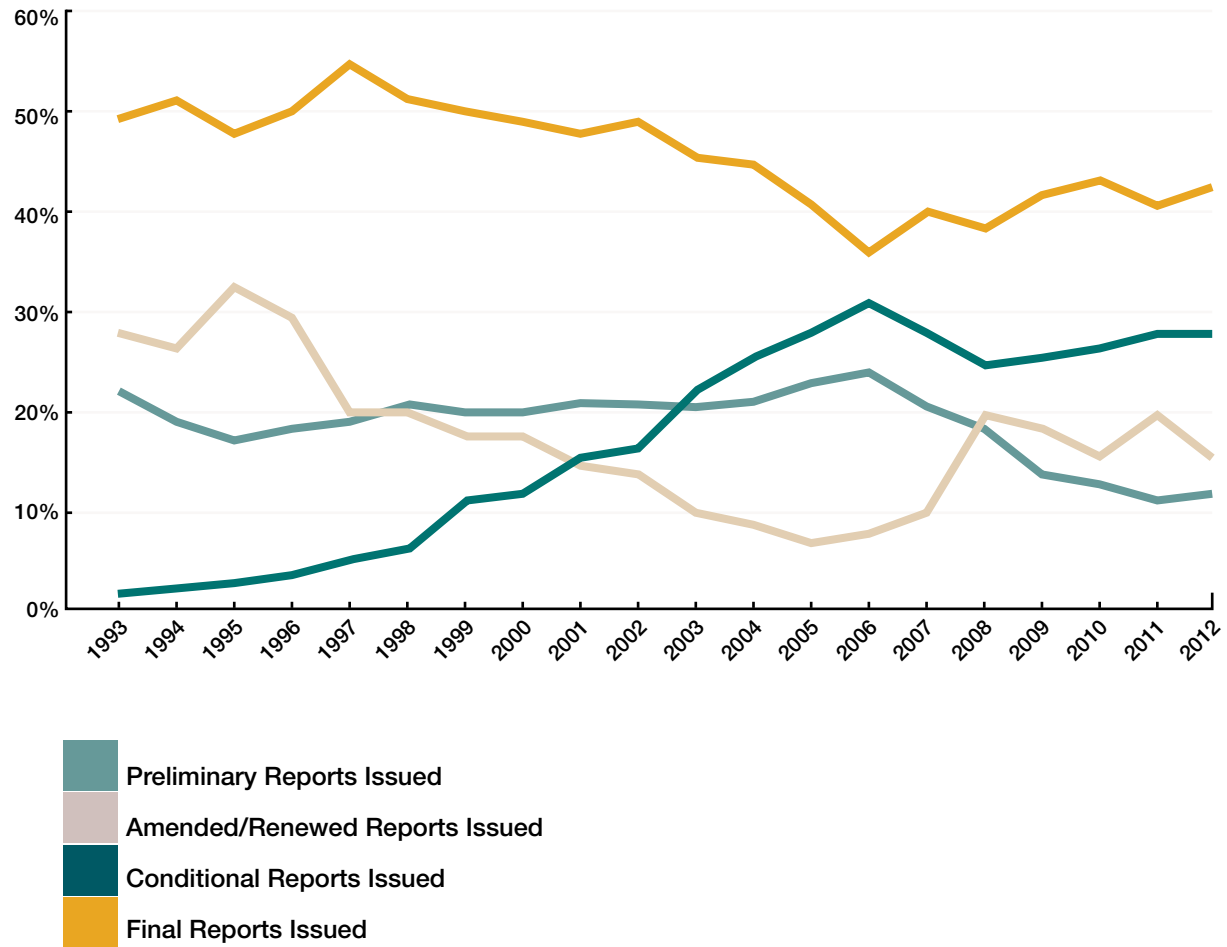
Figure 11 - Issuance of Public Reports by Report Type



documents (if any), the CC&Rs (if any), and draft sale documents. Because the title company is closely involved in the mapping and sales process, the title company usually will be involved to provide title documents, map documentation, and pro forma sale documentation. Some title companies staff individuals that specialize in managing the application process. If an HOA is involved, a draft budget must be submitted, which is typically prepared by a special HOA budget consultant.

Figure 13 illustrates the DRE's application review process.

Figure 12 - Issuance of Public Reports by Type



The following is a list of items and issues that will be disclosed in the public report:

General Information

- Name of applicant
- Location and size of the project

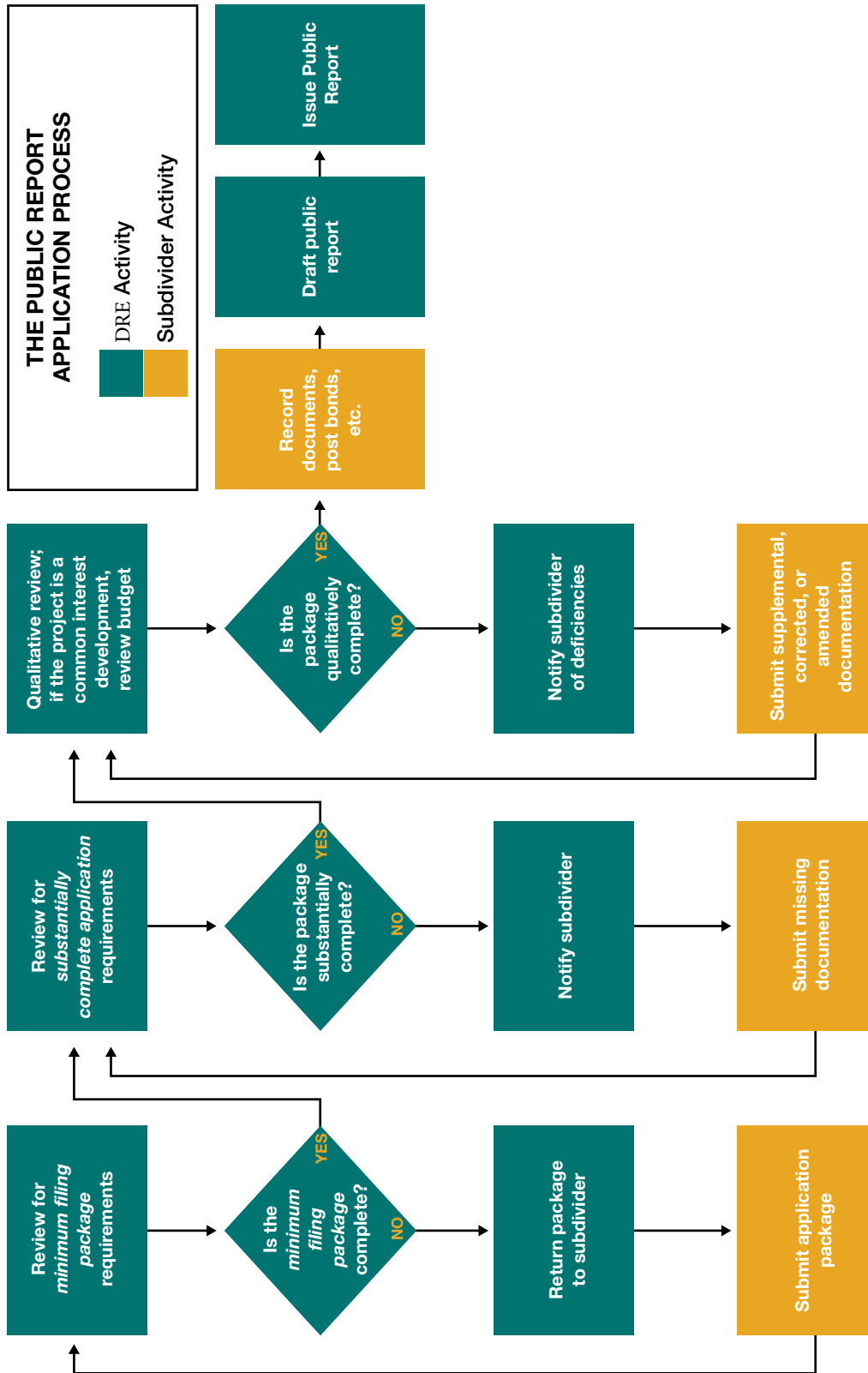
Location Information

- Unusual adjacent uses and zoning
- Airport influence area
- Notice if within SF Bay Conservation or Development Commission Jurisdiction
- Notice of “right to farm”
- Hazards, if any
- Location of soils conditions data

Services

- Sewage disposal
- Water source
- Utility providers

Figure 13 - Flowchart: Public Report Application Review Process



-
- School information

Title Information

- Map and CC&R recordation data
- Exceptions to title insurance preliminary report
- Assessments, if any
- Transfer fees
- Taxes
- Unusual title conditions
- Unusual easements, rights of way, or setbacks
- Contract information
- Purchase money handling
- Conditions of sale
- Unusual restrictions or conditions imposed upon buyers
- Any unusual or potentially harmful financial or conveyance arrangements

Common Interest Developments

- Common interest project management
- Common interest project maintenance and operational expenses

Special Conditions

- Any special permits that may be needed in order to build houses, sewer systems, etc.
- Any unusual costs that buyers will have to bear
- Any other matters that would assist a buyer in making an informed choice

The Public Report Application

The application for a public report is referred to as the *notice of intention*. The notice of intention is an application form (RE 624 for CIDs, RE 628 for standard subdivisions) consisting of three parts: Part I contains the application instructions; Part II contains questions and lists documentation to be submitted for a complete application package; and Part III is a project questionnaire and certification.

