I. Jurisdiction

(1) Undivided interests, coupled with occupancy rights to particular units expressed in marketing materials, a written agreement in any form, or both, in a parcel or parcels of real estate collectively containing five or more legal units, of which at least one unit is legally classified as a residential dwelling, is an undivided interest subdivision under Sections 11000 and 11000.1 of the Business & Professions Code.

(2) The initial marketing or sale of one or more of such interests requires a public report. The resale of such interests shall not require a public report provided that all of the following requirements are satisfied:

a) The seller owns an undivided interest in a tenancy in common consisting of 5 or more tenancy in common interests;
b) The seller, and all of the other owners of the parcel, are parties to an unrecorded tenancy in common agreement which assigns exclusive rights to occupy particular units to particular owners;
c) The parcel has been owned and occupied by a group of tenants in common, and the unrecorded agreement has been in effect, for more than eighteen (18) months;
d) The Seller has owned his/her undivided interest in the parcel for at least eighteen (18) months, and did not purchase that interest with the primary purpose of reselling it;
e) The Seller has never owned the entire parcel, and has never had any familial, personal or business relationship with anyone who has owned the entire parcel; and
f) The Seller was not involved in any manner in the initial creation or sale of the undivided interests except that he/she was a purchaser;
g) No public report under the Subdivided Lands Act (Bus. & Prof. §§11000, et seq.) [the “Act”] has ever been applied for, or issued, for the subject parcel;

h) The seller has not acquired five or more undivided interests in the parcel from the "subdivider" as that term is defined in the Act or related case law and the seller is not a "colleague" (defined as a person having any familial, personal or business relationship) of the "subdivider".

(3) The exemption provisions of Sec 11000.1(b)(2) of the Business & Professions Code do not typically apply because a TIC purchase is not intended for (1) investors who are seeking property as undivided interest owners or (2) to allow the seller to generally market property to the public for investment purposes or otherwise. Further, it is unlikely that the undivided interests have been purchased by persons related by blood or marriage [11000.1(b) (1)], expressly qualified by the issuance of a permit from the Commissioner of Corporations [11000.1(b) (5)], created as the result of a foreclosure sale [11000.1(b) (3)] or created by a valid order or decree of a court [11000.1(b) (4)].

(4) TIC guidelines set forth herein are acceptable for projects of less than 16 units. Larger projects may be subject to more stringent guidelines.

II. Processing Requirements

(1) Public report application for TIC's: RE 624 and common interest filing fee. (While not categorized as a common interest development per the Common Interest Development Act (Civil Code §1351), TIC's are processed in a manner so similar that the RE624 and filing fee are justified.)

(2) Information and documentation listed in Regulation 2792.1 required.

(3) Regulations 2792.13 and 2792.14 may be applicable if TIC will be subject to blanket encumbrance after close of sales of TIC interests.

(4) Right of rescission pursuant to Sec 11000.2 of Bus. & Prof Code must be included in all purchase agreements.

(5) Proposed schedule of undivided interests in the subdivision sufficient to identify the undivided interests to be sold.

(6) A diagram of the of the parcel, prepared by an engineer or land surveyor, that includes boundaries and dimensions of the building and other common areas and

individual dwelling spaces sufficient to show how possessory rights will be allocated to purchasers.

(7) RE 639 must be completed. (not required for new construction)

(8) Plot plan delineating all improvements and recreational facilities.

(9) Duplicate budget package as explained in RE 624 instructions including most recent balance sheet and income statements if applicable.

(10) A Reserve Study shall be prepared and submitted for all properties 3 years or older.

(11) Bond or other security to secure subdivider's obligation to pay assessments pursuant to Regulation 2792.9.

(12) Compliance with Regulations 2790.8 and 2790.9.

(13) Evidence showing the property can be used for the intended purpose, as required by Section 11018(f). For residential offerings this shall include evidence from the local governing agency showing the parcel is currently permitted for the number of residential interests to be offered. San Francisco's Report of Residential Building Record will suffice for those projects located in San Francisco. Similar type documents may be submitted from other cities or counties.

III. Tenancy in Common Agreement

(1) Proposed or existing governing instruments for the TIC, including TIC agreements, and/or occupancy agreements, and provisions for bylaws for the management and operation of the TIC.

a) These arrangements may be included in a single document, which may be otherwise referred to as a "Tenancy in Common Agreement", an unrecorded contract between the subdivider and co-tenants (Must include provisions of Regulation 2792.8).
b) TIC agreement spells out which owner is entitled to occupy which unit.
c) Must set forth the method of property tax apportionment between owners.

(2) A completed RE 648, Regulation Check Sheet.

