

TRUST/ASSOCIATION INSTRUMENT CHECK SHEET (TIME-SHARE)

RE 648C (New 1/18)

SUBDIVISIONS

PROJECT NAME:

PROJECT LOCATION (STATE):

INSTRUCTIONS

- Business and Professions Code (BPC) section 11255 includes, but is not limited to, provisions associated with a trust or association instrument (also known as a trust agreement).
- Correct completion of this form will facilitate review of the proposed instrument(s) for the project. Incomplete and inaccurate information will prolong the review process.
- In the columns on the right side of each page in this form, insert the document code, the page number and preferably the paragraph heading where the provisions of this BPC section are located in the proposed instrument(s).

Document Code

Example

TI = Trust Instrument	AI = Association Instrument	TI p4 (4.1a)
N/A = Not Applicable	N/F = Not Found	

- Include explanations for any N/A or N/F response.
- Applicants shall ensure all time share instruments adhere to any jurisdictional law that may apply.

BPC 11255 - Conveyance of Interests

(b) If the accommodation in a time-share plan offering time-share use interests that is free and clear of blanket encumbrances, other than a lien of current real property taxes, is conveyed to a trustee or an association, the trust or association instruments shall include, but not be limited to, all of the following:

Document Code & Page
Reference & Section or
Paragraph Heading

- | | |
|---|-------|
| (1) Transfer of title to the accommodations to the trustee or association. | _____ |
| (2) If the time-share use interests are conveyed to a trust, the association as a party to the trust or an express third-party beneficiary of the trust. | _____ |
| (3) Notice to the department of the intention of the trustee to resign, if applicable. . | _____ |
| (4) Continuance of the trustee in that capacity until a successor trustee acceptable to the department assumes the position, if applicable. | _____ |
| (5) Prohibition against any amendments of the trust or association instruments adversely affecting the interests or rights of time-share interest owners without the prior approval of the association. | _____ |
| (6) Instructions for the distribution of condemnation or insurance proceeds by the trustee or the association. | _____ |

(c) The department may require that each of the accommodations in a time-share plan offering time-share estate interests that is subject to a blanket encumbrance be conveyed to a trustee acceptable to the department prior to the closing of the escrow for the first sale of a time-share estate which entitles the purchaser to occupy the accommodation in question. _____

(d) If an accommodation in the time-share plan is conveyed to a trustee pursuant to subdivision (c), the trust instrument shall include all of the following provisions in addition to those set forth in subdivision (b):

(1) The deposit into trust, and the retention for the duration of the trust, of nondelinquent installment sales contracts or promissory notes of time-share interests purchases having an aggregate principal balance owing not ordinarily less than 150 percent of the difference between the aggregate principal balance owing under blanket encumbrances against the accommodation and the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket encumbrances.

(A) The trust instrument shall further provide that if the 150 percent requirement has not been met within six months after execution of the trust instrument by the developer, the trustee shall thereafter retain in the trust, or apply to debt service on the blanket encumbrance, the entire amount of all installment payments received on contracts or promissory notes until the 150 percent requirement has been met.

(B) For purposes of this regulation, a contract or promissory note is deemed delinquent when an installment payment is more than 60 days past due.

(C) If the developer for purposes of satisfying the requirements of this subdivision proposes to deposit installment sales contracts or promissory notes of obligor other than purchasers of interests in the time-share plan into the trust, the developer shall have the burden of establishing the liquidated value of the notes and contracts to the satisfaction of the department.

(2) The deposit into trust, and the retention for the duration of the trust, of funds in an amount at all times sufficient to pay the total of three successive monthly installments of debt service on the blanket encumbrance.

(A) If installments of debt service on a blanket encumbrance that is fully amortized are due less frequently than monthly, the funds retained in the trust shall be sufficient to pay all installments becoming due within the next succeeding six months, or, if no installments are due within the next succeeding six months the next installment due.

(B) If a blanket encumbrance against the trust property is an interest-only loan, contains a balloon payment provision, or is otherwise not fully amortized under the terms for repayment, the trust instrument shall require that the developer make monthly payments into the trust sufficient to pay debt service installments as they become due and to create a sinking fund to extinguish the debt at its maturity.

(3) Payment by the trustee of debt service on the blanket encumbrance, property taxes, or assessments on insurance premiums, either as the entity having primary responsibilities for the payments or the entity secondarily responsible if the person with primary responsibility fails to make the payments in a timely manner.

(4) The deposit or investment by the trustee of funds constituting a part of the trust corpus in interest bearing accounts, treasury bills, certificates of deposit, or similar investments.

(e) In the case of a time-share plan offering time-share use interests that have been conveyed to a trustee, the trust for the accommodation shall be irrevocable during the time that any time-share interest owner has a right to the occupancy of an accommodation.

(f) In the case of a time-share plan offering time-share use interests that have been conveyed to an association, the association shall not be dissolved or terminated during the time that any time-share interest owner has the right to occupancy of an accommodation.

(g) In a time-share plan offering time-share estate interests, the trust for an accommodation shall be irrevocable until the extinguishment of all blanket monetary encumbrances against the accommodation.