

POST-REDEVELOPMENT DISSOLUTION OVERVIEW

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PART I

POST REDEVELOPMENT COMPLIANCE

I. INTRODUCTION

- ABx1 26 and AB 1484 (the “Dissolution Laws”)
- Budget trailer bills
- Fundamentally changed municipal, housing, and tax laws
- Rendered Community Redevelopment Law inoperative

PURPOSE OF THE DISSOLUTION LAWS:

- (1) Transfer former redevelopment agencies' housing assets, powers, and responsibilities to "housing successor entities."
- (2) Honor the "enforceable obligations" of the former redevelopment agencies via "successor agencies."
- (3) Eventually wind down the affairs of the former redevelopment agencies.

SUCCESSOR AGENCIES:

- 1) Separate public agencies.
- 2) Ensure timely payment of enforceable obligations by semi-annually preparing a Recognized Obligation Payment Schedule (ROPS).
- 3) Contract with an independent, county auditor-controller approved accountants to perform a "due diligence review" (DDR) for both housing and non-housing assets of the former redevelopment agencies.
- 4) Apply for and receive (or at least theoretically have a goal of receiving) a "finding of completion"(FOC) so that limited powers and rights may be "reactivated" as part of the winding down process.
- 5) Prepare a "long-range property management plan."

II. ENFORCEABLE OBLIGATIONS

- Defined by Statute
- Health & Safety Code Sections 34167(d) and 34171(d)

Generally, the two definitions are identical, with the exception that, for the part of the Dissolution Laws that applies to successor agencies, agreements between a host jurisdiction and its former redevelopment agency are not included as “enforceable obligations” except in limited circumstances.

Can’t understand ROPS or how successor agency payment obligations are governed under the Dissolution Laws without understanding “enforceable obligations.”

“Enforceable obligations” include:

- Bonds
- Loans of money borrowed by the redevelopment agency
- Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law
- Judgments against the former redevelopment agency
- Any legally binding and enforceable agreement or contract that is not void as violating the debt limit or public policy
- Contracts or agreements necessary for the administration or operation of the successor agency, and
- Amounts borrowed from or owed to the former redevelopment agencies’ Low and Moderate Income Housing Fund that had been deferred

No published opinion on definition of an “enforceable obligation” – yet. Superior court decisions discussing EOs:

- *CRFL Family Apartments v. Matosantos* (Sac. Superior Ct. Case No. 34-2012-80001354).
- *City of Pasadena Successor Agency v. Matosantos* (Sac. Superior Court Case No. 34-2012-00134585).
- *Peebler v. Matosantos* (Sac. Superior Ct. Case No. 34-2012-80001172).
- *Forty Niners SC Stadium Co. v. Oversight Board of the Successor Agency to the City of Santa Clara Redevelopment Agency* (Sac. Superior Court Case No. 34-2012-80001192).

- “AB 26 broadly defines the term ‘enforceable obligation.’”
- “[I]t is impossible for the 1986 Agreement [between a city and RDA] to be an E.O. [enforceable obligation] under H&S Code §34171(d)(1)(C), (D), and/or (E) while it is simultaneously not an E.O. pursuant to the exclusionary language of §34171(d)(2). . . .”
- “This legislation on its face goes to great lengths to broaden the scope of obligations which are deemed ‘enforceable’ under §34171 while at the same time deliberately excluding from the E.O. definition only one specifically identified, limited category of ‘agreements, contracts, or arrangements between the city...and the former redevelopment agency’.”

- “Although the Dissolution Law (ABx1 26/AB 1484) purports to define what the term enforceable obligation ‘means,’ it is clear the Legislature actually was attempting to define what the term ‘includes.’”
- “It is axiomatic that to constitute an ‘enforceable obligation,’ the bond, loan, judgment, or contract must give rise to an ‘obligation,’ and the obligation must be ‘enforceable.’ For example, a money judgment that was fully satisfied would not be an ‘enforceable obligation.’”
- The applicable Cooperation and Predevelopment Agreements, taken together, “are instead agreements between a city, a redevelopment agency, **and a third party**. The [] Agreements are thus simply not within the class of agreements covered by section 34171, subdivision (d)(2).”

