California Redevelopment Association

KNOWING YOUR LIMITS

Time and Financial Limits of Redevelopment Plans

Written and Sponsored by Goldfarb & Lipman LLP
About the California Redevelopment Association

Established as a nonprofit organization in 1979, the California Redevelopment Association represents redevelopment agencies and allied firms throughout the state of California in responding to legislative proposals and administrative regulations, providing member services, conducting training and professional development events, and public information regarding redevelopment law and activities.

CRA’s members are more than 360 local redevelopment agencies and 330 associate members, including financial institutions, consultants, nonprofits, government agencies, and law firms involved in the redevelopment process.

For more information about CRA, go to www.calredevelop.org.

Other CRA publications and resources include:

California Affordable Housing Handbook: Strategies for Building Better Communities
Community Guide to Redevelopment (in English and Spanish)
www.sustainableredevelopment.org
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Foreword

This booklet, Knowing Your Limits, grew out of a six-part series featured in Redevelopment. Building Better Communities magazine, published from September 2008 through February 2009. This series explored the key time limits provided under the California Community Redevelopment Law. Knowing these limits and their implications will provide redevelopment agencies with a road map to financial and program planning and to eventually winding down a redevelopment project area plan in a conscientious and responsible manner.

The series was an extension of a presentation by Lee C. Rosenthal and Amy DeVaudreuil of Goldfarb and Lipman LLP with Glenn F. Wasserman, Chief Operating Officer of the Community Redevelopment Agency of the City of Los Angeles, titled “The End of Days: The Limits of the Community Redevelopment Law” presented at the 2008 CRA Legal Issues Symposium.

I wish to thank the law firm of Goldfarb & Lipman LLP for sponsoring this publication and their attorneys who authored the series, especially Amy DeVaudreuil and Rafael Yaquian. Goldfarb & Lipman’s dedication and commitment to redevelopment in California is appreciated.

The primary author and creator of the seminar session and magazine series was our friend and colleague, Lee Rosenthal, who passed away unexpectedly in November 2008. Out of utmost respect and admiration for Lee, we have dedicated this publication to him.

John F. Shirey
Executive Director
California Redevelopment Association

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Knowing Your Limits - Time and Financial Limits of Redevelopment Plans

This publication is dedicated to the memory of Lee Rosenthal and his many contributions to redevelopment in California. In recognition of those contributions, the California Redevelopment Association recognized Lee as a recipient of its prestigious Lifetime Achievement Award at its Annual Conference on April 1, 2009.

Lee was the managing partner at Goldfarb & Lipman LLP. He represented many redevelopment agencies in California and had been involved in major legislation and litigation on redevelopment issues for over thirty years. On the evening of his death, Lee had just returned from a dinner celebrating the closing of Contra Costa County’s Pleasant Hill Transit Village development, a project he worked on for 24 years.

Lee’s interest in redevelopment first took root during law school when he provided research assistance for City for Sale, Chester Hartman’s groundbreaking critique of San Francisco’s urban renewal programs. He was involved with many appellate court decisions regarding eminent domain, governmental powers, housing element challenges, and inclusionary zoning. One of his most notable appellate cases, Home Builders Assn. v. City of Napa, Lee represented a group of nonprofits and cities in a decision which upheld the City’s requirement that 10 percent of all new housing be affordable to low- or moderate-income households.

One of the agencies that Lee represented for more than 25 years was the City of San Rafael. Gus Guinan, San Rafael City Attorney’s office, said, “Lee was one of the finest gentlemen in our profession.” Vanessa Vallarta, Salinas City Attorney, said, “He was a giant and heroic person in this field. I will miss his humor, good judgment, and sound advice.”

John Shirey, CRA Executive Director said, “Lee represented the very best in our profession. We could always rely on his good advice and wise counsel, his willingness to share his knowledge and experience, his utmost honesty and integrity, and his adherence to strong ethical practices.”

Prior to joining Goldfarb & Lipman, Lee was chief legal counsel for the California Fair Political Practices Commission where he led the prosecution of several high profile cases involving campaign finance violations.

He was an avid runner, known for his stately pace and remarkable distances. He completed numerous marathons, including New York, Avenue of the Giants, Chicago, and Los Angeles. At the time of his death, Lee was planning to run the marathon in his hometown of Philadelphia.

Lee was born and raised in Philadelphia, where he attended Central High School and the University of Pennsylvania. He had a Masters of City Planning degree from the University of California, Berkeley, and graduated with Order of the Coif honors from Boalt Hall School of Law.

