

"Ok, I'm in a paperwork mood. Let 'er rip."

El Nino? Despite the hoopla over El Nino's arrival in California this year, obtaining water will-serve letters continues to be a challenge for BRE filings. Water providers are simply not willing to state on the record that "ample, potable water" is available to serve all lots in a given subdivision. Letters issued during the mapping process are not typically accepted by the Bureau of Real Estate; the letter issued for Public Reports must very specifically state that "ample, potable water is available on demand." The letters are *deemed expired* if they are a year old, and a new letter must be obtained.

Transparency is a popular word in politics, and also in HOA management. Developers of new common interest subdivisions should keep a wary eye on transparency when it comes to the structure of the HOA and its daily operations. The need for transparency is heightened *when the subdivider owns or controls 25% or more of the votes in any common*

BRE News

The BRE announced this month that they will be doing a deeper level of investigation into proposed HOA Budgets. Along with subdivision maps, items to include in submittal packages now includes "detailed landscape plans," and site plans showing the location of all planned improvements. This can create a difficult situation when the filing is made early in the mapping process. Plan to submit a detailed set of improvement plans to avoid delays in the approval process.

Recording Documents

During the life of a real estate transaction, there comes a time when documents need to be recorded. Requirements for recording documents vary from County to County, but the common rule is that signatures must be notarized; any blanks in the document must be filled in, and any illustrative Exhibits must be legible. In the case of a subdivision development, the recording process typically includes a Subdivision Map, an Improvement Agreement, and CC&Rs, to mention the most common. Other documents might include Maintenance Agreements and documents creating easements, or agreements required by the local agency as a requirement of the subdivision approval.

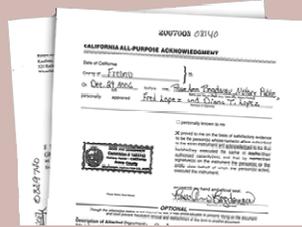
In a Bureau of Real Estate (BRE) filing, recording of documents normally occurs late in the process, after the BRE has granted approval of the proposed documents. Often at this stage in the game, time is a sensitive issue, so it behooves everyone involved to insure that the documents are as complete as possible and coordinated with Title and Escrow to avoid delays at the Recorder's Office. Once recorded, the terms and provisions of documents become a matter of public record, which are reflected in the preliminary title report associated with a Bureau of Real Estate (BRE) filing and included in the BRE submittal packages.

To avoid delays in the process, communication of anticipated documents and city/county requirements is important for development team members to be aware of.

Once the team is aware of the requirements and conditions, documents identified can be allowed for and integrated into the BRE filing with no last minute surprises. For example, a maintenance requirement for a neighboring storm drain structure that pops up in the final recorded documents could create a 30-day delay if not properly identified for the BRE.

Similarly, such a document might have a financial impact on the HOA budget, if the project is a common interest development.

Certain types of recorded documents can create more than a delay in the BRE process. Documents like *Notice of Default under a Deed of Trust*, or a *Lis Pendens* (notice of pending litigation) will be grounds for denial by the BRE – no public report will be issued in the case of one of these documents having been recorded, because they are evidence that the Subdivider no longer has the ability to convey "clear title" to lot/unit purchasers. Similarly, a *Notice of Water Restriction* may also thwart issuance of the public report, due to lack of "ample, potable water," which is a basic requirement of the BRE.



Annexing into an existing HOA

There are still plenty of subdivisions in the marketplace today that were initially created before the "Great Recession." It is not uncommon to see an HOA that was created several years ago, on property that has an easily shared access point for an extended development opportunity. When a situation like this exists, it is necessary to gain approval of the (existing) HOA to approve an annexation of the additional property, making the new development an extension of the existing one. Assuming the existing HOA agrees, it may become necessary to Amend the CCRs that govern the HOA. When this route is chosen, one must be careful to evaluate the amend-ability of the existing CCRs, and what the obstacles to this path might include.

Another option might be to add a Supplemental Declaration of Restrictions (CCR), depending upon the provisions of the existing documents. During due-diligence, investigating the 'automatic right to annex' is a key item to confirm. Lacking that ability, there are several key steps involved in gaining the right to annex into an existing development.

The caveat to the above is that if the subdivider owns or controls 25% or more of the vote in the existing HOA, the entire process must be pre-approved by the Bureau of Real

Estate (B&P 11018.7) *before* an initial approach can be made to the HOA.

The steps involved in evaluating a go-forward plan might look like this:

- 1) Preliminary meeting with the HOA to discern their level of interest in having more lots or units in the development; it makes sense to run a quick budget to offer them relative information regarding the impact of the annexation
- 2) Propose an Amendment to the existing CC&Rs that will extend the CC&Rs to the new property (Depending on the Amendment provisions in the existing document, the vote required is 2/3 majority and may include lenders)
- 3) Process the HOA vote for the Amendment
- 4) Once the ballots are in and the measure has passed, the Amendment document can be executed and recorded, and the annexation can be processed.

Assuming the Bureau of Real Estate was involved initially, the amendment filing to annex the additional property into the HOA should go smoothly.

If the Subdivider owns or controls 25% or more of the votes in the existing HOA, the BRE must approve the Subdivider's offering before any vote can be taken.