III. THE ROPS PROCEDURE

- Simple in concept, difficult in practice.
- Statutorily, the information required:
 - Each enforceable obligation;
 - Funding source or sources for payment thereof.
- DOF prepares ROPS forms.
- DOF periodically updates the form and instructions.

- Deadlines for completing a ROPS keyed to distribution dates for Redevelopment Property Tax Trust Funds (RPTTF).
- *Oversight board approved* ROPS no later than 90 days prior to the RPTTF distribution date.
- Once a ROPS has been delivered, DOF has 5 business days to request review.
- DOF has 45 days after the ROPS has been submitted to make a final determination on that ROPS.

- DOF has the authority to eliminate or modify any item on a ROPS.
- County auditor-controller has review and objection authority over ROPS; 60-day “pre-RPTTF” disbursement deadline.
- “Meet and Confer” may be requested within 5 business days.
- A final determination on a ROPS no later than 15 days before the applicable RPTTF distribution date.

One case has addressed the ability of a successor agency to amend a ROPS to the extent it may have a clerical error that mistakenly designates a particular funding source. (*Town of Apple Valley v. Matosantos* (Sac. Superior Ct. Case No. 34-2012-00127355)).

Implied authority to correct, or at a minimum review a revised ROPS, to address alleged mistakes that occur in the ROPS process can reasonably be implied.

- » Once the meet and confer process has been completed for a ROPS, all administrative action by the DOF, for that ROPS, has concluded.
- » If disputes remain, judicial relief may be the only recourse.
- » If RPTTF is needed, emergency court relief may be needed.
- » In the event of a resolution, a ROPS may be amended to reflect that resolution.
- » Resolution cannot affect any past allocation of property tax revenues to other taxing entities and creates no liability on those taxing entities.

TAKE-AWAYS FROM THE ROPS:

- Successor agencies should always timely complete.
- Submit them to DOF and the other public agencies.
- Failing to adopt a ROPS leads to severe penalties:
 - Host jurisdiction subject to \$10,000/day penalty.
 - 25% reduction of the maximum administrative cost allowance.
 - DOF may determine if any amounts should be withheld to pay for the successor agency's enforceable obligations.

Reporting Processes

- Due Diligence Reviews (H&SC sec. 34179.5)
 - Goal: “precise accounting” of housing and non-housing cash assets available for distribution to Taxing Entities

Due Diligence Review Process

- DDRs require reporting of:
 - Dollar value of all former RDA assets and cash transferred after 1/1/11-6/30/12 to city or others
 - Expenditure and accounting info
 - ID transfer & funding sources for 2010-11 & 11-12
 - Reconcile assets & liabilities and balance against FY 09-10
 - Perform a separate accounting for LMIHF
 - List EOS, and net balances

Due Diligence Review Process

- Review totaled net balances available for distribution after *deducting*:
 - Amounts restricted to purpose (bonds, grants or other conditioned funds)
 - Non cash assets (real estate, records, equipment)
 - Amounts restricted by an EO, plus a projection of annual spending to satisfy each EO and projection of annual revenues to fund requirements; ID amount necessary to funds necessary for retention; Project revenues and bond debt service for any period SA has insufficient Ptax
 - Amounts necessary to satisfy ROPS payments for current year.
- And *adding* any amounts transferred to the City or to any other public agency or private party.