Application forms and detailed instructions (Public Report Application Guidelines) are available on the DRE's website. The initial application package consists of five items (six for CIDs):

- Notice of Intention Part III: Project questionnaire and certification
- Notice of Intention Part II: Index/quantitative deficiency notice
- Filing fee
- Address labels (used by DRE staff to send documents to the applicant)
- Supporting documentation referenced in Part II
- Duplicate budget packet (CIDs only)

The Public Report Application Review

The scope of the application review process is found in BPC Section 11018.5 of the SLA. In order to issue a public report, the DRE must find that:

- Reasonable arrangements have been made to assure completion of the subdivision, all offsite improvements, and common areas included in the offering
- The documents (deeds, conveyances, leases, subleases, instruments, or assignments) to be used are adequate to transfer the interests (the legal interests and uses of which the owner or developer represents) to the purchasers.
- After transfer of title to the first lot, apartment, or condominium in the subdivision to any purchaser, the provisions of the declaration of restrictions, articles of incorporation, bylaws, management contracts, and

other relevant documents shall be binding upon the purchaser and occupant of every other lot, apartment, or condominium in the subdivision.

- Reasonable arrangements have been made for delivery of control over the subdivision and all offsite land and improvements included in the offering to the purchasers of lots, apartments, or condominiums in the subdivision.
- Reasonable arrangements have been or will be made as to the interest of each of the purchasers of lots, apartments, or condominiums in the subdivision with respect to the management, maintenance, preservation, operation, use, right of resale, and control of their lots, apartments, or condominiums, and such other areas or interests, whether or not within or pertaining to areas within the boundaries of the subdivision, as they have been or will be made subject to the plan of control proposed by the owner and developer, and are included in the offering.

Such findings are based on the data submitted by the developer in the application process; data that is also included as disclosure information in the public report document. Information provided in the application and to be disclosed in the report is found in BPC Section 11010 of the SLA.

The application review process consists of two types of review – quantitative and qualitative. The **quantitative review** includes DRE verification that application submittal requirements have been met. The initial application will only be accepted for review if it consists of a **minimum filing package**. The requirements of a minimum filing package are identified in Part II of the application. The purpose of the quantitative review is to achieve a **substantially complete application**, i.e., all of the documentation necessary for the DRE staff to conduct a qualitative review of the application. The substantially complete application will consist of the minimum filing package plus most other documentation required for the final public report.

Once the application is substantially complete, DRE staff begins its qualitative review. The **qualitative review** is the essence of the DRE's responsibility under the SLA, the major areas of which are described below.

Purchase Money Handling. The typical real estate purchase and sale agreement requires the buyer to put up a deposit prior to the actual closing of the purchase and sale, when the contract is signed. The buyer's deposit will be refundable to the buyer for a period of time as specified in the contract, giving the buyer time to perform due diligence before he/she proceeds with the purchase, obtain financing, etc. Once that period expires or specified contingencies are satisfied, the deposit becomes subject to the contractual terms of the agreement should the buyer fail to close under the terms of the agreement. Oftentimes, the seller must fulfill certain obligations prior to the closing. For example, in new subdivisions, the purchase agreement is often signed prior to the home being completed, and a condition of closing would be the actual completion of the home.

When a developer obtains financing for construction of a subdivision, a deed of trust is recorded on all of the land within the subdivision as collateral for the financing. The deed of trust in this situation is considered a **blanket encumbrance** on the subdivision. In order for the developer to transfer the home to the homebuyer, the home must be released from the blanket encumbrance.

The purpose of the SLA and DRE regulations is to ensure that the buyer's deposit funds will not be expended until the contracted interest has been conveyed free of encumbrances and that the funds will be returned to the buyer if the interest cannot be conveyed per the terms of the contract. These regulations therefore limit the ability of the developer to access deposit funds prior to the close of escrow. The regulations provide various alternatives for such access; however, as a practical matter, the most commonly used method for handling purchase money is for funds to be impounded in an escrow account until the close of escrow, although a purchase money bond posted with the state of California is often used.

Completion of Improvements. Given the developer's desire to minimize the overall development schedule, home sales often occur well in advance of the completion of off-site, on-site, and common area improvements.⁸

⁸ For purposes of this study and as is the practice in the homebuilding industry, a "home sale" occurs when a purchase and sale agreement is signed by the parties. The actual conveyance occurs at the close of escrow or closing, when title is transferred to the buyer. Closing can occur any time from one to several months after the purchase and sale agreement is signed.

On-site improvements are generally the improvements within the boundaries of an individual lot or parcel such as buildings, fences, landscaping, and driveways. DRE review is concerned with assuring that, if any of these improvements have not been completed prior to the final public report being issued, adequate provision has been made to assure their completion. A specific provision of the purchase and sale agreement will call for the closing to occur sometime after the home (on-site improvements) has been completed, and the buyer has conducted an inspection of the completed home. Such a provision is sufficient to ensure completion so long as the buyer's purchase money is protected as described above.

In the context of a single-family home sale, off-site improvements are the overall subdivision improvements such as underground utilities (sewer, water, and storm drain lines) and street improvements (curb, gutter, sidewalk, and landscaping). For off-site improvements that are required by the local agency, i.e., as a condition of the subdivision approval, DRE will look to the security posted by the developer with the local agency (payment and performance bonds or letter of credit) that ensures completion of the subdivision improvements. In cases where the off-site improvements are not required by the local agency, the DRE will require that the developer post a bond or letter of credit to ensure such completion. Some projects may be within a special tax district (community facilities district or "Mello-Roos" district) or assessment district, the purpose of which is to fund off-site improvements or community services. In such cases, the DRE will require detailed information about the district for adequate assurance that the improvements funded by such a district will actually be completed.

DRE is particularly concerned with the completion of the common improvements within CIDs. When the common improvements have been completed prior to the issuance of the final public report, the DRE requires that the common improvements be delivered free of mechanics lien claims. When the common improvements have not been completed, the developer must demonstrate that the common improvements will be completed at a reasonable time. The developer must also post completion security for these improvements.

Phasing/Annexation. Larger subdivisions are often constructed in phases in order to match development costs with expected revenue and available financing. For CIDs, it is important for the developer to consider how all of the property (common area and individual units) will one day come under the control of the HOA and the corresponding budget and assessments as annexation occurs. The developer will want the governing documents to allow for the annexation of subsequent phases without needing the approval of the association.

It is advantageous to the developer to process a "master file" for phased projects. The master file procedure allows the developer to submit a master application filing for the initial map/phase, which contains all the documents that will also be completely applicable to all proposed maps/phases that will follow. Master files work best in those cases where subsequent phases are annexed promptly and the construction and sales of homes proceed on an orderly schedule. An extended annexation schedule may result in some master documents becoming obsolete or out of compliance with new laws or regulations, thereby requiring master documents to be updated or replaced.

A **subsidy agreement** is an agreement between the developer and the association whereby the developer agrees to pay a certain portion of assessments for a certain length of time. This is usually done in phased projects where the bulk of the common facilities are installed in the first phase. The homeowners' assessments would be burdensome on the initial homeowners if the developer did not pay a large part of the total assessments. The developer's subsidy allows regular assessments to be set at or close to build-out assessment amounts rather than at the otherwise high amounts that would be detrimental to the initial homebuyers in the project. As subsequent phases are built and sold out, the per-unit/lot assessments usually decrease and the subsidy program is phased out. Additionally, the agreement may cover maintenance or other work the developer may perform in lieu of paying a full assessment on units/lots, which are subject to assessments.

A **maintenance agreement** is a similar agreement between the developer and the association, but it makes no promise of any specific savings to the homeowners. The agreement will provide that all owners will share any cost savings equally. The agreement usually provides for the developer to maintain some portion of the project in lieu of paying the full portion of the assessment obligation.

In determining the phasing, the developer must consider a number of factors including the overall development budget, the corresponding HOA budget and assessments as completely built out, the number of units and the common area to be included in each phase, and the budget and assessment corresponding to each phase. A common challenge for the developer is to match the level of assessments in the early phases with the build-out assessments. If the budget in early phases must be spread over too few units, a very high per unit assessment may result. This problem may be managed by the developer deferring annexation of common area to subsequent phases when the corresponding cost can be spread across more units. When common area is added to the project in subsequent phases, the developer must provide reasonable assurance as to its completion if the developer wishes to advertise or refer to its prospective existence.

Homeowners Association. If the subdivision has an HOA, the review of matters related to the association is a large part of the application review process and is based on the DRE's authority to ensure that reasonable arrangements have been made for the management and operation of the project. A critical area of focus is operation of the association and the project during the selling stage of the project, i.e., that interim period from the time the association is formed until the last unit is conveyed by the developer. During this period, the developer not only controls the association, but is a major financial contributor to the association as the owner of unsold lots or units in the subdivision. The developer also may be a provider of goods and services to the association during that period.

The DRE's review of the association is concerned with five major areas as described below.

