

January 24, 2012

Essential Housing Elements of ABx1 26

Housing Terminology and Housing Successor Entity

ABx1 26 provides that the housing assets and obligations of dissolving redevelopment agencies ("RDAs") do not pass to the Successor Agencies formed to wind-down each RDA. We believe ABx1 26 also does not require that decisions regarding such housing assets and obligations be controlled by the Oversight Board of each Successor Agency.

The city ("City")¹ that authorized creation of a given RDA may elect to retain the housing assets and functions previously performed by the redevelopment agency."² If the City so elects, "all rights, powers, duties, and obligations, excluding amounts on deposit in the Low and Moderate Income Housing Fund ("LMIHF"),³ shall be transferred to the City."⁴

If the City does not elect to retain the housing assets and functions, they shall be transferred to the "local housing authority in the territorial jurisdiction of the former redevelopment agency."⁵ If there is no such local housing authority, the Department of Housing and Community Development must take over.⁶

The entity that assumes the former RDA's housing assets and functions ("Housing Successor") "may enforce affordability covenants and perform related activities pursuant to the applicable provisions of the Community Redevelopment Law."⁷ This would be modified by SB 654 to require enforcement of such covenants by the Housing Successor.

Questions:

- How and when should a City that desires to assume the housing assets and functions make that election?
- What other actions need be taken to effectuate transfer of the housing assets and functions from the RDA to the Housing Successor?⁸
- Do the Successor Agency and/or Oversight Board need to effectuate this transfer to the Housing Successor?⁹
- Are the Successor Agency and/or Oversight Board relevant for any other future activities of the Housing Successor?
- Can the Housing Successor exercise both its inherent powers (as city/county, housing authority, or HCD) and Community Redevelopment Law powers?
- How should the Housing Successor handle accounting for received assets and obligations?
- In what legal capacity does Housing Successor take title to housing assets?

¹ For the purposes of the housing issues discussed in this summary, ABx1 26 treats counties in the same manner as it does cities, so substitute "County" for "City" as appropriate

² Health and Safety Code Section 34176(a)

³ Would be modified by SB 654 proposed revision to Health and Safety Code Section 34176(a)

⁴ Health and Safety Code Section 34176(a)

⁵ Health and Safety Code Section 34176(b)(2)-(3); would be modified by SB 654 proposed revision to Health and Safety Code Section 34176(b)

⁶ Health and Safety Code Section 34176(b)(1)

⁷ Health and Safety Code Section 34176(c)

⁸ For the purposes of this summary, we refer to the entity that succeeds to the housing functions of the former RDA as the "Housing Successor"

⁹ Health and Safety Code Sections 34177(g) and 34181(c)

Housing Obligations/Liabilities of Housing Successors

"Rights, powers, assets, liabilities, duties, and obligations"¹⁰ are not well-defined in Health and Safety Code Section 34176 or anywhere else in ABx1 26.

Obligations could include:

- Contracts (e.g. Loan Agreement, DDA, OPA, etc.)
- Settlement Agreements
- Court Orders/Consent Decrees
- Monitoring Obligations
- RDA Statutory Obligations
 - o LMIHF Deposits
 - o Replacement Housing Requirements
 - o Housing Production Requirements

Assets could include:

- Property Purchased using LMIHF
- Loan Repayments and other Program Income
- Monitoring Fees
- LMIHF Deferrals, and ERAF Repayment Obligations

Funding for the Housing Successor

ABx1 26 does not clearly delineate the procedures a Housing Successor should follow to seek reimbursement for housing obligations it has assumed from the former RDA, but logically funds for such obligations should be obtained by the Successor Agency from the County Auditor-Controller (if listed on ROPS) and paid to the Housing Successor or to the housing obligee.

For housing obligations due before the first County Auditor-Controller allocation to the Successor Agency (May 16, 2011), the Successor Agency should retain sufficient assets to pay such obligations.

ABx1 26 does not dedicate a source of funding for the Housing Successor's administrative costs, but such costs could potentially be incorporated in housing project costs listed on the EOPS/ROPS and/or drawn from the Successor Agency's administrative allowance, or paid from program income such as loan repayments made to the Housing Successor.

Suggested Best Practices

The RDA should prepare an exit memorandum prior to dissolution clarifying which assets/obligations will go to the Successor Agency and which assets/obligations will go to the Housing Successor.

The Housing Successor should notify all parties to housing obligations of its name and address.

The Housing Successor and partner developers should engage title companies and lenders in RDA-related transactions and educate them about ABx1 26 well in advance of housing financing or land conveyance activities or other transactions.

The Housing Successor should review the EOPS/ROPS as amended/drafted by the Successor Agency to make sure that all housing obligations are properly listed.¹¹

¹⁰ Health and Safety Code Section 34176(b)

¹¹ Including deferred amounts owed to LMIHF, as required by Health and Safety Code Section 34170(d)(1)(G)