At his funeral services Lee was described as “a person who could see the good in everyone” and who possessed “a genuine goodness that is very rare.” Another speaker at the service recalled the words of Emily Dickinson who wrote, “My friends are my estate.” Lee Rosenthal left a very large estate of friends.

He is survived by his mother, Shirleyann; his wife, Joan Berzon; and his son, Noah Rosenthal.
INTRODUCTION

The California Community Redevelopment Law (the “CRL”) requires redevelopment plans to contain time limits related to debt incurrence, plan effectiveness, receipt of tax increment revenue and debt repayment, and commencement of eminent domain actions, as well as dollar caps on bonded indebtedness and, for pre-1994 plans, the amount of tax increment revenue that may be claimed.¹

These redevelopment plan time deadlines and financial caps directly affect all aspects of a redevelopment agency’s activities, including bond financing, execution of contracts (such as disposition and development agreements, owner participation agreements, public improvements agreements and loan agreements), property acquisition, satisfaction of affordable housing obligations, winding-down of completed redevelopment programs, and many other redevelopment functions.

Consequently, it is essential that redevelopment agency officials be constantly aware of the time and financial limits in their redevelopment plans, the implications of approaching or reaching various limits, actions that can be taken to modify such limits through certain types of authorized redevelopment plan amendments, program adjustment that can or must be taken to address impending limits, and actions that are appropriate or necessary in connection with winding-down a redevelopment program.

This publication contains a series of chapters that address, in a question and answer format, some of the major legal and programmatic issues related to the various time and financial limits in redevelopment plans, organized as follows:

Chapter 1: Time Limits on Redevelopment Activities and Tax Increment Receipt
Chapter 2: Tax Increment Dollar Receipt Limit
Chapter 3: Tax Increment Receipt Limits on Housing Obligations
Chapter 4: Bond Limits and the Limits for Incurring Debt
Chapter 5: Limits on Exercise of Eminent Domain
Chapter 6: Winding Down an Agency’s Affairs

Redevelopment officials are strongly encouraged to know their redevelopment plan limits through regular review and through reporting of those limits in their annual reports and five-year implementation plans, as now required by law.

Where appropriate, redevelopment officials should seek advice of legal counsel or other redevelopment experts regarding means to extend, increase or eliminate various limits through appropriate redevelopment plan amendments, and means to maximize an agency’s remaining resources and program potential within existing limits when plan amendments are not feasible.

This booklet will facilitate redevelopment officials’ understanding of the time and financial limits in their redevelopment plans and the actions that may be taken, with proper forethought, to maximize the value of redevelopment to their communities within those limits.

¹ Unless otherwise noted, all references contained herein refer to the California Health & Safety Code.
CHAPTER 1

TIME LIMITS ON REDEVELOPMENT ACTIVITIES AND TAX INCREMENT RECEIPT: CAN WE DO THAT?

This first chapter covers the time limit on redevelopment activities and provides an overview of the implications reaching this limit have on the day-to-day operations of agency activities. This chapter also addresses the related time limit on receipt of tax increment revenue/repayment of indebtedness.

Q. What is the time limit on redevelopment activities?
A. For post-1993 plans, the time limit on redevelopment activities requires an agency to halt all activities other than “pay[ing] previously incurred indebtedness” and “enforc[ing] existing covenants or contracts” 30 years after the adoption of the redevelopment plan.

For pre-1994 plans, an agency must halt all activities except payment of previous debt and enforcement of “existing covenants, contracts, and obligations” 40 years after the adoption of the redevelopment plan or by January 1, 2009, whichever is later. For pre-1994 plans, the limit for redevelopment activities may be extended for an additional 10 years if rigorous criteria set out in Section 33333.10 can be satisfied.

For plans adopted prior to 1969, the deadline on redevelopment activities is January 1, 2009 unless the deadline is extended pursuant to Section 33333.10.

Q. What is the time limit on receipt of tax increment revenue/repayment of indebtedness and what is the effect of this limit?
A. For post-1993 plans, the time limit on receipt of tax increment revenue/repayment of indebtedness is 45 years from the adoption of the redevelopment plan.

For pre-1994 plans, the time limit on receipt of tax increment revenue/repayment of indebtedness is no later than 10 years after the termination of the effectiveness of the redevelopment plan. Effectively, the time limit for receipt of
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tax increment/repayment of indebtedness is 50 years after the adoption of the redevelopment plan or, in the case of pre-1969 plans, January 1, 2019.