- **Budget:** From both the DRE's and the homebuyer's perspective, an accurate estimate of association assessments is the most important information contained in the public report, and accuracy of the budget is the focus of DRE's review. The amount of the assessments can greatly affect the buyer's decision and may affect the buyer's financial qualifications to purchase the home. DRE staff reviews the developer's submitted budget for cost reasonableness and accuracy. Toward that end, the DRE requires the budget to be submitted on standardized forms using the DRE's published cost and reserve data, or other justifiable cost data. For phased projects, the budget must set forth the assessments per phase, as additional phases are annexed into the HOA.
- **Special Arrangements for Maintenance:** During the interim period, the developer will bear a large assessment burden and will control the HOA, so the DRE must make sure that the developer actually contributes to the HOA as required. There are various arrangements the developer can make to provide assurance to the DRE in regards to the availability of funds to make assessment payments. One possibility is to agree to a presale requirement i.e., that no sales will be closed until contracts have been obtained for a specified number of units. A more popular method is to provide a security bond (or other security convertible to cash for the performance of the obligation) to the HOA to pay for assessments for a specified number of months for operation of the HOA. For larger projects, it is common for the developer to enter into a subsidy agreement as described above.
- **CC&Rs:** The SLA specifies that the DRE may not issue a public report for CID unless every lot/unit will become subject to the governing documents when the developer makes the first conveyance to the purchaser. This requirement is simply to ensure that the governing documents will be enforceable against every unit in the subdivision. The DRE enforces this by requiring recordation of the CC&Rs prior to the issuance of the public report.

The CC&Rs cannot be subordinate to any liens on the property at the time the property is conveyed to the first purchaser, otherwise, a senior lien holder would not be subject to the CC&Rs after foreclosure in the event of foreclosure on the lien. This requirement is typically not a problem since normally, all liens such as those related to construction financing are removed at the closing i.e., the construction loan is paid by the developer as a condition to the closing of the home. At the closing, based on the order of recording, the CC&Rs would become higher in priority to the homebuyer's new mortgage. In the unusual circumstance where a lien remains on the property post closing, special arrangements would have to be made to have the lien become subordinate to the CC&Rs.

If the lien of any assessments created by the CC&Rs were not subordinate to mortgage financing, it would be difficult for homebuyers to obtain purchase financing. To address this, a provision called a *mortgagee protection clause* is included in the CC&Rs that allows for the lien for regular or special assessments to be automatically subordinated to the lien of any *first* (not junior mortgages or deeds of trust) mortgage or deed of trust. In the event of a judicial foreclosure or trustee's sale by the first mortgage lender, any assessment liens will be extinguished. Thus, in the event of a foreclosure, the mortgage lender's financial rights are superior to those of the HOA, but after foreclosure, the property would still be subject to the CC&Rs.

Governing Documents: The DRE's review of the governing documents, also referred to as "management documents" is based on the reasonable arrangements regulations of the SLA and as enumerated in California Code of Regulations Sections 2792.8-2992.32 (Regulations of the Real Estate Commissioner). The regulations list the main provisions that should be included in management documents. Some of these provisions are described further below.

- *Transfer of Common Area.* The DRE requires the transfer of common areas to the HOA, or alternatively, into a trust for future conveyance to the HOA, prior to the first conveyance. In phased projects, the developer may not advertise or make representations concerning future common area unless financial arrangements have been made for the completion of improvements. In cases where common area is conveyed while common area improvements have not been completed, the developer will need to provide evidence of financial arrangements for completion to the DRE. The developer's rights to access the common area after conveyance also needs to be addressed in the CC&Rs.
- *Assessments.* Although the HOA may receive revenue from special assessments, fines, and user fees, the primary source of revenue is from regular assessments. The DRE usually requires the allocation of assessments to be on a straight allocation calculation (total budget amount divided by the total number of lots or units), where every lot or unit pays the same amount. However, if it can be demonstrated that variability among lots or units results in more than a 10 percent difference in the benefit received from the common area and services, a weighted allocation formula may be used to allocate assessments more accurately. For example, in a subdivision where some homes are located behind gates and some are not, the homes behind the gates could be allocated higher assessments. Another situation where disparate assessments may be allowed is in subdivisions where lots will be vacant for an extended period of time such as in subdivisions where individual lots are marketed to custom homebuilders. In such cases, vacant lots may be allocated lower assessments until construction proceeds on the vacant lots.

The DRE reviews HOA management documents for various matters related to assessments, many of which are specified by the DSA. Specific provisions regarding assessments are as follows:

- The HOA board may not increase regular assessments by more than 20 percent over the regular assessment of the previous year without approval of the majority of the membership of the HOA, excluding the developer.
- The HOA board may not impose a special assessment in a given fiscal year of more than 5 percent of the aggregate budgeted gross expenses for that year without approval of the majority of the membership of the HOA, excluding the developer.
- Special assessments must be allocated on the same basis as regular assessments.
- Assessments must commence as of the date of the first conveyance in the subdivision phase or as of the first day of the month following the first conveyance.
- An HOA member does not have voting rights until assessment has been levied against his/her property.
- The developer will need to pay the assessments on the lots or units he/she owns within the phase until those lots or units have been conveyed, unless he/she has made other arrangements such as a subsidy agreement to mitigate these payments.

-
- *Governance.* A board of directors must manage the HOA pursuant to the governing documents. The governing documents must specify the manner in which board members will be elected, their terms, and the manner in which they may be removed from office. Special provisions will be included to provide for procedures during the time the developer is still involved in the subdivision. The powers and limitations of the board are listed in the Regulations of the Real Estate Commissioner, but this list is not exhaustive. The DRE recommends that powers and limitations be listed in governing documents in as much detail as possible. The DRE is sensitive to provisions of governing documents that may create a conflict of interest among board members. A list of some of these disallowed provisions is included in the Commissioner’s Regulations. The DRE is also sensitive to provisions that may lead to conflict between the board and a majority of HOA members. Consequently, the following provisions will not be approved:

- Entering into a contract for goods or services for the common area for a term of longer than one year, except as specified in the regulations.
- Incurring aggregate expenditures for capital improvements to the common area or selling HOA property having an aggregate value exceeding 5 percent of the budgeted gross expenditures for that year.
- Providing compensation, except for reimbursement of legitimate expenses, to members of the board.

A complete list of prohibitions is included in California Code of Regulations Section 2792.21(b).

The governing documents must provide for the manner in which annual and special meetings of the HOA and the board will be scheduled. The HOA membership must meet at least once annually with the first meeting being held within 45 days after closing of sales of 51 percent of the lots or units in the first phase or no later than six months following the closing of the first sale, whichever is earlier.

The governing documents must provide for one vote per lot or unit unless a multi-class voting structure is included, even if assessments are allocated on other than a straight-line basis. A multi-class structure is often used to provide the developer with control until the later stages of the subdivision development. Under such a structure, the Class A members (the homeowners) would each have one vote. The Class B member(s) (the developer) would have three votes for every subdivision interest owned. This would allow the developer to control a majority vote of the HOA until 75 percent of the subdivision has been sold.

The management of the financial matters of the HOA is a major responsibility of the board. As such, the governing documents must include the following provisions:

- A budget for the fiscal year must be distributed to members at least 45 days before the beginning of the fiscal year. The budget must include an itemized estimate of income and expenditures, the amount of cash reserves, an estimate of the remaining life of common area facilities and a statement of the method for repairing or replacing those facilities, and a statement of the procedures used by the board to establish reserve amount.
- A statement of the HOA’s policies and practices in enforcing lien rights and other legal remedies against members in default of paying assessments.
- An annual report describing the HOA’s fiscal operations, including a balance sheet, an operating statement, and a statement of change in financial position must be distributed to all members within 120 days after the close of each fiscal year.
- Board members must be granted the right to inspect all books, records, and physical properties of the HOA.
- General members of the HOA must be afforded the opportunity to examine and copy the membership register, books of account, and meeting minutes.

-
- *Amendments.* The vote of at least a simple majority of the HOA, not including the developer, must be taken to approve an amendment. Amendment of the articles of incorporation must require approval of a simple majority of the board and the HOA not including, the developer. Amendment of the bylaws requires at least a simple majority of a quorum, but not more than a simple majority of the HOA, not including the developer. In all cases, the percentage approval necessary may not be less than the percentage necessary to take action under that clause of the original document, e.g., if approval of two thirds of the HOA is required for a specific provision, an amendment to that provision may not be approved without two thirds' approval.
 - *Disciplining Members.* The ability to discipline members is an essential component of the governing documents. The need for disciplinary action can arise from three areas –non-payment of amounts owed to the HOA, violation of the CC&Rs and rules of the HOA, and damage to the HOA property caused by the member. Disciplining of members may consist of imposing financial penalties or restricting them from the use of common area, except for rights of ingress and egress.

Annexation. When property is annexed it becomes subject to the CC&Rs, and purchasers become members of the HOA. The DRE requires annexation to be approved by at least two- thirds of the non-developer members unless the DRE has approved a detailed annexation plan and included it in a master file public report application. Each annexed phase must be covered by a public report, and a new, separate application is required unless an annexation plan has been approved. The annexation plan must identify the land proposed for annexation and the total number of units to be included in the overall development. It also must demonstrate that common area facilities will not be overburdened and that assessments of existing owners will not substantially increase over the amount disclosed to them in the original public report.
 - *Architectural Control.* A provision of governing documents designed to preserve and enhance property values and community standards, but that can lead to irritation of HOA members, is the HOA's architectural controls. Architectural controls are typically administered by a committee appointed by the board. The developer may appoint the original members for the first year following the issuance of the public report. After that, the board must have the power to appoint at least one member until 90 percent of the subdivision interests have been conveyed.
 - *Warranties and Guaranties.* The DRE is concerned with the warranties and guaranties offered by the developer in marketing the subdivision. This is different than the warranties associated with the physical improvements of the property. Generally, the DRE requires that financial arrangements be made to fulfill any promise that constitutes a sales inducement if the promise is one that cannot be performed before the close of escrow. The developer's agreement to subsidize HOA operations is one such inducement.