Due Diligence Review Process

- Issues: DOF after-the-fact demands for backup documentation to CPA and OB approved DDRs, and State Controller Office Review conflicts
- DDR Meet & Confer Processes & Challenges

Finding of Completion (“FOC”) (H&SC section 34191.1)

- After completing the DDR process SAs may be allowed to:
 - Retain former RDA assets for certain purposes through an approved “Long-Range Property Management Plan” (LRPMP)
 - Conditionally reinstate prior city-agency loan agreements
 - Spend pre-2011 bond proceeds with certain limitations

Finding of Completion (“FOC”) (H&SC section 34191.1)

- FOC cannot be issued until the SA pays all amounts owned
- Meet & confer process and legal actions may delay the issuance of the FOC

“Long-Range Property Management Plan” (H&SC section 34191.4)

- Post FOC LRPMP governs disposition of former agency property which is to be held in a Community Redevelopment Property Trust Fund approved by OB and DOF and administered by the SA
 - Doesn’t apply to properties held by SHA, and
 - Gov’t use properties already transferred per 34181(a), (c) and (f) and approved by DOF = final and conclusive

LRPMP

- Contains: a ppty inventory; proposed use/disposition; parcel data; estimate of current value; estimate of revenues; description of any contractual arrangements; history of any contamination; potential for TOD development; history of any development proposals

LRPMP

- Must be submitted to the DOF for approval within 6 months of FOC issuance
- Applies to all SA properties
- Permissible dispositions:
 - Gov'tal use (HSC section 34181(a); 34191.5(c)(2))
 - Enforceable obligations (HSC section 34191.5(c)(2))
 - Retention for Future Development (HSC section 34191.5(c)(2))
 - Sale of Property

LRPMP

- CONDITIONS
 - Governmental Use: Must be an existing agreement relating to the construction or use of the asset
 - EO: Proceeds of the sale or revenue must be used to fulfill an approved EO
 - Retention: Must be part of a project ID'd in an approved redevelopment plan
 - Sale: Proceeds distributed to Taxing Entities

LRPMP

- COMPENSATION AND PROCEEDS
 - Gov'tal Use: Governed by existing agreements
 - EO property: Distribute sales proceeds or revenues not needed for EO to taxing entities
 - Retained Property: transfer to the City or Count that formed RDA
 - Sale of Property: proceeds distributed to Taxing Entities

LRPMP

- Property Valuation will be an issue
 - Is a new appraisal required?
 - Types of appraisals
 - Adjustments to prior appraisals
 - Reuse value analyses
- Once LRPMP is approved it governs and supersedes all other provisions relating to the disposal and use of real property (HSC section 34191.3)

Reinstating City/Agency Coop Agreements (H&SC sec. 34191.4(b))

- City Agency Loans can be reinstated:
 - If OB finds agreement was for legitimate redevelopment purpose, then can be deemed an EO and included on ROPS 13-14A
 - Requires “reasonable” repayment terms and conditions on agreements that are reinstated
 - Cannot exceed 50% of increase in ptax distribution to taxing entities from FY 12-13 base year

Reinstating City/Agency Coop Agreements (H&SC sec. 34191.4(b))

- Interest recalculated at LAIF rate
- Repayment “second in priority” to repayments of loans or deferrals owned to the LMIHF
- 20% of any loan repayment to be deducted and transferred to the LMIH Asset Fund
- Repayment delayed until FY 2013-14 (ROPS 13A)

Reinstating City/Agency Coop Agreements (H&SC sec. 34191.4(b))

- Definition of “legitimate redevelopment purpose”
- Timing of ROPS 13-14A approval and reinstatement of loans when data not finalized (later true up not prohibited); however, DOF has stated that can’t be repaid prior to ROPS 14-15A because the calculation for loan repayment amounts relies on a formula that includes ROPS residual pass-through distributions for FY 2013-14

Pre-2011 Bond Proceeds

- Proceeds can be spent in a manner consistent with original bond covenants
- Excess proceeds must be separately listed on ROPS
- If remaining proceeds cannot be spent consistent with bond covenants, then they must be used to defease bonds or purchase bonds on open market for cancellation (HSC section 34191.4(c))