Once the time limit is reached, an agency will not be able to receive tax increment, even if the agency has sufficient cap space and has not reached the dollar limit on tax increment receipt. Because an agency cannot repay debt after reaching the time limit, bond maturity and final repayment dates should be set no later than the date on which the limit on repayment of debt is reached.

Q. **Can the time limits on receipt of tax increment revenue/repayment of indebtedness be amended?**

A. There are currently no provisions in the CRL to allow for amendment of the time limits on tax increment receipt/repayment of debt for post-1993 plans.

For pre-1994 plans, the time limits on redevelopment activities and on receipt of tax increment revenue/repayment of indebtedness may be extended for an additional 10 years each pursuant to a Section 33333.10 amendment. Such a plan amendment is feasible only if the agency can satisfy the rigorous remaining blight and other substantive and procedural requirements set out in Section 33333.10, and is prepared to accept additional obligations, including, without limitation, the deposit of at least 30 percent of the tax increment allocated to the agency into the agency’s low- and moderate-income housing fund starting in the fiscal year one year after the date of adoption of the Section 33333.10 amendment.

Q. **After the deadline on redevelopment activities has passed, can an agency enforce or administer land use controls contained in a redevelopment plan?**

A. Generally, the authority to enforce or administer land use controls contained in a redevelopment plan, that are different than the General Plan land use controls, expire with the end of the plan. An agency may be able to enforce or administer land use controls contained in the redevelopment plan or a design for a development adopted to implement the plan, if the controls being enforced or administered are contained in a pre-deadline contract with an owner or within a recorded covenant or deed.

Q. **Can an agency enforce other covenants such as affordability covenants and anti-discrimination covenants after the deadline on redevelopment activities has passed?**

A. For both pre-1994 and post-1993 redevelopment plans, agencies can enforce existing covenants, including affordability covenants and anti-discrimination covenants contained in the redevelopment plan, development agreements, recorded restrictions, and other contracts.

Q. **After the deadline on redevelopment activities has passed, can an agency take actions in the project area, that would otherwise be authorized under Community Redevelopment Law, such as buying land or installing public improvements?**

A. As discussed above, an agency may buy land or install public improvements if such actions are taken to enforce an existing pre-deadline covenant or contract. An agency may also buy land or install public improvements in the project area if the agency can make required findings that doing so would be of benefit to other project areas. Otherwise, an agency must halt all activities not specifically exempted by Sections 33333.2(a)(2) or 33333.6(a).
Q. How does the expiration of the time limit on redevelopment activities affect an agency’s housing obligations?

A. The housing obligations mandated under Section 33333.8 must be met prior to reaching the time limit on redevelopment activities. Reaching the time limit on redevelopment activities does not excuse an agency from fulfilling those requirements. If an agency has not complied with its housing obligations, the time limit is suspended until the agency has fully complied with its housing obligations.

After the time limit on redevelopment activities has passed, an agency must use all tax increment funds it receives, that are not otherwise pledged to repay indebtedness, to satisfy its housing obligations. Delaying compliance with housing obligations until after the deadline on redevelopment activities has passed may expose an agency to a potential lawsuit.

Q. Do statutory pass-throughs under Section 33607.5 or 33607.7 continue after the deadline on redevelopment activities has passed?

A. Under Section 33607.5 a redevelopment agency is required to make statutory pass-throughs to affected taxing entities during the “term of the redevelopment plan.” If a redevelopment plan is governed under Section 33607.7, the agency is required to make contractual pass-through payments as required under pass-through agreements, or if no contracts exist, to make statutory pass-through payments until “termination of the redevelopment plan.” There are a couple of competing interpretations in the redevelopment community.

Some practitioners contend that the words “term of the redevelopment plan” and “until termination of the redevelopment plan” refer to the deadline of redevelopment activities, and that no pass-through payments are required after that deadline has been reached. Under this theory, redevelopment agencies can in some instances receive tax increment for up to an additional 10 or 15 years without making pass-through payments after the time limit on redevelopment activities.

Other practitioners argue that because Sections 33607.5 and 33607.7 were primarily enacted to alleviate the financial burdens and detriments that affected taxing entities incur as a result of redevelopment agency’s receipt of tax increment revenue, pass-through payments must continue as long as the redevelopment agency continues to claim tax increment, potentially up until the agency reaches the deadline for receipt of tax increment. Under this theory, affected taxing entities are entitled to continue to receive pass-through payments up until the time limit for receipt of tax increment because they are incurring the financial burdens and detriments resulting from redevelopment up until that point. In order to continue to receive tax increment past the deadline on redevelopment activities, the term of the plan must necessarily continue at least for purposes of receiving tax increment, and thus the words “term of the redevelopment plan” and “until termination of the redevelopment plan” in this context more likely refer to the deadline for receipt of tax increment.