Issuance of the Public Report

In processing applications for final public reports, the DRE operates under processing timeframes mandated by the SLA as shown in Figure 14.

Figure 14 - Mandated Application Processing Timeframes

STANDARD SUBDIVISION FINAL PUBLIC REPORT PROCESSING SCHEDULE MANDATE					
WITHIN	10	DAYS OF	RECEIVING THE MINIMUM FILING PACKAGE OR A RESPONSE TO A QUANTITATIVE DEFICIENCY NOTICE,	THE DRE MUST ISSUE A	QUANTITATIVE DEFICIENCY NOTICE OR SUBSTANTIALLY COMPLETE NOTICE.
	20		DETERMINING THE APPLICATION IS SUBSTANTIALLY COMPLETE,		QUALITATIVE DEFICIENCY NOTICE.
	20		RECEIVING A RESPONSE TO A QUALITATIVE DEFICIENCY NOTICE,		RESPONSE TO DEFICIENCY CORRECTIONS OR NOTICE TO "PERFECT" FILE (RECORD CC&RS, OBTAIN BONDS, ETC).
	10		RECEIVING A "PERFECTED FILE,"		FINAL PUBLIC REPORT.
COMMON INTEREST DEVELOPMENT FINAL PUBLIC REPORT PROCESSING SCHEDULE MANDATE					
WITHIN	10	DAYS OF	RECEIVING THE MINIMUM FILING PACKAGE OR A RESPONSE TO A QUANTITATIVE DEFICIENCY NOTICE,	THE DRE MUST ISSUE A	QUANTITATIVE DEFICIENCY NOTICE OR SUBSTANTIALLY COMPLETE NOTICE.
	60		DETERMINING THE APPLICATION IS SUBSTANTIALLY COMPLETE,		QUALITATIVE DEFICIENCY NOTICE.
	30		RECEIVING A RESPONSE TO A QUALITATIVE DEFICIENCY NOTICE,		RESPONSE TO DEFICIENCY CORRECTIONS OR NOTICE TO "PERFECT" FILE (RECORD CC&RS, OBTAIN BONDS, ETC).
	15		RECEIVING A "PERFECTED FILE,"		FINAL PUBLIC REPORT.

The schedule for processing a final report application for a CID is significantly longer due to additional submittal requirements, e.g., HOA documents, budget, etc. The above schedule does not reflect the amount of time it takes the applicant to produce the original application materials or responses to comments. The final report is issued upon payment of all required fees, completion of the application, and submission of all necessary documentation. The term of the final report is ordinarily for five years, but may be renewed for additional five-year periods.

It is unlawful for the developer to materially change the subdivision offering after issuance of the public report without giving written notice of the change to the DRE. If there is a material change in the offering, the report terminates and an amended report must be obtained. A change in the governing documents while the developer is still involved in the subdivision is likely to be considered a material change. Failure to properly notify DRE and/or

to obtain an amended public report may have serious consequences including rescission of sales contracts, monetary damages, and civil action against the developer.

If a change is made in the subdivision offering, it is best for the developer to consult with the DRE in order to determine if the change is considered material. If the change is material, an application for an amended public report must be submitted and approved for the developer to continue marketing activities. The application package consists of an application form, an explanation of the change(s), and supporting documentation.

A copy of the final public report must be given to a purchaser or lessee before execution of a binding contract to purchase or lease. The purchaser or lessee must be given an opportunity to read the report and acknowledge receipt in writing before a written offer is taken or money is solicited or accepted. When a preliminary report is issued, the prospective purchaser or lessee must be given a copy of the report and acknowledge receipt before a reservation can be taken.

Although the SLA provides for the denial of an application for public report for various reasons, as a practical matter, applications are rarely denied. The DRE actively communicates deficiencies with applicants and, to the extent deficiencies are corrected, the public report is issued after application requirements have been satisfied. In the event of a formal denial, the applicant has hearing rights as set forth in the SLA.

APPENDIX A:
LEGISLATIVE HISTORY OF THE SUBDIVIDED LANDS ACT

APPENDIX A: LEGISLATIVE HISTORY OF THE SUBDIVIDED LANDS ACT

California first enacted legislation regulating the sale and leasing of subdivided land in 1921 (Stats. 1921, Ch. 751, Sec. 3-4). This legislation gave the Real Estate Commissioner authority to investigate and issue public reports on the subdivision and sale of agricultural land for residential purposes. The Commissioner's authority was expanded to include regulation of business and residential subdivisions (Stats. 1933, Ch. 691, Sec. 10).

In 1943 Division 4, Part 2, Chapter 1 (Subdivided Lands) was added to the BPC, adopting the structure that is in place today (Stats. 1943, Ch. 127). The focus of the regulation of subdivisions was to protect the public from fraud by requiring full disclosure by the developer to the DRE; the information gathered when the DRE processed subdivision applications was communicated to prospective buyers or lessees through the publication and circulation of the public report. This approach was satisfactory as long as the subdivider did not promise to make substantial improvements to the property in the offering. However, by the early 1960s subdivisions were taking on aspects of self-governing housing communities; thus, efficient organization and operation of the HOA to manage and maintain commonly owned or controlled property became an important factor that had to be addressed by the DRE when processing subdivisions applications. Consequently, over the years, as shown in Appendix A, numerous additions, amendments, and deletions have been made to Chapter 1, also known as the Subdivided Lands Act (SLA). This section focuses on the legislative history of the sections present in the SLA today.

Section 11014, added in 1943, was amended in 1955 (Stats. 1955, Ch. 646) and in 1957 (Stats. 1957, Ch. 1782). This section gives the Real Estate Commissioner authority to investigate any subdivision being offered for sale or lease in California. Section 11014 states "For the purposes of such investigations the Commissioner may use and rely upon any relevant information or data concerning a subdivision obtained by him from the Federal Housing Administration, the United States Veterans Administration, or any other federal agency having comparable duties and functions in relation to subdivisions or property therein." In 1955 the legislature also amended Section 11021, accrual of cause of action, adopting the current language (Stats. 1955, Ch. 1739).

In 1957 Section 11001, Power of Commissioner, was amended, adopting the current language (Stats. 1957, Ch. 1750): "The Real Estate Commissioner (hereafter referred to in this chapter as the Commissioner) may adopt, amend, or repeal such rules and regulations as are reasonably necessary for the enforcement of this chapter. He may issue any order, permit, decision, demand, or requirement to this effect. Such rules, regulations, and orders shall be adopted pursuant to the provisions of the Administrative Procedure Act."

In 1961, Section 11010.1, notice of intention to issue promissory notes secured by individual lots in unrecorded subdivision, was added to the SLA (Stats. 1961, Ch. 886).

In 1963 the legislature added the following language to the SLA (Section 11007, Stats. 1963, Ch. 927): "Every nonresident subdivider shall file with the questionnaire an irrevocable consent that if, in any action commenced against him in this state, personal service of process upon him cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon him by delivering the process to the Secretary of State." The same year, legislation was enacted that authorized the denial of the public report (Stats. 1963, Ch. 927)⁹:

- a) If the subdivider was unable to demonstrate that adequate financial arrangements had been made to assure completion of offsite improvements and common facilities (Section 11018)
- b) If the subdivided lands were not suitable for the intended purpose (Section 11018)
- c) For false and misleading advertising pertaining to subdivision offering; in addition, the legislation imposed criminal sanctions (Section 11022, 11023)¹⁰

In 1969, existing legislation prohibiting material change of the setup of the offering without written notice to the DRE after the project had been submitted to DRE was amended (Section 11012; Stats. 1969, Ch. 138). That

⁹ Legislation was also regulated in the creation and use of condominiums (Civil Code 1350 - 1370; Stats. 1963, Ch. 863).

¹⁰ This legislation also segregated out-of-state subdivision sales from sales of California land and established different standards for each.

same year, the SLA was amended and commercial and industrial subdivisions were exempted from the SLA (Section 11018.2; Stats. 1969, Ch. 373). The exemption applies to a subdivision that is “limited to commercial or industrial uses” by zoning or by a Declaration of Covenants, Conditions, and Restrictions that is recorded in each county in which the subdivision is located (Section 11010.3).

