



## Handling Funds for Options & Upgrades

In a previous Newswire, we reported that money paid for Options and Upgrades are considered “Purchase Money” and are therefore subject to impound laws—in other words, 100% of the funds to pay for options and upgrades must be impounded with a neutral escrow depository.

Understandably, most Subdividers attempt to defray some of the up-front costs of these options and upgrades, so they routinely ask their Buyers to increase the purchase deposit to cover some of the additional costs. This is completely acceptable..... as long as the deposited funds are held by Escrow until the escrow for the sale of the residence has closed.

The deposited funds become a problem any time that funds are released to the Subdivider prior to the close of the escrow. There should not be any ‘early release of funds’ to the Subdivider in the case of a subdivision sale. It is important to note that the requirement to impound purchase money with Escrow applies to ANY subdivision interest—regardless of whether the project falls under the jurisdiction of the Bureau of Real Estate, and whether or not a Final Public Report has been issued.

It is also important to point out that, if a home buyer contracts separately with a contractor or supplier who is *in no way associated with the Subdivider*, then the amounts paid are **NOT** considered purchase money and are exempt from the impound requirements. The vast majority of options and upgrades packages are offered by or through the



Subdivider, so typically all upgrades are considered purchase money.

*Purchase Money Handling requirements apply to ANY subdivision lot/home sale—regardless of whether the project falls under the jurisdiction of the Bureau of Real Estate, and whether or not a Final Public Report has been issued.*

More and more Subdividers are finding it easiest to obtain a “Purchase Money Bond” to cover these deposits. With a bond in place, the Subdivider can legally request that funds be released prior to the close of escrow.

Purchase Money Bonds are kept on file with the Bureau of Real Estate, and can be modified to add or release projects as market conditions and inventory changes. Bonds can be filed for single projects, or a group of projects. The amount of the bond is calculated based on the amount of buyer deposits that the Subdivider anticipates holding. As new applications are filed with the Bureau of Real Estate, a copy of the bond on file must be included in the submittal package.

In the event of a Buyer default or cancellation, the funds, (whether held by escrow or released under the authority of a purchase money bond), are considered ‘purchase money’ and therefore subject to liquidated damages. The Subdivider may still be liable to the buyer for the purchase monies expended if the court or arbitrator determines that the Subdivider is not entitled to the liquidated damages being claimed.

Statewide, the common feedback is that obtaining the purchase money bond is the easiest and most practical option for addressing buyer deposits.

## BUDGET SEASON

Fall is the season when most businesses start the evaluation process of next year’s budget. Costs are evaluated based on this year’s expenses, and weighed against costs and needs for the upcoming year. It is the same with Homeowners Associations. Each fall, a good HOA manager compiles an evaluation of this year’s budget and prepares a proposed budget for the upcoming year, that includes anticipated expenses for renovations and repairs that are needed or scheduled.

The budget that is proposed for adoption by the HOA must include a “Reserve Funding Disclosure Statement,” which details the amount of reserve dollars needed to meet the long term reserves goal of the HOA. Typically, this Disclosure Statement is included in a Reserve Study, which includes an evaluation of life expectancy and long term repairs of the various common area components. While a Reserve Study is required to be performed every three (3) years, the requirement for a current Reserve Funding Disclosure Statement is annual. Thus, the “Reserve Study Update”.

A Reserve Study Update essentially takes the recommendations and funding status as of the date of the on-site inspection, and factors in the repairs and renovation (if any) that have been done subsequent to the inspection, as well

as the funds that have been deposited into the Reserve bank account, and provides the required updated Funding Disclosure Statement. Using last year’s Disclosure Statement is inappropriate; it is misleading to the individual owners in the community, since it does not accurately portray the actual account balances and expenses that have occurred during the current year. Updates are typically available from Reserve Study preparers at a fraction of the cost of the site inspection.

The annual Update provides the HOA with the information it needs to successfully plan for upcoming repairs as well as long term replacements. Lacking an annual Update, the HOA is operating on the premise that “nothing has changed,” when in fact, a lot changes from year to year! In our drought-stricken State, plenty of HOA’s are evaluating landscape replacement, and the schedule for repainting common area buildings and amenities seems to have shortened in the dry weather for many Associations. The vast majority of our Reserve Study clients take advantage of reduced cost packages for a 3-year Reserve Study program, which includes an initial on-site inspection and two annual updates to evaluate their budgeting and funding progress. It makes sense to do so, since the Funding Disclosure Statement is an annual requirement. We welcome you to call our office today to discuss options for your HOA.

### HOA: Professionally or “Self” Managed?

Our developer clients are always looking for a few good ways to reduce the initial HOA dues, and sometimes the question of whether to hire a professional manager comes up. Our firm recommends going with the Pros at least for the fiscal billing and collection activities.

There are a number of obligations assumed by the HOA Board, which the average layperson is not aware of. The work of being self-managed is extremely labor intensive! Obligations such as the requirement for regular “common area inspections,” the Reserve Study every three years, or the basic issues of dealing directly with errant neighbors who refuse to participate or acknowledge the HOA issues. Often, a professional manager can approach those homeowners who would otherwise not talk with their neighbor.

A professional HOA manager will also keep the Board updated on issues like changes in the law, or on methods that must be undertaken to address violations of the CCRs.

A rule of thumb for evaluating when to go Pro versus when to have minimal support services, is when the HOA is only a few lots, or is only responsible for minor easement areas, and there are no buildings or “common areas” to maintain. If there are more than 25 lots, or if there are buildings or amenities involved—Go Pro! The savings between using a layperson or a professional manager won’t even come close to the headaches suffered along the way.

### BRE News

Just when it looked like the staffing woes were over, BRE lost two Special Investigators in Sacramento: one permanently and the other out on medical leave. One Special Investigator left State service and one Clerical employee retired in L.A. BRE advises they are ready to fill the vacated positions, but the medical leave will create some back-log in Sacramento. The number of new filings remains high compared to previous years, and it is important to note that new Preliminary Public Report (Pink Report) filings are consistently 12-15% of the overall submittals, which means there are still a large number of new developments being created.