While the statute is ambiguous and no court has yet resolved the ambiguity, in the opinion of the authors, as well as McDonough Holland & Allen and the CRA, the second approach is the most likely to be adopted by a court.
CHAPTER 2
TAX INCREMENT DOLLAR RECEIPT LIMIT:
KEEPING COUNT

This chapter addresses the tax increment receipt dollar limits and touches on issues related to calculating the tax increment dollar cap and the consequences of reaching this dollar limit.

Q. **What is the limit on tax increment receipt?**
A. The limit on tax increment receipt refers to a dollar cap on the total amount of tax increment revenue an agency can receive over the life of a redevelopment plan. Plans adopted before 1994 are required to contain a cap on the total amount of tax increment. However, a tax increment receipt limit is not required for plans adopted in 1994 and thereafter or for areas added to plans in 1994 and thereafter. The tax increment dollar receipt limit for pre-1994 plans is in addition to the time limit on receipt of tax increment revenue and repayment of indebtedness that applies to all redevelopment plans. That time limit is discussed separately in Chapter 1.

Q. **Can the limit on tax increment receipt for plans adopted before 1994 be amended?**
A. Sometimes the tax increment cap set in plans adopted prior to 1994 affects an agency’s ability to eliminate blight in a project area. The limit on tax increment receipt can be increased by plan amendment if the agency can sufficiently document that the amendment is necessary to eliminate significant remaining blight. A plan amendment to increase a tax increment cap requires a process and documentation similar to that for adoption of a new redevelopment plan.

Q. **What is or is not included as tax increment for the purposes of the tax increment cap?**
A. In calculating the tax increment receipt limit, agencies should include all tax increment revenue deposited into the 20 percent housing set aside fund, all statutory pass-through payments, all payments made under pass-through agreements for redevelopment plans adopted prior to 1994, and county administrative costs deducted from an agency’s tax increment prior to tax
increment disbursement.

For plans adopted between 1985 and 1993, taxing entities could elect to receive a two percent election payment from a project area pursuant to former Section 33676 of the CRL. Two percent election payments are made directly by the county auditor-controller to the electing taxing entity as normal property taxes. It does not constitute tax increment to the redevelopment agency and are thus not counted towards the tax increment receipt limit.

If an agency’s records of tax increment receipt are insufficient to determine the precise amount of tax increment revenue it has received, an agency may by written request obtain annual statements from the county auditor, detailing the calculations made by the county auditor to determine the agency’s allocation of tax increment revenue. However, an agency making such a request may be required to reimburse the county auditor for the auditor’s reasonable costs of preparing the requested annual statements.

Maintaining an accurate account of tax increment receipt will be critical to issuance of tax increment bonds. Underwriters and bond insurers will require this in order to avoid potential default on existing bonds.

Q. **What happens if an agency reaches the limit on tax increment receipt?**

A. Reaching the limit on tax increment receipt does not limit any other agency activity. However, since tax increment revenue is typically the main source of revenue for most agencies, under most circumstances, reaching this limit will greatly curtail or preclude agency activities within a project area.
CHAPTER 3
TAX INCREMENT RECEIPT LIMIT:
EFFECT ON AN AGENCY’S HOUSING OBLIGATIONS

This third chapter discusses the limits on tax increment receipt in relation to an Agency’s Housing Obligations under Section 33333.8.

Q. **What Housing Obligations must an agency satisfy prior to reaching the limit on tax increment receipt?**

A. A redevelopment agency must fulfill the following four basic low- and moderate-income housing obligations prior to reaching the time limit on tax increment receipt.

First, an agency must deposit and spend the required amount of tax increment revenue to increase and improve the supply of low- and moderate-income housing in the community prior to reaching its limit on tax increment receipt. A minimum of 20 percent of the gross tax increment allocated to an agency for a project area must be deposited into the agency’s Low- and Moderate-Income Housing Fund. If a pre-1994 plan is amended to extend the date for receipt of tax increment beyond the 40-year AB 1290 limit, the agency must set-aside 30 percent of the gross tax increment from the project area for deposit to the Housing Fund, subject only to limited exceptions to accommodate preexisting debt.

