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LAW ALERT

THE FINAL ACTIONS OF REDEVELOPMENT AGENCIES AND THE SET-UP OF SUCCESSOR AGENCIES

As of February 1, 2012, all California redevelopment agencies will dissolve and their assets and functions will transfer to a successor agency and a successor to the agency's housing functions. Following is a list of actions and other consideration items to be addressed in the next few weeks by a dissolving redevelopment agency ("RDA"), as well as by the community that formed the RDA ("Sponsoring Community") and that has chosen to act as its RDA's successor agency ("Successor Agency") and/or as the successor to the RDA's housing functions:

Legal Status

- Successor Agency – To preserve the limited liability provided to a Successor Agency in ABx1 26 (and to insulate the Sponsoring Community's other separate funds and assets from any potential liability), the Successor Agency should take all actions and hold all assets of the former RDA as the Successor Agency to the former RDA. As an example, for the City of California Dreaming, the assets held and the actions taken should be in the name of the "City of California Dreaming, as successor agency to the California Dreaming Redevelopment Agency." The governing board of the Successor Agency will be the Sponsoring Community's governing board (City Council or Board of Supervisors), although subject to the Oversight Board when formed. The City Council or Board of Supervisors, as applicable, should agendaize and conduct meetings on Successor Agency items on a separate place on its agenda acting as the Successor Agency (not simply as the City or County), take all actions in its capacity as the Successor Agency and enter into all agreements in its capacity as the Successor Agency. The contents of the former RDA

website related to redevelopment dissolution (such as the EOPS) should be transferred to the Successor Agency website (perhaps a separate and distinct page of the Sponsoring Community's website).

- Successor to RDA's Housing Functions – unlike the Successor Agency to the RDA, the successor to the RDA's housing functions will act in its own capacity relative to the former housing functions of the RDA, not as successor agency to the former RDA. So, for example, the successor to the housing functions of the former California Dreaming Redevelopment Agency will act as the City of California Dreaming or the Housing Authority of California Dreaming.

Asset Transfers

- As of February 1, 2012: All RDA assets (including properties, contracts, leases, books and records, buildings and equipment, and existing fund balances including the existing Housing Fund balance), other than housing assets (exclusive of the existing Housing Fund balance), transfer to the Successor Agency.
- As of February 1, 2012: All RDA housing assets (excluding the existing Housing Fund balance¹) transfer to the successor to the RDA's housing function.
- Based on our preliminary consultations with title companies and the treatment of similar types of entity reorganizations under California law, deeds, certificates of acceptance,

¹ SB 654, a pending urgency bill introduced by Senator Steinberg, would revise the current law so that existing Housing Fund balance would instead transfer to the successor to the RDA's housing functions for continued affordable housing production, rather than to the Successor Agency for RDA wind-down purposes.

- assignment agreements and other similar transfer documents should not be necessary to transfer assets and contracts as these should all transfer as a matter of law. We recommend that staff prepare two internal memoranda: one listing the properties, other assets and agreements transferred from the RDA to the Successor Agency and the other one listing the properties, other assets and agreements transferred from the RDA to the successor to the RDA's housing functions so there is a clear record of which of the former RDA's assets and agreements were transferred to which successor entity.
- We suggest for each contract in which the former RDA was a party that the successor entity send notice to the other parties in the contract of the name and address of the successor entity. Similarly, for any former RDA agreements in which payments may be due to the former RDA, the successor entity should send notice of the name in which, and location where, payments are to be made in the future. Similarly, for any secured RDA loan where the RDA was a junior lien holder, the successor entity should record a new notice of default with the successor entity name and address where notices are to be sent. We suggest staff send these notices as soon as possible and no later than the end of February.
- Based on preliminary discussions with members of the Accounting Standards Committee of the California State Association of County Auditors, we suggest that the Successor Agency retain all former RDA funds on hand and not deliver them to the County Auditor- Controller until the County's initial audit of the former RDA is complete or until further legislative direction is given.

