



"CAN YOU DESCRIBE IT?"

CBIA's President & CEO, Dave Cogdil had the opportunity to write an article featured in the July,

2015 League of City's Western City Magazine, "Heeding the Call for Water Conservation." The highlights of the article. *"the Governor and the Legislature have rightly acknowledged that drought relief and conservation efforts must also be balanced with the need to protect the State's recovering economy. Taking into account the full range of economic impacts, the new housing construction contributes more than \$38.6 billion per year to the State's economy, and annually supports more than 209,000 jobs."* For a complete copy of the article, we invite you to contact our office.

## BRE News

- After 8 years, the BRE has made the decision to update the Operating Cost Manual for Associations. The revisions have been circulated to industry for review, and is anticipated to be published in September, 2015. As with most everything else, the costs are increasing... It goes without saying that HOA dues will be higher under the new standards. The only way to go below the new minimum costs will be to obtain written commitments to provide services at costs below recommended levels.
- Overtime work and pay was approved this month, in another effort to get caught up on the backlog of subdivision reviews.
- Water will-serve letters continue to be a point of concern in BRE filings. Files already in process may be checked by BRE for affirmative can and will-serve letters.

## Amending CCR's... and other documents

From time to time, and often after a new Subdivider takes control of a subdivision, it becomes necessary to amend or modify the CC&Rs or other governing documents, after sales have commenced. In these situations, it is important to know that the changes may fall under the jurisdiction of the California Bureau of Real Estate (BRE).

Section 11018.7 of the California Business & Professions Code states that a Subdivider—or a Successor Subdivider— **who controls 25% or more the votes in the subdivision**, cannot propose an amendment or modification of the CC&Rs, Bylaws, Articles of Incorporation, or other controlling document that would "materially change" any owner's right to ownership, possession or use of his or her subdivision interest, without pre-approval from the BRE. To do so would not only be a violation of this law, but it would make the amendment invalid.

A special process is provided for approval of a Subdivider's proposal to amend documents, wherein the BRE will review the proposed amendment, and the reason for the change. The application filing fee is \$20, and must be accompanied by the proposed amended document, the proposed form of Notice to be used to notify the owners of the proposed change, the proposed voting ballot, and a narrative explaining the reasons for the amendment and the anticipated effects of the change.

Once the BRE has reviewed and approved the proposed change, the Subdivider can then proceed with the Notification and Amendment procedures outlined in the governing documents.

*No official meeting of owners nor any written solicitation of owners for the purpose of effectuating a change shall be made without the Commissioner's prior approval to do so.*

## Preserving the Right to Sell

There are many rental projects in the State that were actually created as Condominiums. The Subdivider (or Successor Subdivider), for a variety of different reasons, has elected not to pursue the right to sell the Units. There are Pros and Cons to this decision not to maintain a right to sell.

The PROs of waiting are the obvious: no BRE filing fees, no legal documents, no HOA budgets, etc. You simply continue to operate the rental complex as you have been. You also have no fiduciary responsibilities to comply with the legal requirements involved with a homeowners association.

The CON side could be outlined like this:

- The process is lengthy and somewhat cumbersome, but once the white report is issued, you have 5 years in which you can sell one or more of the units individually. Having the public report in hand gives you the ultimate flexibility of being able to sell the units.
- Without a public report in hand, the only option if you elect to sell is to sell the entire development "in bulk" to an investor.

Two legal cases have established the merit of maintaining a Public Report to preserve your right to sell (beyond the BRE approval) that an owner of a condominium project might consider, which are outlined below.

*City of West Hollywood v. Beverly Towers, Inc. (1991) 52 C. 3d 1184.* In this case, the developer had obtained an approved and recorded final subdivision map for the development and a Public Report from the Bureau of Real Estate. It had not sold any units when the City decided to impose further conditions on the project. The California Supreme Court said that once the developer has an approved map and an **active Public Report**, the City was no longer in a position to impose further conditions on the project.

*City of West Hollywood v. 1112 Investment Co. (2003) 105 Cal App 4th 1134.* In this case, the developer had an approved map, but while he had obtained a Public Report previously, it had expired. No units had been sold, and the City decided to impose rent control on the project. In this case, the appellate court in Los Angeles held in favor of the City because the developer did not have an active Public Report.