Agencies must also expend Housing Fund monies for the appropriate purposes prior to reaching the time limit on tax increment receipt. An agency must eliminate all Housing Fund deficits prior to reaching the time limit. An agency must also expend, encumber, or transfer any excess surplus (unexpended or unencumbered amounts in an agency’s Housing Fund exceeding the greater of $1,000,000 or the total amount deposited in the agency’s Housing Fund during the preceding four-year period) by that time.

Second, the CRL requires that redevelopment agencies replace all low- and moderate-income housing destroyed as a result of a redevelopment project by the time limit on tax increment receipt. Units housing low- or moderate-income households destroyed or removed as a result of a redevelopment project must be replaced with new or newly rehabilitated low- and moderate-income housing units within four years after they are destroyed or removed from the housing stock.
Third, the CRL requires that agencies meet two specified housing production requirements prior to reaching the time limit on tax increment receipt. If an agency, itself, develops or rehabilitates housing units in a project area, 30 percent of those units must be available at affordable housing cost to low- and moderate-income persons or households. Of those, at least 50 percent must be affordable to very low-income persons or households.

Fifteen percent of all new and substantially rehabilitated housing units produced in a project area by any other public or private entity (other than the agency) must be affordable to low- and moderate-income persons or households. Of those units, 40 percent must be affordable to very low-income persons or households.

Fourth, the CRL requires that agencies meet their relocation obligations prior to reaching the time limit on tax increment receipt. Whenever redevelopment activities cause the displacement of low- and moderate-income residential occupants, an agency must provide relocation assistance to the affected individuals using the guidelines issued by the Department of Housing and Community Development.

Q. What happens if an agency fails to meet the housing obligations prior to reaching the time limit on tax increment receipt?

A. If an agency has not met or fulfilled its housing obligations prior to reaching the limit on tax increment receipt, the time limit for tax increment receipt is suspended. The agency must also amend the redevelopment plan to extend the deadline for receipt of tax increment and, if necessary, increase the dollar limit of tax increment the agency is allowed to receive. Thereafter, all tax increment funds that are not pledged to repay indebtedness must be devoted to meeting any remaining housing obligations.

Agencies should use annual reports and implementation plans as tools to track compliance with their housing obligations. Failing to meet the housing obligations in a timely manner may prevent an agency from dissolving a redevelopment plan or terminating. Agencies should also be aware that any person can sue an agency to compel the agency to meet its housing obligations over the life of the plan – though it is unclear when such a suit would be ripe.

Q. When an agency receives additional tax increment pursuant to Section 33333.8, does it also incur an additional obligation to the Housing Fund?

A. An agency can only receive additional tax increment under Section 33333.8 in an amount necessary to satisfy its housing obligations. When an agency receives additional tax increment, no new obligation to the Housing Fund arises because all unencumbered tax increment must be spent by the agency to meet its preexisting housing obligations.

Q. When an agency receives additional tax increment, is that agency required to make statutory pass through payments pursuant to Sections 33607.5 and 33607.7?

A. Yes, an agency receiving additional tax increment under Section 33333.8 must make the statutorily required pass-through payments. However, the law is unclear on how the pass-through payment amounts are calculated for the additional tax increment received. Normally, statutory pass-through payments are calculated after the amount required to be deposited into an agency’s Housing Fund is deposited. Section 33333.8 does not require additional tax increment to be deposited into an agency’s Housing Fund; it only requires that all unencumbered tax increment received by an agency be dedicated to meeting the agency’s housing obligations. All, some, or none of the additional tax increment may be deposited in an agency’s Housing Fund. If an agency was required to deposit all additional tax increment into its Housing Fund, and subsequently uses all of the additional tax increment to meet its housing obligations, then it may have no statutory pass-through payment.
Chapter Four discusses the bond limit and the limit on incurring debt and the implications reaching these limits have on an agency's ability to leverage tax increment revenues.

**Q. What is the bond limit?**

A. Redevelopment plans adopted on or after October 1, 1976 that authorize the issuance of bonds must also contain a dollar limitation on the amount of bonded indebtedness that can be outstanding at any time. Reaching the outstanding bond limit precludes issuance of new tax increment bonds until outstanding bonds are retired and may constrain agency activities that require bond financing. The limit on bond debt can be increased by plan amendment; however, it is a major plan amendment.

