

### UPDATE ON REDEVELOPMENT LAW: THE SUPREME COURT MAKES IT OFFICIAL - REDEVELOPMENT IS DEAD IN CALIFORNIA

*December 29, 2011 by Michael Kiely and Phillip Tate*

The California Supreme Court released its [opinion](#) today in *California Redevelopment Association v. Matosantos*, challenging the Legislature's adoption of AB 1X 26, providing for elimination of California redevelopment agencies (RDAs), and AB 1X 27, exempting from elimination any RDA that agrees to make its share of a \$1.7 billion voluntary contribution of its revenues to other local government needs<sup>[1]</sup>.

The Court has upheld the Constitutionality of AB 1X 26 and struck down AB 1X 27. The Court held that RDAs do not have a Constitutionally protected right to continue to exist, however, RDAs do have a protected right, pursuant to Proposition 22, to not be forced to make payments to other agencies. While the State argued that the payments under AB 1X 27 are voluntary, the Court disagreed. The Court found that the payments under AB 1X 27 are not in fact voluntary because an RDA would cease to exist if it did not make the payment. Because the defective provisions within AB 1X 27 cannot be severed, the entire bill fails. Conversely, AB 1X 26 can be severed from AB 1X 27.

As a result, AB 1X 26, which eliminates RDAs, remains in place and AB 1X 27, which would have allowed RDAs to make a payment and continue to exist, is struck down, meaning that RDAs are now effectively dissolved.

In its decision, the Court also upheld the "freeze" provisions of AB 1X 26, which suspended the ability of RDAs to use their funds or to incur new indebtedness. The Court's opinion did not expressly address the effectiveness of the provisions of AB 1X 27 that purport to invalidate transactions entered into prior to the effective date of the bill.

The Court invoked its power of reformation to extend all applicable deadlines under AB 1X 26 by four months, the length of the stay imposed by the litigation. Accordingly, for example, RDA draft

obligation schedules due on November 1, 2011 under AB 1X 27 will now be due on March 1, 2012.

The vote was 6-1. Chief Justice Cantil-Sakauye issued a concurring and dissenting opinion arguing that both AB 1X 26 and AB 1X 27 are Constitutional.

As the court noted, the legislative record shows that at least some legislators preferred to have the package of the two bills, and did not desire to end redevelopment. Therefore, it is possible that there may be a legislative attempt to revive AB 1X 27, or something similar to it, with changes to address the Court's concerns that the voluntary continuation payments were not voluntary. Perhaps an approach would be to require that such payments come from the local sponsor governments' general fund, rather than from the agencies themselves. From a state fiscal perspective, the ruling is good news, in that now substantially more than \$1.7 billion anticipated under AB 1X27 will be available for the state budget crisis. So it is uncertain whether there will be the votes necessary to resuscitate the continuation of redevelopment agencies. It seems even less likely that the Governor, who started this by proposing to eliminate redevelopment altogether, would sign such a bill.

County and school district officials will now begin the process of forming successor agencies to begin the unwinding and disposition of RDA assets. We can anticipate that agency obligations that existed prior to January 1, 2011 will be fully paid and performed. Successor agencies may also try to attack and unwind RDA deals cut after that date, particularly protective transfers from agencies to their local governments. In addition, successor agencies may also try to avoid earlier conditional agency obligations, for example, the sale of property for less than fair market value where the sale obligation is conditioned upon other financing to be approved by the agency.

After a run of more than 50 years, redevelopment and tax increment financing for development in California have come to an end.

[1] The two bills and litigation were described in more detail in [Redevelopment Agencies Update, with Attorney Michael Kiely, December 7, 2011](#), [Update On Redevelopment Law: Litigation Proceeds - Uncertainty Continues, October 4, 2011](#), [California Redevelopment Update: Governor Signs Trailer Bills To End Redevelopment Agencies Unless They Make Payments - Uncertainty Continues, July 1, 2011](#), [California Redevelopment Update: Legislative Two Step To Cut Redevelopment Agency Funding Goes Down With Governor's Budget Veto, June 16, 2011](#), and [California Redevelopment Update: No News is ...No News, April 26, 2011](#)