

January 5, 2012

Court Rules to Eliminate California Redevelopment Agencies

Michael A. Williamson, Esq. and Amanda Steele, Esq.

The Ruling

As 2011 drew to a close, the California Supreme Court struck a fatal blow for California's redevelopment agencies. In upholding Assembly Bill X1 26 and striking down Assembly Bill X1 27 in *California Redevelopment Association v. Matosantos*, S194861, the Court eliminated all four hundred California redevelopment agencies (RDAs) and started a process to transition all existing projects and obligations to other agencies.

The two laws were part of Governor Brown's budget deficit solution approved in June, 2011. AB X1 26 would eliminate California RDAs by denying them the ability to borrow, acquire property and adopt or amend redevelopment plans, among other things. AB X1 27, however, would then allow RDAs to continue to exist, if the cities and counties that created them "voluntarily" agreed to make payments to benefit State schools and special districts. The total amount of these payments for the 2011-2012 fiscal year would be \$1.7 billion, with \$400 million to schools and special districts in subsequent budget years.

The Court held that AB X1 26 was "a proper exercise of legislative power vested in the Legislature" under the California Constitution, because that power includes the right to create entities, such as RDAs, to implement State goals. Along with this power to create, the Court concluded, comes the power to dissolve the same entities when the Legislature deems it necessary and proper.

The Court determined that AB X1 27 was invalid under Proposition 22, passed in November, 2010, which prohibits the State from re-directing funds required to be used for local government projects and services to other uses for the State's benefit. Unfortunately for RDAs, the Court determined that Proposition 22 invalidated AB X1 27 in its entirety, leaving no option but elimination of RDAs.

The Implications

Without AB X1 27, RDAs will cease to exist as of February 1, 2012. The procedure for implementing this dissolution under AB X1 26 is somewhat convoluted and has consequences for those who have outstanding business with RDAs.

By January 30, 2012, the RDA must prepare a preliminary draft of the initial "recognized obligation payment" schedule (ROP schedule) which projects the dates and amounts of scheduled payments for each "enforceable obligation". After February 1, 2012, a "successor agency" (likely the city or county that created the RDA) will assume responsibility for any enforceable obligations of the RDA under the supervision of an "oversight board" that will eventually be charged with disposing of the RDA's assets.

By March 1, 2012, the successor agency must prepare its own draft ROP schedule. This ROP schedule will cover the period from May 1, 2012 to October 1, 2012. The oversight board, the State Department of Finance, and the State Controller will have the power to review and

approve each ROP schedule – promising to make the process drawn out and potentially contentious.

By July 1, 2012, each county's auditor-controller must audit its RDA's assets and required obligations. The audits must be delivered to the State Controller by July 15, 2012. The auditor-controller in each county will then create a redevelopment obligation trust fund (RO Trust Fund), to hold the funds required to meet RDA obligations. Whether these deadlines can be met remains to be seen.

Once this process is completed, the tax-increment funds for enforceable obligations will be placed in the RO Trust Fund, with any remainder distributed to taxing agencies as regular property tax. Typically, but with some variation throughout the State, schools receive 50%, counties receive 33%, and cities receive 15%, with the rest distributed between special districts.

Emergency Legislation

Absent some prompt and effective legislative action, every RDA in California will cease to exist as of February 1, 2012. While many legislators have expressed a desire to "fix" this pending problem, it is expected that any proposal to undo the consequences of the ruling may face an uphill battle from county offices and schools.

Investors, developers, lenders and others who do business with RDAs need to carefully evaluate their existing transactions with any RDA, including keeping abreast of the role of "successor agencies." In particular, ongoing projects and agreements should be reviewed to confirm whether they are "enforceable obligations" and that complete information and documentation for any RDA activities (over the past year in particular) are available in the event it is necessary to enforce the obligations against relevant "successor agencies" or such recourse against RO Trust Funds. It may be necessary to consult with counsel to the extent a dispute arises as to whether an obligation is in fact enforceable against any such agency.



Michael Williamson is a Shareholder and Chair in the firm's Real Estate Practice Group. He can be reached at (213) 891-5074 or mwilliamson@buchalter.com.



Amanda Steele is an Associate in the firm's Real Estate Practice Group. She can be reached at (213) 891-5375 or asteel@buchalter.com.