**Q. What constitutes an outstanding debt for the purpose of the limit on bonded indebtedness?**

A. In general, bonded indebtedness includes obligations to repay bonds. However, sometimes streams of payments in fulfillment of an obligation may also be deemed to be bond indebtedness. Further, the recent case of Fontana Redevelopment Agency v. Torres, 153 Cal. App. 4th 902 (2007), raised additional ambiguity regarding what constitutes an outstanding debt. Although it is not clear how the case will be applied in the future, agencies may want to consider the effect of tax increment pledges in DDAs and OPAs as potential “outstanding debt.”

**Q. What is the time limit on incurring bond debt?**

A. The time limit on incurring debt prevents an agency from “establishing...loans, advances, and indebtedness to be paid” with tax increment, which includes bond indebtedness.

Every pre-1994 plan was required to contain a time limit on incurring debt, which was not to exceed 20 years from the adoption of the plan or January 1, 2004, whichever was later. However, SB 211 allows an agency to eliminate that deadline.
altogether for pre-1994 plans. Some agencies have opted not to remove the limit on incurring debt from pre-1994 plans for political or financial reasons.

For plans adopted in 1994 and thereafter, the limit on incurring bond indebtedness is 20 years from the date the plan was adopted. That deadline may be extended for up to an additional 10 years by plan amendment, if the amendment is necessary to remove significant remaining blight.

Q. **What activities are affected by the time limit on incurring debt?**

A. Time limit on incurring debt only applies to debts secured with tax increment, including both bond indebtedness and any other debt secured by tax increment (e.g., debts under DDAs, OPAs, and public improvements). Therefore, after this deadline, an agency can continue to incur debt and engage in authorized activities that are funded from sources other than tax increment. For example, an agency could incur debt to undertake activities such as land acquisition or construction of public improvements, so long as the debt is to be paid from an alternative source that may include proceeds of tax allocation bonds issued before the deadline, land disposition proceeds, lease revenues, developer funds, or grant funds.

Conversely, after the expiration of the time limit on incurring debt, an agency could not incur debt to be paid from tax increment accumulated before the deadline because an agency would have to claim the debt to receive tax increment.

Furthermore, the time limit on incurring debt does not affect debts to be paid from an agency’s low- and moderate-income housing fund or debts incurred to meet the replacement housing and project area housing production requirements.

Q. **Can an agency incur debt to meet obligations established prior to the expiration of the time limit on incurring debt?**

A. An agency can incur debt after the deadline to fulfill an obligation established prior to the expiration of the time limit to incur debt, and the debt would not be considered new debt because it implements the original “debt,” which was obligated prior to the expiration of the time limit. One such example is an agency entering into a contract to buy property after the expiration of the debt incurrence time limit in order to fulfill a pre-deadline DDA obligation requiring the agency to purchase the property.

The deadline to fulfill an obligation would not impact agencies’ ability to enter into contracts after the deadline to spend bond proceeds from bonds issued before the deadline. Otherwise, agencies would not be able to spend all of the funds to fulfill the purposes for which the bonds were issued.

An agency could also potentially issue escrow bonds where bond proceeds come out of escrow as tax increment grows in the years after the expiration on the time limit to incur debt, so long as there is a reasonable expectation that the bonds will be paid out within three years.

Q. **Can an agency refinance existing debt incurred prior to the expiration of the time limit on incurring debt?**

A. For post-1994 plans, the CRL allows agencies to refinance, refund, or restructure indebtedness after the expiration of the time limit on incurring debt if the indebtedness is not increased and the time for paying off the debt is not extended beyond the time limit to repay indebtedness. A similar provision that applied to pre-1994 plans was unintentionally deleted with the adoption of SB 211. We believe despite this legislative anomaly, that for pre-1994 plans, agencies should be allowed to refinance, refund, or restructure indebtedness after the expiration of the time limit on incurring debt if the indebtedness is not increased, and the time for paying off the debt is not extended beyond the time limit to repay indebtedness.

Q. **How does the expiration of the time limit on incurring debt affect an agency’s housing obligations?**

A. This time limit on incurring debt does not apply to debts to be paid from an agency’s low- and moderate-income housing fund or debts incurred to meet the replacement housing and project area housing production requirements. An agency can continue to incur debt to carry out low- and moderate-income housing activities despite reaching the time limit for incurring debt.
CHAPTER 5
LIMITS ON EXERCISE OF EMINENT DOMAIN: TOUGH TO TAKE

This chapter explores the time limits on eminent domain and considers how the passage of Proposition 99 affects the eminent domain limits.