(3) A draft Memorandum of Tenancy in Common Agreement, an instrument to be recorded in the applicable county's recorders office.

(4) See Section IV (5) (g) for additional TIC Agreement language.

(5) Arrangements that protect a purchaser from loss of his interest due to acts of the other owners, bankruptcy, discrimination, or financial deficiencies except for the non-payment of assessments or purchase financing.

(6) Any arrangement in the TIC agreement obligating the purchasers to create a blanket encumbrance in the future is subject to compliance with Section 11013.2 at the time of the initial public report application.

IV. Financing

Information/Documentation required for financing TIC's:

(1) Detailed statement of financing arrangement, whether or not property/interests will be subject to blanket encumbrance after first closing.

(2) If property/interests to be subject to blanket encumbrance, statement must include consent of any existing blanket lien holder, confirmation that no "due-on-sale' clause exists, loan to value information on the blanket encumbrance, estimated sell-out period, and explanation of alternative arrangements, as a means of compliance with Bus & Prof Code Sec 11013.2, to paying off the blanket encumbrance, including that of establishing a fund for curing any defaults on the blanket encumbrance. The amount of the "default fund" shall be in the amount of 6 months mortgage payments.

(3) Copies of instruments to be used in financing interests if subdivider or other non-state or federally-regulated lender is offering such financing.

(4) <u>Individual financing</u> (Buyer obtains loan from bank lender against his/her interest and property will be free and clear of blanket encumbrance in compliance with 11013.2):

a) Public report must include caveat that sales prices may exceed appraised value and institutional refinancing of property will be based on appraised value, not sales prices. Purchase contract and sample escrow instructions must include provision for seller to provide buyer a current appraisal (of the overall building and each individual undivided interest) prepared by a licensed appraiser at or before close of escrow. The buyer shall have the right to cancel purchase within 7 days after receipt of such appraisal.

b) Escrow instructions to assure blanket encumbrance is paid off prior to close of first escrow.

c) If means of compliance with Business & Professions Code §§ 11013.2 is a partial release agreement, the agreement must be in a format acceptable to DRE.

d) No balloon payment of any type shall be due within the first ten (10) years after the loan is made. Negative amortization loans shall not be permitted.

e) The loan must be assumable by a buyer meeting customary underwriting guidelines for an assumption fee not to exceed one percent (1%) of the outstanding loan balance.

f) The loan must not contain a prepayment penalty that fails to meet the requirements for prepayment penalties imposed by California Law on loans for residential condominiums.

g) If secondary (short-fall) financing is offered, balloon payments are prohibited; such financing must be fully amortized over term of loan which may be less than 10 years.

(5) <u>Group financing</u> (Property subject to blanket encumbrance after close of sales):

a) Public report must include caveat that sales prices may exceed appraised value and institutional refinancing of property will be based on appraised value, not sales prices. Purchase contract and sample escrow instructions must include provision for seller to provide buyer a current appraisal (of the overall building and each individual undivided interest) prepared by a licensed appraiser at or before close of escrow. The buyer shall have the right to cancel purchase within 7 days after receipt of such appraisal.

b) If purchaser financing includes balloon payments, provide DRE with estimates of mortgage payments when balloon payment becomes due. There should be no balloon payments on blanket financing unless the seller can show there will be equity in the property sufficient to refinance when the balloon becomes due. To include estimates of mortgage payments when the balloon payment note is to be refinanced would likely require the sales price and financing terms for the initial sale. If not known a conditional public report may be issued until these terms are known.

c) If blanket encumbrance includes acceleration clause triggered by proposed sale and financing of TIC interests, provisions must be included in financing documents in addition to acceptable assurance from blanket lender that acceleration clause will not be implemented.

d) Presale requirement of 80% is required unless applicant posts bond in a format acceptable to DRE in the amount of seller's portion owing on blanket encumbrance or makes other security arrangements satisfactory to the Commissioner.

e) A security agreement and escrow instruction in a format acceptable to DRE, must accompany the bond to secure payoff of blanket encumbrance.

f) Individual secondary financing permissible if financing does not encumber other owners.

g) TIC Agreement that authorizes any owner or owners to refinance blanket loan must provide for following:

    i. Owners who will not receive funding from refinancing will not pay higher payment.

    ii. Each borrower will be limited to incurring debt only to amount for which he/she qualifies under current lending standards, not to exceed loan amount proportional to the value of his/her undivided interest based on the amount for which the TIC qualifies under current lending standards.

    iii. Refinancing TIC within the first five (5) years must require majority approval of owners, excluding subdivider, and thirty three percent (33%) approval, excluding subdivider, within first ten (10) years.