



A couple of recent court cases **impact** our industry.

**CBIA vs City of San Jose** The California Building Industry Association challenged the City's right to enforce an affordable housing ordinance, alleging that the ordinance was unconstitutional, calling it a "taking" of property. The California Supreme court decided that cities and counties may require developers to provide below market rate housing as a condition of a building permit. The CBIA is considering whether to appeal the case to the U.S. Supreme Court.

**Watts vs Oak Shores Community Association.** The courts ruled that the HOA management documents gave the association the right to impose fees for violations of HOA rules as well as the pro-ration of increased costs associated with a specific unit or its tenants (i.e.: water use, trash, parking, etc). Typically the governing documents allow the HOA Board the latitude to impose these allocations.

## BRE News

- Two retirements have emerged in Los Angeles from the list of employees out on long term leave, adding a finality of sort to the staffing issues facing the BRE today.
- New filings continue to increase, which is a positive for our industry, but an obvious negative for the under-staffed Bureau of Real Estate. Over 300 new files were received statewide in May, 2015. Applicants are well advised to allow ample time for the approval process, due to the impacted staffing levels.
- Applicants are urged to file early to allow for the delays at BRE.

## "Sample" Documents

Included in the stack of documents that are submitted to the Bureau of Real Estate (BRE) application package are "sample" documents. Samples of the actual documents that will be used to convey title to the individual lots or units. Unfortunately, the samples are often overlooked by sales and escrow staff members when the sales are actually made. Such an oversight can result in non-compliance with critical conditions to close, and completion of common areas and conveyances of common area to a homeowners association. Failing to adhere to the sample documents during sale outs puts all parties involved in the sale out transactions at risk: the Subdivider, the licensed sales personnel and even the escrow agent.

If you are selling in a subdivision (or handling the escrows for the sales), you are well advised to review the "master" documents that were approved by the BRE. Some examples of often over-looked items follow.

- **Sample Grant Deed** (including acceptance of CC&R's and any special restrictions on specific lots)
- **Sample Escrow Instructions**, which contain requirements that are specific to the subdivision
- **Irrevocable Escrow Instructions and HOA Grant Deed**, which set forth the conditions for conveyance of the common area to the Association, and the requirement for a title insurance policy to be issued in favor of the Association.

Updates due to changes in contract laws or form availability should be reported to the BRE. If you are unclear what documents in your sale transactions were approved by BRE, we welcome you to contact our office for guidance, regardless of whether we handled your Public Report filing originally.

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## Cost Center vs. Sub-Association

The term "Cost Center" refers to common facilities, amenities or services that are provided to some, but not all, of the owners of lots or units in common interest developments, and which are paid for through regular assessments on the benefitted units. In a situation like this, even if participation is optional, it is unfair to assess all of the owners in the development for a facility or service that only benefits a select few owners.

When a Cost Center is created, the costs are budgeted through a separate, additional Budget, called the "Cost Center Budget," which addresses the fees and costs associated with the cost center. The regular budget, that encompasses all of the lots or units in the development then becomes known as the "Base Budget."

The Cost Center Budget is approved along with the Base Budget, during the BRE review and approval process. The project CC&R's should contain provisions for the separate cost center structure, which are reviewed in conjunction with the budget review at the BRE.

Assessment guarantees made during the Public Report approval process must include both the cost

center and base budget assessment amounts.

Whether special-benefit facilities or services should be managed through a cost center or a Sub-Association is typically determined by the relationship of the cost center and "base" elements of the overall association budget.

A Sub-Association should be created whenever

- 1) the special benefit areas or services include maintenance of the exterior and roof of residential structures on the majority of lots or units, but not all; and/or
- 2) The special facilities or services creates a burden on the association that is disproportionately high when compared to the benefits to the overall group of members, such that operation and governance is burdened.

Of course, if it can be demonstrated that the cost center is less burdensome to a community overall than a Sub-Association would be, then the BRE will typically allow the cost center. These situations are often considered a "reverse cost center," wherein the base budget is applied to the fewer lots, and the cost center to the larger group.