Section 11018, added in 1943, dealing with the examination of a subdivision, the report, and grounds for denial, was amended in 1963 (Stats. 1963, Ch. 927), 1965 (Stats. 1965, Ch. 178), 1967 (Stats. 1967, Ch. 1136), and in 1971 (Stats. 1971, Ch. 1686) leading to its current language “The Real Estate Commissioner shall make an examination of any subdivision, and shall, unless there are grounds for denial, issue to the subdivider a public report authorizing the sale or lease in this state of the lots or parcels within the subdivision. The report shall contain the data obtained in accordance with Section 11010 and which the Commissioner determines are necessary to implement the purposes of this article. The Commissioner may publish the report. The grounds for denial are:

- a) Failure to comply with any of the provisions in this chapter or the regulations of the Commissioner pertaining thereto
- b) The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees
- c) Inability to deliver title or other interest contracted for
- d) Inability to demonstrate that adequate financial arrangements have been made for all offsite improvements included in the offering
- e) Inability to demonstrate that adequate financial arrangements have been made for any community, recreational, or other facilities included in the offering
- f) Failure to make a showing that the parcels can be used for the purpose for which they are offered; and in the case of a subdivision being offered for residential purposes, failure to make a showing that vehicular access and a source of potable domestic water either is available or will be available
- g) Failure to provide, in the contract or other writing, the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto
- h) Agreements or bylaws to provide for management or other services pertaining to common facilities in the offering, which fail to comply with the regulations of the Commissioner
- i) Failure to demonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering”

Section 11018.2, added by Stats. 1963, Ch. 927 and amended in 1969 (Stats. 1969, Ch. 373), 1974 (Stats. 1974, Ch. 606), and 1980 (Stats. 1980, Chs. 1105, 1152, and 1336) forbid the sale or lease, or offer for sale or lease of any lots or parcels in a subdivision without first obtaining a public report from the Real Estate Commissioner.

Section 11013, blanket encumbrance, added by Stats. 1943, Ch. 127, was amended in 1955 (Stats. 1955, Ch. 1863), 1963 (Stats. 1963, Ch. 805) and 1980 (Stats. 1980, Ch. 1335) resulting in its current language: “For the purposes of this part, a blanket encumbrance shall be considered to mean a trust, deed, or mortgage or any other lien or encumbrance, mechanics’ lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.” The 1955 statute (Stats. 1955, Ch. 1863) added Section 11013.1: requiring a release clause to sell or lease lots or parcels within a subdivision subject to a blanket encumbrance (amended by Stats. 1963, Ch. 805 and Stats. 1980, Ch. 1335); Section 11013.2: establishing the conditions under which a sale or lease without release clause is permitted (amended by Stats. 1980, Ch. 1335); Section 11013.3 stating: “Taxes and assessments levied by public authority shall not be considered a blanket encumbrance within the meaning of Section 11013;” Section 11013.4: establishing the conditions under which lots or parcels within a subdivision not subject to a blanket encumbrance could be sold or leased (amended by Stats. 1963, Ch. 805; Stats. 1980, Ch. 1335; and Stats. 1982, Ch. 517); and Section 11013.5 stating: “The public report of the Commissioner, when issued, shall indicate the method or procedure selected by the owner or subdivider to comply with the provisions of Sections 11013.1, 11013.2, or 11013.4.”

In 1981, Section 11010.7 “dealing with the applicability of notice of intention” was added to the SLA by Stats. 1981, Ch. 519, Sec. 1: “The notice of intention specified in Section 11010 shall not apply to nonbinding expressions of intent to purchase or lease, which an owner, agent, or subdivider is required to obtain from the tenants of units that are proposed to be converted to a condominium, community apartment project, or stock cooperative project, by ordinance, or as a condition to the approval of a tentative or parcel map pursuant to Division 2 (commencing with Section 66410) of Title 7 of the Government Code.”

The commercial and industrial subdivisions exemption was amended (Section 11018.2) in 1974 adopting language based on commercial zoning (Stats. 1974, Ch. 606) and in 1980 the exemption was moved to Section 11010.3 (Stats. 1980, Ch. 1335) and Section 11018.2 was amended (Stats. 1980, Ch. 1336). In combination, both sections exempted from the public report process subdivisions zoned commercial and industrial. In 1982, Section 11010.3 was amended and a simple general exemption was adopted (Stats. 1982, Ch. 148).

Section 11010.06 was added by Stats. 1980, Ch. 1336 and amended by Stats. 1982, Ch. 148, which established that the provisions of the SLA “shall not be applicable to subdivided land that is offered or proposed to be offered for sale, lease, or financing by a state agency, including the University of California, a local agency, or other public agency.”

Section 11019, originally added to the SLA by Stats. 1973, Ch. 202, was amended in 1985 (Stats. 1985, Ch. 128, Sec. 1). This section establishes the circumstances under which the Real Estate Commissioner may order a person “to desist and refrain from those acts and omissions or from the further sale or lease of interests in the subdivision until the condition has been corrected.”

The same year planned development (Section 11003), stock cooperative (Section 11003.2), and community apartment projects (Section 11004) were given the same meaning as the those specified in Section 1351 of the Civil Code by Stats. 1985, Ch. 874. In addition, it was made clear that a stock cooperative does not include a limited-equity housing cooperative. In 1985, Section 11008, applicability of criminal law to violations was added to the SLA.

The right to rescind the purchase of interest in an undivided interest subdivision was added as section 11000.2 by Stats. 1988, Ch. 434, Sec. 2.

Section 11018.6, dealing with documentation to be provided to prospective buyers or lessees, was added to the SLA by Stats. 1985, Ch. 1596, and amended by Stats. 1990, Ch. 144, Sec. 2. This section states: “Any person offering to sell or lease any interest subject to the requirements of subdivision (a) of Section 11018.1 in a subdivision described in Section 11004.5 shall make a copy of each of the following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy thereof to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

- a) The Declaration of Covenants, Conditions, and Restrictions for the subdivision
- b) Articles of incorporation or association for the subdivision owners association
- c) Bylaws for the subdivision owners association
- d) Any other instrument that establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees of interests in the subdivision as shareholders or members of the subdivision owners association or otherwise
- e) To the extent available, the current financial information and related statements as specified in Sections 5300 and 5565 of the Civil Code, for subdivisions subject to those provisions
- f) A statement prepared by the governing body of the association setting forth the outstanding delinquent assessments and related charges levied by the association against the subdivision interests in question under authority of the governing instruments for the subdivision and association.”

In 1992, Section 11018.13, dealing with abandonment of application for subdivision public report, was added to the SLA (Stats. 1992, Ch. 881, Sec. 3). Specifically this section states:

- a) After written notice to the subdivider, or the subdivider’s representative, the Commissioner may abandon any

application for a subdivision public report if the data required by Section 11010 has not been furnished within three years from the date a notice of intention is filed for a subdivision public report.

b) The Commissioner shall adopt regulations establishing time periods for notifying the subdivider, or the subdivider's representative, of the intention to abandon a file, and establishing hardship or justifiable extenuating circumstances the Commissioner deems acceptable.

The same year, Section 11010.5 was amended by Stats. 1992, Ch. 864, Sec. 1. This section, added to the SLA by Stats. 1961, Ch. 1175, establishes the conditions under which a second notice of intention to sell and a second report of the Commissioner shall not be required. The conditions are: "a) Where there has been a previous subdivision report and the lots are subsequently acquired through any foreclosure action, or by a deed in lieu of foreclosure, by a bank, life insurance company, industrial loan company, credit union, or savings and loan association licensed or operating under the provisions of a state or federal law if the acquired lots, either improved or unimproved, will be sold in conformance with the previously issued subdivision public report; b) The original public report is given to the first purchasers of the lots in the foreclosed subdivision; and c) The Commissioner is notified of the change of ownership within 30 days of the acquisition of the title to such property."

In 1994, legislation was enacted that deleted numerous requirements relating to certain out-of-state developments and made it easier to issue conditional public reports. Sections 11018.12 and 11022 were amended and Section 11029 was repealed (Stats. 1994, Ch. 279). This legislation:

a) Defined "improved out-of-state residential subdivision" and "improved out-of-state time-share project" (i.e., residential uses to be offered for sale or lease with all improvements completed that are necessary or with financial arrangements for those improvements determined to be adequate), whereby numerous current requirements for out-of-state developments will no longer apply. The DRE Commissioner must apply certain provisions to these subdivisions. This bill also deletes the "accessible urban subdivision" provisions.

b) Deleted provisions allowing the DRE Commissioner to issue a preliminary report for an accessible urban subdivision, but allows issuance of the report and a conditional permit for the "improved out-of-state residential subdivision" and "improved out-of-state time-share project" added to the law by this bill (#3 above).

c) Revised the conditions for issuing a conditional public report (e.g., deletes requirement for a final subdivision map to be approved; deletes requirement for the application to be qualitatively complete; requires documents to be substantially complete).

d) Deleted the requirement for submitting land project reports.

In 1995, the legislation was enacted relating to mobile home parks; Section 11010.8 was amended and Section 11010.9 was added (Stats. 1995, Ch. 256). This legislation:

a) Provides that the subdivider of a mobile home park that is proposed to be converted to resident ownership, prior to filing a notice of intent to apply for a public report, shall make a written disclosure to homeowners and residents of the park. The disclosure shall state the tentative price of the subdivided interest proposed to be sold or leased, and:

b) Specifies that the subdivider desiring to convert a park to resident ownership shall be subject to a hearing by a legislative body, or an advisory agency that is authorized by local ordinance to approve, conditionally approve, or disapprove the map.

In 1996, legislation relating to the consent required to amend the controlling instruments of a subdivision and the basis for denial of a proposed change enacted (Section 11018.7) was amended by Stats. 1996, Ch. 587. In addition, sections 11000.5, 11000.6, 11025, 11027, 11028, 11029.1, and 11030 were repealed (Stats. 1996, Ch. 587). This legislation:

a) Repealed numerous provisions of existing law that recognize, define, and regulate certain types of subdivisions or subdivided lands known as "land projects."

b) Repealed a section of existing law that provides that no amendment or modification of provisions in a declaration of restrictions, bylaws, or other instruments affecting rights to ownership, possession, or use of interests

in a subdivision and/or land project is valid without the prior written consent of the Commissioner, as specified.