AFFORDABLE HOUSING AFTER REDEVELOPMENT

- I. TRANSFER OF HOUSING ASSETS AND FUNCTIONS TO HOUSING SUCCESSOR
 - A. Exceptions to Transfer
 1. Amounts in the LMIHF
 - a. Retention is subject to Due Diligence Review
 2. Assets pledged to repayment of bonds
 3. Unobligated pre-2011 housing bond proceeds

- II. STATE REVIEWS OF HOUSING ASSETS
 - A. DOF Review of Housing Asset Transfer Form and LMIHF Due Diligence Review
 - 1. Ongoing Disputes
 - B. State Controller's Review of Asset Transfers to City, County or Other Public Agency
 - 1. Transfers by Redevelopment Agency between January 1, 2011 and January 31, 2012
 - 2. Importance of Oversight Board Resolution approving transfer
 - 3. No review of housing assets transferred after February 1, 2012

- III. USE OF TRANSFERRED HOUSING ASSETS
 - A. Held in Separate Low and Moderate Income Housing Asset Fund (LMIHAF)
 - B. Includes Repayment of ERAF/SERAF Loans and Deferred Deposits
 - 1. Annual payments subject to statutory formula cap
 - 2. Takes priority over repayment of previous loans from City
 - 3. Per DOF, payments may not commence until FY 2014-2015
 - C. Must be used in accordance with "applicable housing related provisions" of the CRL

- D. Pending Legislation on Use of Transferred Housing Assets – SB 341
 - 1. Priorities for the expenditure of funds
 - 2. Income targeting and limits on senior housing
 - 3. Use of funds for homelessness prevention and rapid rehousing
 - 4. Administrative costs subject to a cap
 - 5. Pooling of funds by two or more housing successors
 - 6. “Excess surplus” funds
 - 7. Time limit for development of real property

- III. NEW FUNDING SOURCES
 - A. AB 1484 - 20% of City Loan Repayments
 - 1. After Finding of Completion and (per DOF) not before FY 2014-2015
 - 2. Subject to statutory cap
 - B. AB 981 – 2011 Housing Bond Proceeds
 - C. 20% Set Aside Requirement (AB 229, AB 243, SB1 and SB 628)
 - D. SB 391 – California Homes and Jobs Act
 - 1. Imposes new recording fee
 - 2. Administered by HCD
 - E. Proposed Funding For Transit Projects, Veterans Housing, and Homeless Youth

- IV. HOUSING RELATED LITIGATION
 - A. Pre-Existing Statutory Housing Obligations
 - 1. Housing Replacement
 - 2. Housing Production (Inclusionary Housing)
 - B. Housing Administrative Costs
 - C. Housing Set Aside Obligations
 - D. Determination of Housing Assets
 - E. Contractual Housing Obligations
 - 1. Loan commitments
 - 2. Impact on Proposition 1C funding and obligations
 - F. Retention of LMIHF for Housing Obligations

REDEVELOPMENT DISSOLUTION LITIGATION

- I. Constitutional Challenges
 - A. ABX1 26
 - 1. Impairment of Contract
 - a. Facial challenges
 - b. As-applied challenges
 - 2. Home Rule
 - 3. Single Subject

REDEVELOPMENT DISSOLUTION LITIGATION

- I. Constitutional Challenges
 - B. AB 1484
 - 1. Violations of Propositions 1A and 22
 - a. Sales taxes
 - b. Property taxes
 - 2. True-up Payments
 - 3. DDR Payments
 - 4. Delegation
 - 5. Spot bill

REDEVELOPMENT DISSOLUTION LITIGATION

- II. ROPS Challenges
 - A. Contracts
 - B. City-Agency Agreements
 - 1. Cooperation Agreements
 - 2. Enterprise Fund Loans
 - C. Judgments and Settlements
 - D. Use of Bond Proceeds
 - E. Administrative Costs

REDEVELOPMENT DISSOLUTION LITIGATION

III. Due Diligence Review Challenges

A. Whether funds are obligated

B. Unused loans

IV. Calculation of True-up Payments

V. Violations of APA

VI. Military Bases and Non-profit Development Corporations