

## BRE News

With measurable rain in California it may be surprising to some to learn that the BRE is continuing to pursue water letters affirming "ample, potable" water availability on subdivisions where vacant lots are being offered for sale. Filings where homes are offered may be exempt from obtaining a water letter in many cases, but it appears that the BRE does not exempt the requirement when even one vacant lot might be offered for sale.

Before making an application for both vacant and improved lot sales, we encourage our clients to investigate the willingness of the water purveyor to write an unconditional water letter.



AND IF YOU LOOK TO YOUR LEFT BETWEEN THE CONDOS AND THE ABD STORE, YOU CAN SEE THE OCEAN.

## Industry news

AB 1448, "The Clothesline Bill" became law in November, 2015. The bill allows HOA's to adopt 'reasonable' restrictions against clothes drying on balconies, railings, awnings, or other parts of a structure. The courts may ultimately have to test what "reasonable" means, since the law does not give clear guidelines.

The intention of this Newsletter is to convey current-time news articles to our clients. Information and topics for articles are gathered through actual dealings with subdivision filings throughout the State. It is our hope that the information contained in the Newsletter is truly pertinent to your business. For additional information on any published article, we invite you to contact us.

## Selling Exempt Subdivisions

Everyone knows that subdivisions located in the city limits, with no homeowners associations or common areas, where the developer is selling only completed homes, are exempt from the public report process. The important thing to note, is that they are NOT entirely exempt from Bureau of Real Estate (BRE) jurisdiction.

What exactly does the BRE have jurisdiction over in this type of development?

**Purchase Money Handling.** Any subdivision in the state must comply with the law in protecting the buyer's purchase money. This protection includes depositing the funds into a neutral escrow depository.

The only legal way to avoid depositing 100% of buyer's purchase money into escrow is through the filing of a bond for this purpose, with the BRE directly. As we have indicated in previous articles, this is a good approach for use in handling funds for options and upgrades.

**Advertising Guidelines.** Care must be taken that any element of a promotion or advertising

campaign avoid any statement or pictorial representation that may be false or misleading.

For example, if a picture of the ocean or waterway is used, the advertisement should include a true statement that advises the correct distance to the ocean or waterway. Pictorial representations include project advertising logos; it is recommended to validate representations through disclosure statements included in the advertisement, which inform prospective buyers of proper distances or conditions.

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**Sales promotions promising delivery of a gift** or inducement of any type must be filed with the BRE and financially secured. *Examples of commonly seen inducements include delivery of appliances (upgraded kitchen appliances, or washer/dryer), or big-screen TVs, or gas cards to prospective buyers.*

**The procedure for developers wishing to offer promotional gifts to potential buyers is easy to comply with.** Call our office today and we will be happy to guide you through it.

## Considerations for Mixed-Use Projects

Recent court cases have brought the structure of mixed-use projects to the forefront for BRE management. Historically there have been cases where, if the commercial property owner is a significant or influential entity, the commercial property is afforded the means to control the HOA.

It is not uncommon for a commercial property to be burdened with a higher ratio of financial responsibility to the HOA, since such entities would typically have more traffic, more wear and tear on the amenities, and quite frankly, more at risk financially. The BRE has accepted a structure where the commercial owner or owners can control the HOA vote.

As a result of the recent court cases, the BRE has taken the stance that the commercial entity cannot control the HOA over the residential lot/unit owners. The feeling is that, if the commercial entity is allowed to control the residential owners, then the BRE will have fallen short of meeting their obligation to protect the residential consumers.

In 2016 and beyond, certain controls will be in place to protect these consumers, including but not limited to the following structural components:

1. All owners must be members of the HOA
2. Voting allocations and ratios must be justified
3. Additional power in the HOA should equate to additional financial burden in assessment allocations
4. Reciprocal Use or Maintenance Agreements may or may not be accepted in these cases. To be acceptable to BRE today, the Agreement must create a voting structure within the HOA, giving the (residential) HOA recourse to the commercial owner if the commercial entity is not otherwise a Member.