In 2000, legislation relating to subdivided lands was enacted; Sections 11010.2, 11010.3, and 11011 were amended and Sections 11010.10 and 11010.35 were added (Stats. 2000, Ch. 279). This legislation exempted from the public report requirements of the SLA certain sales of subdivision lots between developers, provided the purchaser agrees to comply with the reporting requirements on subsequent sales of the property. Additionally, this law clarified the exemption that applies to industrial and commercial subdivisions, and authorized a new voluntary report for exempt developers. Section 11010.3 was broadened to include any subdivision that is limited to commercial or industrial use by a recorded declaration (in addition to any subdivision that is restricted to such uses by zoning) (Stats. 2000, Ch. 279).^{11, 12} The same year, legislation relating to senior housing laws was enacted; Section 11010.05 was amended (Stats. 2000, Ch. 1004). Specifically this legislation:

- a) Required all developments applying for senior development status to issue a public report specifying the limitations on occupancy applicable to the development.
- b) Deleted the January 1, 2001 expiration date on the exemption from senior housing design requirements for housing constructed before February 8, 1982.
- c) Provided that senior housing developments built on or after January 1, 2001 shall be presumed to be in compliance with meeting the needs of seniors if certain specified elements are present.
- d) Added to the definition of “qualified permanent resident,” a disabled person who is a child or grandchild of the resident, and established provisions for when a disabling condition ends.
- e) Provided that the owner(s) or board of a senior housing development may evict a qualified permanent resident if it is found that based on credible evidence, the person is likely to pose a significant threat to the health or safety of others and that such eviction requires first notice and hearing.
- f) Replaced the existing housing and population density formula with a single minimum standard of 35 units.

In 2001, legislation relating to subdivision laws was enacted; Section 11010.11 was added to the SLA (Stats. 2001, Ch. 307). This legislation specified that if a subdivision is to be used for residential purposes, the Real Estate Commissioner’s subdivision examination report shall disclose that a prospective buyer has the right to negotiate additional inspections of the property by the buyer, or buyer’s designee, under terms mutually agreed upon by the prospective buyer and seller.

In 2003, Sections 11000.1 and 11018.12 were added to the SLA (Stats. 2003, Ch. 434).¹³ This legislation made it easier for developers to finance condominium projects by allowing them to: 1) pre-sell individual condominium units earlier in the development process, and 2) retain enough of the buyer’s deposit to cover actual damages suffered when a buyer of a pre-sold unit defaults on the contract. To accomplish the second of these goals, the bill establishes an exception to the existing “liquidated damages” statute for contracts for the sale of residential property.

In 2004, legislation relating to time-share developments was enacted; Sections 11000, 11000.1, 11004.5, 11018.1, and 11018.5 were amended and Chapter 2 (commencing with Section 11210) was added to Part 2 of Division 4 of the BPC. Sections 11003.5, 11004.6, 11018.8, 11018.9, 11018.10, 11018.11, and 11024 were repealed (Stats. 2004, Ch. 697). This legislation consolidated and revised the entire body of time-share vacation property law, streamlined the regulatory approval process, and added new consumer protections to create the Vacation Ownership and Time-Share Act of 2004.¹⁴

¹¹ After the amendment the section reads: “The provisions of this chapter shall not apply to the proposed sale or lease of lots or other interests in a subdivision in which lots or other interests are: a) Limited to industrial or commercial uses by zoning; or b) Limited to industrial or commercial uses by a Declaration of Covenants, Conditions, and Restrictions, which declaration has been recorded in the official records of the county or counties in which the subdivision is located.”

¹² California Law Revision Commission, Memorandum 2011-29, “Common Interest Development Law: Commercial and Industrial Subdivisions,” July 13, 2011.

¹³ Section 1675 of the Civil Code and Sections 66427 and 66452.4 of the Government Code relating to subdivided lands were also amended.

¹⁴ This legislation also repealed Article 8.5 (commencing with Section 10250) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and amended Sections 1365.1 and 1367.1 of the Civil Code, Section 25021 of the Corporations Code, Section 30610 of the Public Resources Code and Sections 998, 2188.8, 2188.9, and 7280 of the Revenue and Taxation Code.

In 2008, legislation relating to the regulation of residential transfer disclosures regarding agricultural activity was enacted; Section 11010 was amended (Stats. 2008, Ch. 686).¹⁵

Specifically this legislation required that any person who intends to offer subdivided lands within California for sale or lease file an application for a public report with the DRE consisting of, among other things, a statement regarding the property's location near designated farm or ranch land.

In 2009, legislation relating to housing was enacted; Section 11003.4 of the SLA was amended (Stats. 2009, Ch. 520).¹⁶ This legislation provided for a new type of limited-equity housing cooperative known as a "workforce housing cooperative trust" and established new procedures and standards for the dissolution of both limited-equity housing cooperatives and workforce housing cooperatives.

In 2011, the Public Safety Realignment bill containing necessary statutory and technical changes to implement changes to the Budget Act of 2011 was enacted. This legislation affected several codes including Sections 11020 and 11023 of the SLA (Stats. 2011, Chs. 15 and 39). Section 11020 of the SLA was amended to read:

a) It shall be unlawful for any person to make, issue, publish, deliver, or transfer as true and genuine any public report which is forged, altered, false, or counterfeit, knowing it to be forged, altered, false, or counterfeit or to cause to be made or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit.

b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by both that fine and imprisonment.

c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law.

Section 11023 of the SLA was amended to read: "Any person who violates Section 11010, 11010.1, 11010.8, 11013.1, 11013.2, 11013.4, 11018.2, 11018.7, 11018.9, 11018.10, 11018.11, 11019, or 11022 is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by both that fine and imprisonment."

In 2012, legislation relating to common interest developments was enacted. Sections 10131.01, 10153.2, 10177, 11003, 11003.2, 11004, 11004.5, 11010.10, 11018.1, 11018.12, 11018.6, 11211.7, 11500, 11502, 11504, 11505, 23426.5, and 23428.20 of the Business and Professions Code were amended (Stats. 2012, Ch. 181).¹⁷ This legislation, operative January 1, 2014, made technical and conforming changes to reflect the reorganization and recodification of the DSA.¹⁸

¹⁵ This legislation also amended Section 1103.4 and the heading of Article 1.7 (commencing with Section 1103) of Chapter 2 of Title 4 of Part 4 of Division 2 of, the Civil Code.

¹⁶ This legislation also amended Section 1351 of, and added Chapter 5 (commencing with Section 817) to Title 2 of Part 2 of Division 2 of, the Civil Code. In addition, amended Sections 33413.7 and 50073 of, and repealed Section 33007.5 of, the Health and Safety Code, relating to housing.

¹⁷ This legislation also amended the following Codes:

- a) Civil Code: Sections 51.11, 714, 714.1, 782, 782.5, 783, 783.1, 798.20, 799.10, 800.25, 895, 935, 945, 1098, 1102.6a, 1102.6d, 1133, 1633.3, 1864, 2079.3, 2924b, 2929.5, and 2955.1;
- b) Government Code: Sections 86, 116.540, 564, 726.5, 729.035, and 736 of the Code of Civil Procedure, to amend Sections 12191, 12956.1, 12956.2, 53341.5, 65008, 65915, 65995.5, 66411, 66412, 66424, 66427, 6645 2.10, 66475.2, and 66477;
- c) Health and Safety Code: Sections 1597.531, 13132.7, 19850, 25400.22, 25915.2, 25915.5, 33050, 33435, 33436, 33769, 35811, 37630, 37923, 50955, 51602, and 116048;
- d) Insurance Code: Section 790.031;
- e) Revenue and Taxation Code: Section 2188.6;
- f) Sections 21107.7, 22651, 22651.05, and 22658 of the Vehicle Code;
- g) Water Code: Section 13553.

¹⁸ The Davis-Stirling Common Interest Development Act establishes the rules and regulations governing the operation of a common interest development (CID) and the respective rights and duties of a homeowners association and its members. (Civil Code Section 1350 et seq.)

APPENDIX B:
BUSINESS AND PROFESSIONS CODE – TIMELINE

APPENDIX B: BUSINESS AND PROFESSIONS CODE – TIMELINE

DIVISION 4. REAL ESTATE [10000. - 11506.] (added by Stats. 1943, Ch. 127.)

PART 2. REGULATION OF TRANSACTIONS [11000. - 11288.] (added by Stats. 1943, Ch. 127.)

CHAPTER 1. Subdivided Lands [11000. - 11200.] (added by Stats. 1943, Ch. 127.)

ARTICLE 1. General Provisions [11000. - 11008.]

