

AFFORDABLE HOUSING

CLIENT ALERT

MAY 7, 2010

REDEVELOPMENT AGENCIES LOSE ROUND 1 OF BATTLE TO KEEP LOCAL FUNDS OUT OF STATE COFFERS

On May 4, 2010, the Sacramento County Superior Court rejected the California Redevelopment Agency's constitutional challenge to ABX4 26, California's budget agreement that was adopted in July 2009. ABX4 26 requires redevelopment agencies to transfer \$2.05 billion in local redevelopment funds over the next two years to an educational fund to be used for funding of programs located within the redevelopment areas. The court also declined the California Redevelopment Association's request to issue a stay until the matter could be heard on appeal. The California Redevelopment Association (CRA) intends to appeal the judgment and has requested a stay from the California Court of Appeal. On Friday, May 7, 2010, the Third District Court of Appeal denied the CRA's request for a temporary stay. Therefore, the first payment of funds from redevelopment agencies to this educational fund is due on Monday, May 10, 2010.

In the 2008-2009 budget year, the legislature passed a similar bill which was successfully challenged by the CRA as unconstitutional. However, during budget negotiations last year, the governor and lawmakers attempted to cure the asserted deficiencies in the 2008-2009 budget bill with the passage of the ABX4 26.

Due to the on-going challenges to this initial ruling, it should not be considered final. After passage of ABX4 26, redevelopment agencies set aside money in anticipation of such payments. Redevelopment agencies would likely continue to set aside the funds regardless of the outcome of this first determination, so there are not expected to be any immediate repercussions from this initial ruling.

This latest news highlights the troubling trends that continue to plague affordable housing development over the past several years in California. The severity of the California budget crisis has directly impacted the availability of state and local funding sources. Perhaps more damaging is the concern that institutional lenders and investors are no longer confident that these impacted state and local funding sources will be available to fund in part affordable housing and infrastructure projects. After taking into account the funds required to be set aside under ABX4 26, many, if not most, redevelopment agencies no longer have sufficient funds to support affordable housing or infrastructure projects. This redevelopment agency crisis could lead to a situation similar to the one that developed after the Pooled Money Investment Board (PMIB) decided in June 2009 to freeze disbursements of funds to affordable housing projects. Even though funding has since resumed, many tax credit investors and senior lenders are now very wary of any state programs reliant on the PMIB to provide funding as and when promised.

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Until there is an overall solution to California's systemic budget crisis, it is difficult to expect that public sources of funds can be relied upon to the same extent as in the past. As a result, some of the private sources of financing, such as Low Income Housing Tax Credits, New Markets Tax Credits, Housing Bonds, and Mello Roos financing will necessarily play a more important role in affordable housing transactions as the state and local funding options dwindle.

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