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# Redevelopment Dissolution: A View from the Trenches

2014 Annual Conference – California Society of Municipal Finance Officers  
Renaissance Hotel, Palm Springs – February 20, 2014

PRESENTED BY

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# Update on Post-Redevelopment Litigation

- Dissolution Law (AB 1x 26 & AB 1484) allocated \$22 million to DOF, including \$2 Million to Sacramento County Superior Court
- More than 170 cases filed; more than 100 still pending
- Vast majority filed as petitions for writs of mandate, 4 writ judges – don't always agree

# Issues Raised

- True-Up Payments
- Constitutional challenges to sales/use tax offsets & property tax reductions
- ROPS/DDR /HAT determinations re:
  - Re-entered City-Agency Agreements
  - 3<sup>rd</sup> Party Agreements
  - Court-approved judgments

# *LOCC v. Matosantos*

- Challenged penalty provisions allowing DOF to order City Sales/Use Tax withholding OR Auditor-Controller to reduce City property tax if True-Up or Due Diligence Review (DDR) payment not made by successor agency
- Withheld sums would be disbursed to taxing entities

# *LOCC v. Matosantos*

- Propositions 1A and 22 prohibit State from
  - diverting sales tax for purposes other than those determined by local government AND
  - Reallocating property taxes among cities and counties  
(Cal. Const., Art. XIII, §§ 24(b); 25.5(a)(2)(A))
- Petition challenged penalty provisions on their face

# *LOCC v. Matosantos*

- Judge Kenny initially declined to rule - facial challenges not ripe since DOF had not tried to have sales tax withheld
- At same time, DOF sent letters to various notifying them of city sales tax withholds in August if DDR payments not made based on the amount DOF had determined “was in the possession of the city,” per DOF policy
  - 34179.6 (h)(1)(A) v. 34179.6(h)(1)(C)
- No explanation as to how DOF determined what funds were in city’s possession
- LOCC filed motion for reconsideration

# *LOCC v. Matosantos*

- Court determined that language of Art. XIII, Section 24(b), was a complete prohibition against the Legislature taking or using local tax revenues, without exception, for any purpose.
- Prop 22 statement of purpose: to “conclusively and completely prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government ...”



# *LOCC v. Matosantos*

- Writ issued ordering DOF to cease any use or threatened use of city sales/use tax offsets (property tax reduction issue not ripe)
- Contrary ruling in *Bellflower, et al. v. Matosantos* by Judge Frawley
  - Purpose of Propositions 1A and 22 was to prohibit State from reducing existing local tax revenues
  - If City/County did not receive funds, offset would be unconstitutional, but no evidence presented in facial challenge
  - Notice of appeal filed

# RPTTF Reductions

- Section 34179.6(h)(2) – DOF may order A-C to reduce RPTTF allocations from Successor Agency
- Orders do not specify how reductions calculated

# Re-entered City-Agency Agreements

- Per AB 1x 26, City-Agency Agreements generally invalid, unless oversight board approved re-entering of such agreements
- AB 1484, enacted June 27, 2012, amended to allow re-entry only after finding of completion issued; DOF denied re-entered agreements approved prior to AB 1484
- *Emeryville, Riverside, Sonoma County*

# Pre-Dissolution Payments

- Proposition 22 prohibition on re-allocating tax increment received by redevelopment agencies (Cal. Const. Art. XIII, §25.5(a)(7))
- *Brentwood* and *Foster City* tentative rulings held that DOF could not claw back pre-dissolution payments made between January 1, 2011 – January 31, 2012 by RDA to city under valid agreements
- Supplemental briefing – no final trial court decision

# *Bakersfield v. Matosantos*

- Agreement with HCD awarding Prop 1C funds for 2 affordable housing projects obligated the SA to enter into development agreements for the construction of those projects
- No development agreements in place as of June 27, 2011
- Since RDA obligations sufficiently defined in HCD contract, SA had the authority to enter into development agreements

# Housing Asset Transfers

- *Fresno v. Matosantos* — State Controller order that City should transfer housing assets back to SA so Oversight Board could order assets transferred back to City was invalid and served no legitimate purpose
- Law required housing assets be transferred to housing successor

# *Fresno v. Matosantos*

- DOF approval of Housing Asset Transfer list – including cash transfers of \$17.9M - was final and binding, and DOF could not later reverse that decision in its LMIH DDR determination

# Other issues

- Agreements with 3d parties
  - 49'er case -- was enforceable obligation
  - Other cases, agreements not EOs
- Loans from Enterprise funds – Proposition 218 issues
- 2011 Bond Proceeds
- Funds set aside per judgments or agreements
- Long Range Property Management Plans



Thank you for attending.

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