Accounting

The following actions should be implemented on February 1, 2012:

- All accounts of the former RDA transfer to the Successor Agency. To preserve the limited liability of the Successor Agency provided in ABx1 26, the Successor Agency should hold all former RDA accounts separately from its other accounts and as the Successor Agency to the former RDA. We understand that many successor agencies plan to use the same account numbers as used by the former RDAs, changing the name on the accounts to the Successor Agency as successor to the former RDA. These accounts should

initially include a "housing account" where the existing balance in the RDA's Housing Fund should be placed pending the County audit and possible new legislative direction. We strongly suggest NOT including the former RDA accounts in any pooled account arrangements with other funds of the Sponsoring Community.

- The Successor Agency is required to establish a Redevelopment Obligation Retirement Fund. Funds transferred from the former RDA on February 1, 2012 and funds received from future asset dispositions should be held in the accounts described in the previous item and not in the Redevelopment Obligation Retirement Fund, which is intended as the repository for property taxes received from the County Auditor-Controller to pay enforceable obligations as set forth in the Enforceable Obligation Payment Schedule ("EOPS") or, when effective, the Recognized Obligation Payment Schedule ("ROPS"). Some Successor Agencies of former RDAs that administered multiple project areas are intending to set up sub-accounts in the Redevelopment Obligation Retirement Fund to track property taxes received and obligations paid with respect to each separate project area.
- All accounting records for properties, other physical assets and agreements of the former RDA (excluding the housing assets for the former RDA but including the former Housing Fund) should be listed on accounts of the Successor Agency as successor agency to the former RDA and not on the RDA's or Sponsoring Community's accounts.
- Accounting records for all housing assets (excluding the former Housing Fund) should show the housing assets of the former RDA in the name of the entity assuming the former RDA's housing functions.
- The successor to the former RDA's housing functions should create a new "housing fund" in its accounts where any loan repayments or receipt of funds from disposition of former RDA housing assets should be placed until used pursuant to redevelopment law provisions relating to the use of affordable housing funds.

EOPS/ROPS

- By January 31, 2012, the RDA delivers latest adopted EOPS and preliminary draft ROPS to the Successor Agency.

- On and after February 1, 2012, the Successor Agency is permitted to make payments only as listed on the EOPS until the ROPS becomes operative, and then permitted to make payments only as listed on the ROPS.
- As of February 1, 2012, RDA agreements with the Sponsoring Community are deemed void (with limited exceptions). ABx1 26 directs the Successor Agency to not make payments on these agreements and to remove them from the EOPS. However, given pending legislation and litigation on this issue, we suggest continuing to list these agreements on the EOPS and the ROPS until further clarification and subject to community-specific advice with regard to each community's particular agreements and circumstances.
- From February 1, 2012 to July 1, 2012, the Successor Agency is prohibited from accelerating payments or making any lump sum payments that are intended to prepay loans unless such accelerated repayments were required prior to February 1, 2012.
- By March 1, 2012, the Successor Agency prepares an initial ROPS (including an administrative budget), subject to review and certification by an external auditor as to accuracy and approval by the Oversight Board. The first draft of the ROPS should cover the six-month period from January 1, 2012 through June 30, 2012, and should also project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period the RDA "would have been authorized to obligate property tax increment" (which we interpret to mean the debt service schedule for the life of the obligation). Due to the relatively late date for formation of the

Oversight Board, we suggest that the Successor Agency may also decide to prepare an additional ROPS at the same time to cover the next six-month period from July 1, 2012 through December 31, 2012.

Employees

- As of February 1, 2012: The existing terms of any memorandum of understanding with an employee organization will be deemed to have been assumed by the Successor Agency and the Successor Agency shall become the employer of all employees of the former RDA.

Oversight Board

- The Successor Agency may consider contacting the appointing entity for each representative on its Oversight Board to discuss appointment procedures and timing. Some Successor Agencies may find it advantageous to facilitate formation of the Oversight Board prior to the May 1, 2012 deadline.
- The Sponsoring Community should consider its appointments to the Oversight Board, which are to be made by the Mayor or Chair of the Board of Supervisors, as applicable.

The California Redevelopment Association has set up expert committees that are addressing many of these implementation and accounting issues. Information from those CRA committees may be accessed at: <http://www.calredevelop.org>.

For more information, please call Lynn Hutchins, Karen Tiedemann, Jack Nagle, Rafael Yaquian, Josh Mukhopadhyay or any attorney at Goldfarb & Lipman.



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