Section	Text	Timeline
11000.	Subdivided lands; subdivision	<i>Added</i> by Stats.1943, Ch. 127, p. 862, Sec. 1. <i>Amended</i> by Stats.1947, Ch. 454, p. 1352, Sec. 1, eff. May 31, 1947; Stats.1947, Ch. 1445, p. 3013, Sec. 1; Stats.1955, Ch. 1013, p. 1924, Sec. 1; Stats.1959, Ch. 306, p. 2214, Sec.1; Stats.1961, Ch. 886, p. 2343, Sec. 27, eff. June 28, 1961; Stats.1975, Ch. 24, p. 30, Sec. 3, eff. April 4, 1975; Stats.1980, Ch. 601, p. 1652, Sec. 3; Stats.1980, Ch. 1127, p. 3628, Sec. 2; Stats.1992, Ch. 774 (S.B.1522), Sec. 3; Stats.1995, Ch. 723 (A.B.1644), Sec. 19; Stats.2004, Ch. 697 (A.B.2252), Sec. 2.
11000.1.	Subdivided lands; subdivision; exclusion from “undivided interests” for certain property	<i>Added</i> by Stats.1971, Ch. 1285, p. 2518, Sec. 2, eff. Oct. 29, 1971. <i>Amended</i> by Stats.1972, Ch. 447, p. 816, Sec. 1; Stats.1980, Ch. 601, p. 1653, Sec. 5; Stats.1986, Ch. 98, Sec. 1; Stats.1987, Ch. 56, Sec. 11; Stats.1998, Ch. 485 (A.B.2803), Sec. 21; Stats.1998, Ch. 11 (A.B.759), Sec. 1; Stats.2003, Ch. 434 (A.B.728), Sec. 1; Stats.2004, Ch. 697 (A.B.2252), Sec. 3.
11000.2.	Purchase of interest in undivided interest subdivision; right of rescission; duty of disclosure to prospective purchasers; conclusiveness of certificate	<i>Added</i> by Stats.1988, Ch. 434, Sec. 2.
11001.	Rules and regulations; enforcement; orders; permits	<i>Added</i> by Stats.1943, Ch. 127, p. 862, Sec. 1. <i>Amended</i> by Stats.1957, Ch. 1750, p. 3141, Sec. 2.
11003.	Planned development	<i>Added</i> by Stats.1985, Ch. 874, Sec. 2. <i>Amended</i> by Stats.2012, Ch. 181 (A.B.806), Sec. 4, operative Jan. 1, 2014.
11003.2.	Stock cooperative	<i>Added</i> by Stats.1985, Ch. 874, Sec. 4. <i>Amended</i> by Stats.2012, Ch. 181 (A.B.806), Sec. 5, operative Jan. 1, 2014
11003.4.	Limited equity housing cooperatives or workforce housing cooperative trusts; exemption from requirements; conditions; notice	<i>Added</i> by Stats.1979, Ch. 1068, p. 3765, Sec. 1.5. <i>Amended</i> by Stats.1982, Ch. 925, p. 3377, Sec. 1; Stats.1983, Ch. 142, Sec. 2; Stats.1984, Ch. 1087, Sec. 1; Stats.1988, Ch. 430, Sec. 1; Stats.2009, Ch. 520 (A.B.1246), Sec. 1.

Section	Text	Timeline
11004.	Community apartment project	<i>Added</i> by Stats.1985, Ch. 874, Sec. 7. <i>Amended</i> by Stats.2012, Ch. 181 (A.B.806), Sec. 6, operative Jan.1, 2014
11004.5.	Additional subdivisions and interests included in reference to “subdivided lands” and “subdivision”	<i>Added</i> by Stats.1965, Ch. 988, p. 2611, Sec. 3. <i>Amended</i> by Stats.1979, Ch. 1068, p. 3765, Sec. 1.7; Stats.1980, Ch. 601, p. 1654, Sec. 7; Stats.1980, Ch. 1105, p. 3553, Sec. 1; Stats.1980, Ch. 1336, p. 4684, Sec. 3; Stats.1982, Ch. 1185, p. 4227, Sec. 2; Stats.2004, Ch. 697 (A.B.2252), Sec. 5; Stats.2006, Ch. 538 (S.B.1852), Sec. 19.
11007	Nonresident subdivider; consent to service on Secretary of State; procedure	<i>Added</i> by Stats.1963, Ch. 927, Sec. 2.
11008	Construction of provisions not to preclude application of other criminal provisions for violations	<i>Added</i> by Stats.1985, Ch. 57, Sec. 2.

ARTICLE 2. Investigation, Regulation and Report [11010 - 11023]

Section	Text	Timeline
11010.	Notice of intention to sell or lease	Added by Stats.1943, Ch. 127, p. 862, Sec. 1. Amended by Stats.1943, Ch. 638, p. 2257, Sec. 1; Stats.1953, Ch. 731, p. 1996, Sec. 1; Stats.1963, Ch. 927, Sec. 3; Stats.1965, Ch. 805, p. 2401, Sec. 1; Stats.1967, Ch. 1136, p. 2806, Sec. 1; Stats.1969, Ch. 482, p. 1084, Sec. 19, operative Jan. 1, 1970; Stats.1972, Ch. 1312, p. 2613, Sec. 1; Stats.1975, Ch. 879, p. 1959, Sec. 1; Stats.1978, Ch. 521, p. 1679, Sec. 1; Stats.1980, Ch. 1105, p. 3554, Sec. 2; Stats.1980,
11010.4.	Certain proposed offerings of subdivided land; notice exception	Added by Stats.1980, Ch. 1336, p. 4686, Sec. 6. Amended by Stats.1998, Ch. 485 (A.B.2803), Sec. 23; Stats.1998, Ch. 11 (A.B.759), Sec. 3.
11010.5.	Necessity of filing second notice and report; conditions	Added by Stats.1961, Ch. 1175, p. 2914, Sec. 2. Amended by Stats.1992, Ch. 864 (A.B.2639), Sec. 1.
11010.6.	Lands offered or proposed to be offered for sale, lease, or financing by public agencies; applicability of chapter	Added by Stats.1980, Ch. 1336, p. 4686, Sec. 7. Amended by Stats.1982, Ch. 148, p. 490, Sec. 2, eff. April 5, 1982.
11010.7.	Nonbinding expression of intent to purchase or lease; notice exception	Added by Stats.1981, Ch. 519, p. 1879, Sec. 1
11010.8.	Notice of intention to sell or lease; exception; purchase of mobile home park by nonprofit corporation	Added by Stats.1986, Ch. 26, Sec. 1, eff. March 21, 1986. Amended by Stats.1988, Ch. 1625, Sec. 1; Stats.1989, Ch. 810, Sec. 1; Stats.1995, Ch. 256 (S.B.310), Sec. 1
11010.9.	Proposed conversion of subdivided mobile home park to resident ownership; disclosure notice of tentative price	Added by Stats.1995, Ch. 256 (S.B.310), Sec. 2.
11011.	Regulations prescribing lower fees; maximum filing fees; deposit of fees collected	Added by Stats.1943, Ch. 127, p. 862, Sec. 1. Amended by Stats.1961, Ch. 1035, p. 2718, Sec. 1; Stats.1965, Ch. 1191, p. 3011, Sec. 24, operative Jan. 2, 1966; Stats.1968, Ch. 329, p. 711, Sec. 4, eff. June 20, 1968; Stats.1970, Ch. 461, p. 914, Sec. 4; Stats.1980, Ch. 1336, p. 4686, Sec. 8; Stats.1981, Ch. 848, p. 3268, Sec. 11; Stats.1984, Ch. 345, Sec. 10; Stats.1992, Ch. 860 (A.B.2490), Sec. 1; Stats.1993, Ch. 416 (S.B.1002), Sec. 27; Stats.1996, Ch. 342 (A.B.2536), Sec. 17; Stats.1997, Ch. 232 (A.B.447), Sec. 20; Stats.2000, Ch. 279 (S.B.1395), Sec. 5.
11012.	Change in setup of offering; notice	Added by Stats.1943, Ch. 127, p. 862, Sec. 1. Amended by Stats.1961, Ch. 1175, p. 2914, Sec. 1; Stats.1969, Ch. 138, p. 295, Sec. 22, eff. Sept. 11, 1969.

