

California Debt and Investment Advisory Commission
Land-Secured Financing Current Topics and Practices
(May 1, 2015)

SESSION SEVEN

MANAGING GOING FORWARD: ADMINISTRATIVE ISSUES

ADMINISTRATION OF DISTRICTS

Presented by:

Robert J. Whalen
Stradling Yocca Carlson & Rauth,
a Professional Corporation
Phone: (949) 725-4166
E-Mail: rwhalen@sycr.com

Stradling
Attorneys at Law

KEY TOPICS FOR ADMINISTRATION OF DISTRICTS

- PERSONNEL/CONSULTANTS
- INVESTMENT OF BOND FUNDS
- DISBURSEMENT OF BOND FUNDS
- REBATE ISSUES
- CONTINUING DISCLOSURE
- ANNUAL CDIAC AND BOND ACCOUNTABILITY REPORTS
- LEVY OF SPECIAL TAXES/ASSESSMENT INSTALLMENTS
- COLLECTION AND DELINQUENCY

PERSONNEL/CONSULTANTS

- Local Agency Staff
- Special Tax Consultant
- Assessment Engineer
- Rebate Consultant
- Foreclosure Counsel
- Disclosure Counsel

INVESTMENT OF BOND FUNDS

- City Treasurer/County Treasurer/Bond Trustee
- Prior to transfer to Trustee/Fiscal Agent, general Government Code investments rules apply
 - City Investment Policy
 - County Investment Policy
 - Special District Investment Policy

INVESTMENT OF BOND FUNDS (cont'd)

- Funds held by Trustee/Fiscal Agent
 - Permitted Investments under Indenture/Fiscal Agent Agreement
 - Requires written direction
- Recordkeeping for Investments
 - Tracking of investments and interest earnings
 - Key for rebate calculations
 - Maintain for term of bonds plus 3 years

DISBURSEMENT OF BOND FUNDS

- Application of Internal Controls
 - Authorized signatories
 - Approval of expenditures – required documentation
 - District engineer role
- Trustee/Fiscal Agent
 - Written requisition submitted
 - Monthly Statements
 - Reconciliation by Local Agency

DISBURSEMENT OF BOND FUNDS (cont'd)

- Joint Community Facilities Agreements
 - Tracking bond proceeds transferred to other agencies
 - Proceeds not spent until disbursed by recipient public agency
 - Commingling issues
 - Reimbursement only preferred approach
- Compliance with IRS Regulations
 - 3-year temporary period (85% rule)
 - 5-year hedge bond rules (year 1 - 10%; year 2 - 30%; year 3 - 60%; year 5 - 85%)
 - Active IRS audit area

REBATE CALCULATIONS

- IRS Requirement
- Calculate and pay every 5 years
- Only applicable where investment earnings exceed bond yield
- Various exceptions available for:
 - Bona fide debt service funds
 - Construction Funds
 - 6 month expenditure
 - 18 month expenditure
 - 24 month expenditure

CONTINUING DISCLOSURE

- SEC Rule 15c2-12
- Need for written policies and procedures
- Obligated Persons – Issuer & Developer
- What to disclose
 - Annual Report content in Continuing Disclosure Certificate
 - Other “material” information
 - Enumerated events

CONTINUING DISCLOSURE (cont'd)

- Information Repository – MSRB (Municipal Securities Rule-Making Board)
- Reports and events must be filed on time
- Failure to file must be disclosed for 5 years in Official Statements

ANNUAL REPORTS

- Summary of development
- Summary of account balances
- Status of improvements
- Updated value-to-lien information
- List of parcels and levy
- Delinquencies

ENUMERATED EVENTS

- 16 events under Rule 15c2-12
- 9 events require filings within 10 business days
 - Payment defaults
 - Draws on debt service reserve funds
 - Draws on credit enhancements
 - Rating changes
- 7 events require filing, if material, within 10 business days
 - Nonpayment
 - Amendments to bond documents
 - Bond calls

STATE REPORTING

CDIAC

- Yearly Fiscal Status Report: Gov. Code § 53359.5
 - October 30 deadline
 - 15 required items: form provided
 - 10-day significant event reporting: form provided
 - Failure to pay debt service
 - Reserve Fund withdrawal to less than Reserve Requirement

STATE REPORTING (cont'd)

Local Agency Special Tax & Bond Accountability Act

- Report filed with Clerk each year (Gov. Code §§ 50075.3 and 53411)
 - January 1 filing deadline
 - Amount of funds collected and expended
 - Status of authorized project

ON-GOING SPECIAL TAX/ASSESSMENT ADMINISTRATION

- Calculating the Annual Special Tax Levy
 - Update taxable parcel list and assign each parcel to appropriate special tax category
 - Calculate “Special Tax Requirement”
 - Apply Rate and Method to determine amount of special tax for each taxable parcel

ON-GOING SPECIAL TAX/ASSESSMENT ADMINISTRATION (Cont.)

- Levying the Special Tax
 - Usually pursuant to one-time ordinance and without further action of legislative body
 - Need to know requirements of County Auditor, including format, deadline for submission, and fee
 - Submit parcel-by-parcel levy to Auditor's Office and review printout for accuracy

ON-GOING SPECIAL TAX/ASSESSMENT ADMINISTRATION (Cont.)

- Calculating the Annual Assessment Installments
 - Reapportionment process for parcel splits
 - Calculate reassessment installments and administrative costs
 - Submit to County Auditor and review printout for accuracy

ON-GOING SPECIAL TAX/ASSESSMENT ADMINISTRATION (Cont.)

- Delinquency Management
 - Accelerated judicial foreclosure
 - Monitor delinquencies even in Teeter Plan counties
 - Delinquency thresholds
 - Notice to delinquent owners
 - Strip delinquent taxes/assessments from tax roll
 - Involve foreclosure counsel