Q. What is the limit on the exercise of eminent domain?
A. Each plan must have a time limit on commencing eminent domain proceedings of not more than 12 years. For Post-AB 1290 plans, the 12-year time limit on commencing eminent domain proceedings runs from the adoption of the redevelopment plan. For Pre-AB 1290 plans, the law is ambiguous as to when the limit begins, but the time limit is most likely also applicable from the date of adoption of the redevelopment plan.

Q. When have “eminent domain proceedings” actually commenced?
A. The limit on the exercise of eminent domain is a limit on “commencing of eminent domain proceedings.”

If an agency has filed an eminent domain action and served it on the defendant by the time limit, the proceedings have clearly been commenced. If the agency filed the lawsuit prior to the expiration of the deadline, but failed to serve the defendant prior to the expiration of the limit, the eminent domain proceedings likely commenced, but the answer is less clear.

If an agency adopted a resolution of necessity but failed to file an eminent domain action prior to the expiration of the limit, the agency’s position may be weaker, although an argument could be made that the eminent domain proceedings have commenced because the resolution of necessity is an essential step in the condemnation process.
Q. **What if the agency makes a fair market value offer to purchase the property but has not adopted a resolution of necessity prior to the expiration of the limit on the exercise of eminent domain?**

A. In this instance, eminent domain proceedings have clearly not commenced. The threshold for commencement of an action is a declaration of intent to exercise the agency’s power to acquire the property. Making a fair market value offer to purchase the property is insufficient because that offer is intended to avert the use of eminent domain proceedings and is considered a necessary step that an agency must complete prior to commencing a condemnation action.

Q. **Can the eminent domain time limit be extended?**

A. If necessary, an agency can extend the limit on the exercise of eminent domain, for up to an additional twelve-year period, by amendment of the redevelopment plan. To adopt an extension, the agency must document and the legislative body must find that the extension of eminent domain authority is necessary for elimination of significant remaining blight in the project area. An eminent domain extension plan amendment may trigger a need to create or reinstitute a project area committee.

Q. **How does Proposition 99 affect the eminent domain time limit?**

A. Proposition 99 approved by the voters on June 3, 2008, prohibits State and local governments from acquiring by eminent domain an owner-occupied, single-family residence for the purpose of conveying it to a private person. Proposition 99 does not affect the application of the limit on the exercise of eminent domain under the Community Redevelopment Law. The Proposition does restrain an agency’s ability to condemn owner-occupied residences for ultimate private ownership, even if the use of the property may benefit the public. Proposition 99 does not apply to certain acquisitions initiated prior to the June 3, 2008 effective date of the proposition. If the agency made an initial offer to purchase the property prior to the effective date of Proposition 99 and adopts a resolution of necessity to condemn within 180 days from the effective date, Proposition 99 will not apply.
CHAPTER 6
WINDING DOWN AN AGENCY’S AFFAIRS: HARD TO SAY GOODBYE

This last chapter concludes our exploration of the CRL time and dollar limits with a discussion on closing down a redevelopment project and the process for winding down an agency’s affairs in a responsible and effective manner.

Q. What happens when an agency no longer has any active redevelopment plans or project areas?

A. Once all of an agency’s redevelopment plans and project areas are no longer active and have reached all the statutory deadlines, the agency may choose to continue to exist or the legislative body of the sponsoring community (the city council or board of supervisors of the city or county that established the agency) may, by ordinance, elect to dissolve the agency.

Q. What powers can an agency that does not dissolve exercise during the interim period between the expiration of its last redevelopment plan and the adoption of a new redevelopment plan?

A. Although the passing of all the statutory deadlines limits an agency’s ability to perform redevelopment activities within a project area, an agency that continues to exist without any active redevelopment plans or project areas, may continue to exercise some basic powers as illustrated below. An agency that continues to exist without active redevelopment plans or project areas has powers similar to those of a newly formed agency that has yet to adopt its initial redevelopment plan. The principal practical limitation on the powers of such an agency would be the ability to fund any ongoing activities without the benefit of tax increment financing.

For instance, subject to funding availability, the agency would have the power to litigate, to have a corporate seal, to make and execute contracts, and to enact bylaws and regulations to carry into effect the powers and purposes given to it in the Community Redevelopment Law. The agency could also continue to have employees, to rent office space, buy equipment, supplies or insurance, and pay for services. The agency would also continue to have access to the services and facilities of the planning commission, city or county engineer, or other departments or offices of the community.
In addition, the agency could prepare plans for improving and rehabilitating blighted areas, disseminate redevelopment information, and seek and accept financial assistance from public and private sources to carry out such programs. For instance, an agency that elects to continue to exist may, using alternative sources of funding that do not include tax increment financing, conduct the necessary research and planning to establish a survey area and adopt a new redevelopment plan. The Community Redevelopment Law does not prescribe a deadline within which a new plan must be adopted. It appears that an agency could continue to exist indefinitely for as long as it was able to find alternative funding sources that generated sufficient revenue for its continued, albeit limited, existence.