Section	Text	Timeline
11013.	Blanket encumbrance defined	<i>Added</i> by Stats.1943, Ch. 127, p. 863, Sec. 1. <i>Amended</i> by Stats.1955, Ch. 1863, p. 3458, Sec. 1.5.
11013.1.	Sale or lease of lots in subdivision subject to blanket encumbrance; release clause	<i>Added</i> by Stats.1955, Ch. 1863, p. 3458, Sec. 2. <i>Amended</i> by Stats.1963, Ch. 805, Sec. 1; Stats.1980, Ch. 1335, p. 4680, Sec. 2.
11013.2.	Sale or lease of lots in subdivision subject to blanket encumbrance; conditions	<i>Added</i> by Stats.1955, Ch. 1863, p. 3458, Sec. 3. <i>Amended</i> by Stats.1980, Ch. 1335, p. 4680, Sec. 3.
11013.3.	Taxes and assessments not blanket encumbrance	<i>Added</i> by Stats.1955, Ch. 1863, p. 3459, Sec. 4.
11013.4	Sale or lease of lots in subdivision not subject to blanket encumbrance; conditions	<i>Added</i> by Stats.1955, Ch. 1863, p. 3459, Sec. 5. <i>Amended</i> by Stats.1963, Ch. 805, Sec. 2; Stats.1980, Ch. 1335, p. 4681, Sec. 4; Stats.1982, Ch. 517, p. 2318, Sec. 49.
11013.5.	Indication in Commissioner's report as to procedure selected by owner or subdivider	<i>Added</i> by Stats.1955, Ch. 1863, p. 3461, Sec. 6.
11014.	Investigations; information from federal agencies	<i>Added</i> by Stats.1943, Ch. 127, p. 863, Sec. 1. <i>Amended</i> by Stats.1955, Ch. 646, p. 1142, Sec. 1; Stats.1957, Ch. 1782, p. 3175, Sec. 1.
11018.	Investigation; public report; grounds for denial	<i>Added</i> by Stats.1943, Ch. 127, p. 863, Sec. 1. <i>Amended</i> by Stats.1963, Ch. 927, Sec. 4; Stats.1965, Ch. 178, p. 1144, Sec. 1; Stats.1967, Ch. 1136, p. 2807, Sec. 2; Stats.1971, Ch. 1686, p. 3622, Sec. 1.
11018.1.	Copy of public report; distribution; common interest development general information statement	<i>Added</i> by Stats.1959, Ch. 305, p. 2214, Sec. 1. <i>Amended</i> by Stats.1965, Ch. 805, p. 2401, Sec. 2; Stats.1979, Ch. 631, p. 1954, Sec. 1, operative July 1, 1980; Stats.1985, Ch. 874, Sec. 7.5; Stats.1990, Ch.144 (S.B.2022), Sec. 1; Stats.2000, Ch. 522 (A.B.935), Sec. 2; Stats.2004, Ch. 697 (A.B.2252), Sec. 7; Stats.2012, Ch. 181 (A.B.806), Sec. 9, operative Jan. 1, 2014.
11018.12	Conditional public report; issuance; sale or lease of lots or parcels; purchase money deposits; written statements; terms	<i>Added</i> by Stats.1992, Ch. 860 (A.B.2490), Sec. 2. <i>Amended</i> by Stats.1994, Ch. 1108 (A.B.3358), Sec. 10; Stats.1998, Ch. 485 (A.B.2803), Sec. 25; Stats.1998, Ch. 11 (A.B.759), Sec. 5; Stats.1999, Ch. 83 (S.B.966), Sec. 10; Stats.2003, Ch. 434 (A.B.728), Sec. 2.
11018.13	Abandonment of application for subdivision public report; regulations	<i>Added</i> by Stats.1992, Ch. 881 (A.B.3565), Sec. 3.
11018.14	Environmental Quality Act; Commissioner deemed not responsible agency; evidence of compliance	Formerly Sec. 11018.11, added by Stats.1980, Ch. 1335, p. 4683, Sec. 7. Renumbered Sec. 11018.14 and amended by Stats.1997, Ch. 17 (S.B.947), Sec. 10.

Section	Text	Timeline
11018.2.	Sale or lease without public report; applicability of section	<i>Added</i> by Stats.1963, Ch. 927, Sec. 5. <i>Amended</i> by Stats.1969, Ch. 373, p. 909, Sec. 1; Stats.1974, Ch. 606, p. 1450, Sec. 1; Stats.1980, Ch. 1105, p. 3555, Sec. 5; Stats.1980, Ch. 1152, p. 3795, Sec. 4; Stats.1980, Ch. 1336, p. 4687, Sec. 12.
11018.3.	Denial of public report; request for hearing; time for hearing	<i>Added</i> by Stats.1963, Ch. 927, Sec. 6. <i>Amended</i> by Stats.1965, Ch. 178, p. 1145, Sec. 2; Stats.1969, Ch. 763, p. 1527, Sec. 4, operative Jan. 2, 1970; Stats.1998, Ch. 485 (A.B.2803), Sec. 24; Stats.1998, Ch. 11 (A.B.759), Sec. 4.
11018.5.	Issuance of public report with respect to subdivisions and interests described in section 11004.5	<i>Added</i> by Stats.1965, Ch. 988, p. 2612, Sec. 5. <i>Amended</i> by Stats.1980, Ch. 1133, p. 3651, Sec. 1; Stats.1982, Ch. 1608, p. 6430, Sec. 1; Stats.2004, Ch. 697 (A.B.2252), Sec. 8.
11018.6.	Sale or lease of any lot or parcel in subdivision; copies of specified documents for prospective purchasers or lessees; availability	<i>Added</i> by Stats.1985, Ch. 1596, Sec. 1. <i>Amended</i> by Stats.1990, Ch. 144 (S.B.2022), Sec. 2; Stats.2012, Ch. 181 (A.B.806), Sec. 11, operative Jan. 1, 2014.
11018.7.	Amendments and modifications; consent of Commissioner	<i>Added</i> by Stats.1973, Ch. 780, p. 1394, Sec. 1. <i>Amended</i> by Stats.1996, Ch. 587 (A.B.2711), Sec. 14.
11019.	Order prohibiting violations of sales or leases	<i>Added</i> by Stats.1973, Ch. 202, p. 519, Sec. 3. <i>Amended</i> by Stats.1985, Ch. 128, Sec. 1.
11020.	Forged, altered, false, or counterfeit public reports; penalty	<i>Added</i> by Stats.1989, Ch. 296, Sec. 1. <i>Amended</i> by Stats.2011, Ch. 15 (A.B.109), Sec. 21, eff. April 4, 2011, operative Oct. 1, 2011.
11021.	Accrual of cause of action; calculation of limitation	<i>Added</i> by Stats.1949, Ch. 817, p. 1559, Sec. 1. <i>Amended</i> by Stats.1955, Ch. 1739, p. 3199, Sec. 3
11022.	False or misleading advertising; exceptions	<i>Added</i> by Stats.1963, Ch. 927, Sec. 9. <i>Amended</i> by Stats.1994, Ch. 1108 (A.B.3358), Sec. 11.
11023.	Violations; punishment	<i>Added</i> by Stats.1963, Ch. 927, Sec. 10. <i>Amended</i> by Stats.1965, Ch. 988, p. 2614, Sec. 7; Stats.1976, Ch. 1139, p. 5064, Sec. 6, operative July 1, 1977; Stats.1983, Ch. 1092, Sec. 44, eff. Sept. 27, 1983, operative Jan. 1, 1984; Stats.1986, Ch. 26, Sec. 2, eff. March 21, 1986; Stats.1996, Ch. 541 (A.B.2530), Sec. 15; Stats. 2011, Ch. 15 (A.B.109), Sec. 22, eff. April 4, 2011, operative Oct. 1, 2011.

ARTICLE 2.5. Land Projects [-] (added by Stats. 1971, Ch. 1399.)

ARTICLE 3. Sales Contracts [11200. - 11200.]

Section	Text	Timeline
11200	Required contents	Added by Stats. 1960, 1st Ex.Sess., c. 79, p. 436, Sec. 1, operative May 15, 1960.

LIST OF ACRONYMS

BPC Business and Professions Code
DRE Department of Real Estate
CC&Rs Covenants, Conditions and Restrictions
CID..... Common Interest Development
DSA Davis-Stirling
Act HOA Homeowners
Association SLA
Subdivided Lands Act

SOURCES

California Air Resources Board. (2013). *Climate Change Programs*. Retrieved 2013, from California Air Resources Board: <http://www.arb.ca.gov/cc/cc.htm>

California Association of Community Managers. (2012). *California CID Stats and Figures*. Retrieved 2013, from CACM.org: <http://www.cacm.org/files/IndustryData2012.pdf>

California Association of Realtors®. (2006). *California's Construction Defect Law*. Retrieved 2013, from www.northsandiegohomes.us: <http://www.northsandiegohomes.us/PageManager/Default.aspx/PageID=1917842&NF=1>

California Department of Real Estate. (2010). *Reference Book*. Sacramento: State of California, Department of Real Estate.

California Department of Real Estate. (2011). *Subdivision Public Report Application Guide*. Sacramento: California Department of Real Estate.

California Law, <http://www.leginfo.ca.gov/calaw.html>

California Law Revision Commission, Memorandum 2011-29, "Common Interest Development Law: Commercial and Industrial Subdivisions"; July 13, 2011.

California Legislative Information, <http://leginfo.legislature.ca.gov/faces/codesTextSearch.xhtml>, California Primary Law, Sacramento County Public Law Library

California Statutes, <http://www.leginfo.ca.gov/statute.html>

Community Associations Institute. (2012). *Neighbors: The Nature and Benefits of Community Associations*. Retrieved 2013, from CAI Online: <http://www.caionline.org/info/readingroom/Publication%20Excerpt%20Library/NeighborsBrochure.pdf>

Curtin, D. J. and Merritt, R. E., *California Subdivision Map Act and the Development Process*, Second Edition; Continuing Education of the Bar - California, 2012.

Deering's *Business and Professions Code of the State of California*, Sections 9891 - 12000, Annotated, LexisNexis, 2012.

Institute For Local Government. (2010). *The Basics of SB 375*. Retrieved 2013, from Institute for Local Government: <http://www.ca-ilg.org/post/basics-sb-375>

Johnston, J. L.D. (2002). *Common Interest Developments: Housing at Risk?* Sacramento: California Research Bureau.

Levy, Erlanger & Company, CPAs. (2012). *2012 California Community Association Statistics*. San Francisco: Levy, Erlanger & Company, CPAs.

Public Policy Institute of California. (2011). *California Housing*. Retrieved 2013, from PPIC.org: http://www.ppic.org/content/pubs/report/R_611JK2R.pdf

West's *Annotated California Codes – Business & Professions 11000 - 15999*, Thomson West, March 2008.

Westlaw Next, Thomson Reuters.



www.dre.ca.gov