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## LAW ALERT

### SB 341: NEW RULES FOR HOUSING SUCCESSORS TO REDEVELOPMENT AGENCIES

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SB 341 (Chapter 796, Statutes of 2013) will require "housing successors" – cities, counties, and housing authorities that have taken over housing functions for former redevelopment agencies – to follow new expenditure and accounting rules beginning January 1, 2014. While some of the rules are more permissive than former Community Redevelopment Law (regarding expenditures for monitoring costs, for instance), others are stricter (all funds must be spent on housing for lower income households, with expenditures for moderate income housing no longer permitted) .

#### **Housing Successors and Housing Assets**

After redevelopment agencies dissolved on February 1, 2012, another agency, called the "housing successor," was designated to assume all of the rights, obligations, and "housing assets" of the former redevelopment agency. In most cases, the housing successor was the city or county that had formed the former redevelopment agency or a city or county housing authority operating in the jurisdiction of the former redevelopment agency.

So-called "housing assets" were transferred to the housing successor by operation of law on February 1, 2012 and placed in a "Low and Moderate Income Housing Asset Fund." Housing assets include land, funds encumbered by a contract entered into by June 27, 2011, loans or grants receivable, and program income. However, all unencumbered funds held by housing successors were required to be paid to the County Auditor-Controller for distribution to other taxing entities. The only unencumbered dollars remaining in the Housing Asset Fund are

those derived from program income from operations, repayment of loans, and land sales.

#### **Key Provisions of SB 341**

SB 341 applies primarily to unencumbered *funds* held by housing successors in the Housing Asset Fund. It provides that these funds must be used as was previously required for monies in the Low and Moderate Income Housing Fund established under Community Redevelopment Law, but makes these key changes:

- The housing successor may, in each fiscal year, spend up to the greater of \$200, 000, or 2% of the combined value of land and loans and grants receivable held by the successor, for program administration and to monitor and preserve the affordability of units with affordability covenants.
- If the housing successor has fulfilled all replacement, affordable housing production, and monitoring requirements, it may spend up to \$250,000 per fiscal year on homelessness prevention and rapid rehousing services.
- All other funds in the Housing Asset Fund must be used to develop, acquire, and/or rehabilitate lower income housing (affordable to households earning 80 percent of median income or less). At least 30 percent of the funds must be spent on extremely low income housing (affordable to households earning 30 percent of median income) and no more than 20 percent may be spent on housing for households earning between 60 and 80 percent of median income. These requirements must be met over a five-year period. If the housing

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successor fails to meet the extremely low income requirement in any five-year period, at least 50 percent of the funds in each fiscal year must be spent for extremely low income households until the extremely low income target is met.

- If more than 50 percent of the total deed restricted affordable units located in the former redevelopment project area, its city or county, and the housing successor are reserved for seniors, no more senior housing can be assisted until the percentage of restricted senior units falls below 50 percent.
- Two or more housing successors within 15 miles of each other in the same county may pool their funds to assist households earning 60 percent or less of median income, but only for transit priority projects, permanent supportive housing, farmworker housing, and special needs housing, and subject to a variety of preconditions.
- The housing successor must initiate development activities on any land that it obtained from the former redevelopment agency within five years after the Department of Finance confirmed the property as a housing asset (usually in September 2012 or later, giving successors until at least 2017 to initiate development activities).
- An independent audit must be conducted every year and detailed information must be posted on the successor agency's web site.

### **Retained Provisions of Community Redevelopment Law**

Provisions of the Community Redevelopment Law not modified by SB 341 include:

- Methodology to be used for calculation of allowed rents and incomes for units assisted by the housing successor.
- 55-year affordability for rentals and 45-year affordability for for-sale units assisted by the housing successor.

- Required recordation of a Notice of Affordability Restrictions for all units assisted by the housing successor.
- Procedural requirements for sale or lease of property originally acquired with Low and Moderate Income housing funds.

### **Unanswered Questions**

SB 341 refers to the obligation of a housing successor to meet all replacement and affordable housing production requirements included in the former Community Redevelopment Law. These provisions mandated that low and moderate income housing removed by the former agency be replaced and required that 15% of new housing constructed in the project area be affordable to very low and moderate income households. However, the Department of Finance has rejected requests for tax increment to meet these obligations, and these obligations are the subject of current litigation.

### **Implications of SB 341**

Most housing successors have program income of substantially less than \$200,000 per year. For these agencies, the ability to spend their limited program income on administration and monitoring costs will be helpful.

Given the limited funds available to most successors, the requirement to target expenditures to housing for very low and extremely low income households may result in the construction of fewer affordable units. The intent appears to be to target expenditures to projects qualifying for federal low income housing tax credits.

If you have questions about SB 341, please feel free to contact Lynn Hutchins, Rafael Yaquian, Barbara Kautz, Polly Marshall, or any other attorney at Goldfarb & Lipman LLP for more information.

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