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California Land Use & Development Law Report

Redevelopment Assets Ordered Returned by State Controller

Last year's bill eliminating redevelopment agencies, AB x1-26, has created massive headaches for successor agencies as they attempt to unwind years of complex financial transactions. For many of them, the headache just got worse. On April 20, the State Controller issued an unconditional order that all assets transferred from a redevelopment agency to any other public agency after January 1, 2011, must be reconveyed to the successor agency charged with winding down the redevelopment agency's affairs. Adding to the commotion, the order includes assets that are subject to binding contracts with third parties unless those contracts were signed before June 29, 2011.

The order surprised many public agencies, which had anticipated a more methodical process under which the Controller – who is charged with reviewing and, in some cases, reversing asset transfers – would determine, on a case-by-case basis, which assets needed to be returned. Such a process is what the clawback provision of AB x1-26 appeared to contemplate by providing that the Controller was to review the redevelopment agency activities to determine whether an asset transfer had occurred after January 1, 2011, and, if so, whether (1) the transferee agency was contractually committed to a third party regarding those assets; and (2) whether reversal of the asset transfer would conflict with state or federal law. If not, the Controller was to "order the available assets to be returned to the . . . successor agency."

The Controller's April 20 letter, however, draws a bright line distinction between assets subject to a contract before or after June 29, 2011, the effective date of AB x1-26. Only contracts executed *before* June 29, 2011 – according to the letter – can exempt assets from the reconveyance requirement. The letter also skips over the issue of whether the reconveyance would conflict with state or federal law (as, for example, where the asset is pledged in connection with a federal grant).

The League of California Cities "Post-Development Working Group" – a group of City attorneys charged with interpreting AB x1 26 and providing general guidance to cities – disagrees with the Controller's interpretation of the statute. In a "Q&A" on property transfer issues posted on the League's website, they note that AB x1-26 permits an order of return of the asset only where the "government agency that received the asset ***is*** not contractually committed to a third party . . . ." It says nothing about the contract pre-dating June 29, 2011. The Legislature was clearly aware of the significance of June 29, 2011, date since numerous provisions of the statute distinguish between events occurring before and after that date (including the clawback provision itself, which states that the Controller's review is to commence "on the effective date of [this] act."

Based on this legal analysis, the Working Group's recommendation to cities is that "any demand for the return of property or assets that are contractually committed to a third party at the time of receipt of such an order respectfully be denied on the grounds that the demand is not consistent with the statutory provision."

The issue will come to a head soon because agencies are required to send the Controller a list of assets transferred after January 1, 2011, and to include the date of any contract to which such assets are subject. Based on his April 20 letter, the Controller can be expected to issue a follow-up order to agencies whose asset transfer forms list assets subject to a post-June 29 contract that have not been reconveyed to the successor agency as directed in that letter. The next step may well be litigation seeking judicial review of the Controller's restrictive interpretation of the statute.

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