



## BRE Filing Activity

- New filing activity at BRE Statewide through October is up 26% over last fiscal year. Applications for new Final Public Reports are up 32%.
- The increase in filings has strained the BRE's ability to respond to new filings timely. Application submittals should be planned anticipating that the BRE's full review timeframe will be used.
- Requests for hardship are currently being met with full timeframe review.
- While it seems that the economy is indeed recovering, developers are still somewhat reluctant to create large phases, as evidenced by file sizes at the State.
- Filing sizes in Southern California average 9.5 lots/units per file; NorCal filings average 14.



MAYBE IT WOULD BE EASIER IF I JUST PUT A STAKE WHERE IT IS SAFE TO DIG!

## Money paid for Options & Upgrades are Subject to Impound Laws Even when the Subdivision is Exempt from a Public Report



Having options and upgrades available to prospective purchasers is typical in California subdivisions. Often, the specially-installed items may cost thousands of dollars and once installed, cannot be removed without the subdivider incurring additional fees and expenses.

When a buyer orders options and upgrades, then fails to complete the purchase, sometimes the property cannot be sold to another buyer for an amount sufficient to cover the subdivider's additional costs.

It is understandable why a subdivider would be inclined to secure the optional extras by additional buyer deposits.... But sometimes, the deposits are made to another account, other than the escrow depository. Use of alternative option deposit accounts is a violation of the Subdivided Lands Law, which requires Subdividers to deposit all funds into a neutral escrow depository account. Money paid by buyers for options and upgrades are considered purchase money. As such, cannot be used by the Subdivider until clear title has been delivered to the Buyer, and escrow has closed.

Since all deposits must be impounded with escrow, Subdividers must install the options and upgrades using their own funds. If there is a default by the purchaser, then the Subdivider can make a claim against the deposit under the liquidated damages provisions of the purchase agreement. Procedures for making a claim against purchase money must be in accordance with Regulation 2791 of the Real Estate Commissioner's Regulations.

The alternative to using the Subdivider's own funds to install the options and upgrades is to file a "Purchase Money" bond (or other approved security) with the Bureau of Real Estate (BRE) as allowed by B&P Section 11013. The amount of the security should be sufficient to cover all monies that the Subdivider would collect from the purchaser outside of the neutral escrow account.

**Money paid by buyers for options and upgrades are considered purchase money .... and subject to liquidated damages.**

## BRE Approval of Purchase Agreements Required for Subdivisions

For our clients who use C.A.R. forms.....

Our office has been working with the California Association of Realtors (C.A.R.) and with the Bureau of Real Estate (BRE) management regarding the updated purchase agreements that will meet BRE approval. During our numerous discussions, it was mentioned that although CAR released all new contracts for November 2014, they are in discussion with BRE Management and making revisions again, with hopes to have another new contract that will be awarded with the 'approval for statewide use' certification. These revised contracts are anticipated to be released by March of this year.