

Court stay puts redevelopment projects in limbo

Agencies, lawyers scramble to save deals

By Ben Adlin

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A recent state Supreme Court order staying new redevelopment legislation until next year has caused confusion among lawyers and developers, leaving dozens of green-lighted projects up in the air.

Redevelopment agencies filed a motion this week asking the court for guidance.

“We’re now in this place of limbo,” said Robin Hughes, president of Abode Communities, which develops, designs and operates affordable housing projects in Southern California.

One property the organization is trying to acquire is stuck in escrow. The lender has refused to close on the deal, Hughes said, because the redevelopment agency is uncertain whether it can move forward.

She’s hoping the building will still be on the market in January, when the high court is expected to issue a decision in the redevelopment case. But it’s a gamble.

Hughes is so concerned about the precariousness of her position that she wouldn’t identify which of her projects have been stalled. She said she’s heard “a range of interpretations” from cities about what agencies can do under the stay, and she’s concerned discussing the projects could sow even more uncertainty.

David Bloom, a spokesman for Los Angeles’ community redevelopment agency, said the court’s order has stalled 91 affordable housing projects his agency is involved in.

“Maybe we’ve got to close escrow and we can’t, or maybe we need to do some kind of services contract,” he said. “We can’t do our part.”

There’s a lot on the line for developers: If a project were to move forward and later found to have violated the stay, the project could be scrapped, and parties would risk forfeiting resources they’d invested, said Amy E. Freilich, a partner at Armbruster Goldsmith & Delvac LLP in Los Angeles who represents agencies and developers.

“Agencies are being very protective now, so they’re unlikely to move into those types of arrangements,” she said, “but generally it would mean that the deal would be unwound.”

The confusion stems from a move by the state Legislature in June to dissolve redevelopment agencies unless they pay a portion of their funds to the state. The agencies sued, claiming Proposition 22, passed by voters last November, prohibits the move. The state Supreme Court agreed to hear the case.

Under the terms of the court’s Aug. 11 stay, agencies can perform work associated with existing “enforceable obligations,” as defined in California Health and Safety Code Section 34167(d). But agencies are prohibited from entering into new obligations while the stay is in effect. *California Redevelopment Association. v. Matosantos*, S194861

The distinction is clear in the abstract, but the real-world line between new and existing obligations is blurry. Most redevelopment projects involve various contractors, a hodgepodge of funding sources and overlapping support from multiple government agencies. Performing on one enforceable obligation sometimes entails creating another.

That creates problematic scenarios that the court’s stay doesn’t resolve, Freilich said. Last week, a developer asked her about a project that a redevelopment agency

committed to fund before the stay but on documents that had yet to be negotiated when the stay took effect. Would it be permissible for agencies to negotiate and approve the pending documents, or would that violate the court’s prohibition of new enforceable obligations?

In a document offering “general guidance” to municipalities, the California Redevelopment Association, a petitioner in the suit, wrote that an agency can enter new contracts if they’re necessary to carry out the agency’s duties under an enforceable obligation.

But when asked about Freilich’s example, John Shirey, the association’s executive director, admitted it “would be a gray area.”

“There are going to be arguments about this,” he said, “but we feel that if agencies use good judgment here and don’t step too far afield, that will be OK.”

That’s scant reassurance for many in the redevelopment community.

“We’re trying to provide additional clarity for our employees about what they can work on and what they can’t,” said Bloom with the redevelopment agency in Los Angeles. “We’re going to have to check with the lawyers and everyone else to make sure we’re not stepping somewhere that’s going to get us in trouble.”

In a motion filed Monday, redevelopment agencies asked the high court to lift the stay on agencies that have pledged to pay the state part of their funds.

In a flagging economy and with state unemployment in July at 12 percent — the second highest in the country — some said redevelopment money that could be put to work as economic stimulus will instead stagnate.

“We’d like to be putting the city back to work as soon as possible,” Bloom said.