During the interim period between the expiration of an agency’s last redevelopment plan and prior to the adoption of a new redevelopment plan, the agency does not have the authority to use eminent domain to acquire property. However, certain provisions of the Community Redevelopment Law can be interpreted to allow an agency, in that interim period, to voluntarily acquire property for the purposes of redevelopment. During that interim period, an agency, may at the request of the legislative body of the community, also accept donations of public or privately-owned property, which the agency could then dispose of by sale or long-term lease.

Finally, an agency that does not dissolve has an obligation to continue to meet the administrative reporting and audit requirements imposed on active agencies during the interim period.

Q. What if an Agency chooses to dissolve?

A. An agency continues to exist until the sponsoring community’s legislative body adopts an ordinance to dissolve the agency. Section 33141 permits a local legislative body to adopt an ordinance ordering the deactivation of a redevelopment agency by declaring that there is no need for the agency to function in the community.

Such an ordinance can be adopted only if the agency has no outstanding bonded indebtedness, no other unpaid loans, indebtedness, or advances, and no legally binding contractual obligation with persons or entities other than the community, unless the community accepts and assumes the debt or obligation. To accept and assume the debts or obligations of an agency, the sponsoring community would need independent legal and financial authority and capacity to do so.

The local legislative body may adopt an ordinance to dissolve an agency only if the agency has completed all of its housing obligations under Section 33333.8(a) for all project areas (See, chapter 3 above). If an agency has not complied with its housing obligations, the time limit to conduct redevelopment activities is suspended until the agency has fully complied with its housing obligations.

The ordinance by the local legislative body to dissolve the redevelopment agency of the community is subject to referendum process applicable to other ordinances adopted by the legislative body.

Q. What happens to the property and assets the agency owns or holds at dissolution?

A. There is no clear guidance in the Community Redevelopment Law to determine how the assets and property of an agency to be dissolved are to be distributed, though a close parallel can be drawn with the Government Code provisions that deal with the distribution of property and assets upon the dissolution of special districts. The discussion below represents how specific types of assets and property may be distributed upon dissolution of an agency.

Property: Practitioners have come to the general consensus that the property owned by the dissolving agency must be transferred to the city or county that sponsored the agency, and that the sponsoring community is entitled to all the benefits and burdened by all of the obligations associated with the property.

Non-Tax Increment Program Income: The sponsoring community would also be entitled to receive any non-tax increment program income receivable by the agency to be dissolved, such as repayment of loans previously made by the agency. If the program income derives from a non-affordable housing program, then such money could be received by the sponsoring community and probably used at its discretion (e.g. deposited in its general fund). If the program income derives from loans that originated from an agency’s low and moderate income housing set-aside fund, the sponsoring community would arguably have to spend the funds for affordable housing uses consistent with the then applicable rules for housing fund expenditures.

Affordable Housing Tax Increment: If an agency that has met all its statutory housing obligations has tax increment deposits (including interest earned on such
deposits) remaining in its low- and moderate-income housing fund at the time of
dissolution, the remaining funds must either be transferred to a special fund of
the sponsoring community or to the sponsoring community’s housing authority.
The sponsoring community or the housing authority to which the remaining funds
are transferred must use the funds for the purposes of, and subject to, the same
restrictions for use of affordable housing funds that would be applicable to the
redevelopment agency had it continued in existence.

Non-Affordable Housing Tax Increment: In general, if the statement of
indebtedness system under Section 33675 works properly, an agency should not
have any excess of tax increment for non-affordable housing purposes at time of
dissolution because the cumulative amount of tax increment allocated and paid
by a county auditor-controller to an agency for such purposes should not exceed
the sum of the agency’s total indebtedness, including principal and interest, that
the agency paid to eliminate all of its existing debt prior to dissolution.

On the other hand, if the sponsoring community is accepting the obligations to
repay remaining outstanding debt of the agency at time of its dissolution, then
the sponsoring community should be able to receive and use any tax increment
previously allocated to the agency by the county auditor-controller to meet
the debts and obligations of the dissolving agency that are being accepted and
assumed by the sponsoring community.
Knowing Your Limits - Time and Financial Limits of Redevelopment Plans
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