COMMUNITY DEVELOPMENT DISTRICTS

The following information briefly answers the most commonly asked questions regarding establishment, powers, and governance of Community Development Districts under Florida law.

Q: What is a Community Development District?

A. A Community Development District (CDD) is an independent special purpose unit of local government established pursuant to and governed by Chapter 190, Florida Statutes. There are more than 65 CDDs throughout Florida today. CDDs have been used to help ensure infrastructure is in place when needed, meet the concerns of permitting agencies with respect to long-term maintenance of infrastructure, and provide access to sources of capital for infrastructure.

Q. What powers are CDDs permitted to exercise?

A. As special purpose local governments, by law CDDs possess certain general legal powers similar to cities and counties, such as the right to enter into contracts, to acquire and dispose of real and personal property, to adopt rules and regulations, and to obtain funds either by borrowing, issuing bonds, or levying non ad valorem assessments and taxes. CDDs also have certain special powers relating to basic public improvements and community facilities, such as roads, bridges, and water management. Finally, CDDs may have the power to undertake other types of facilities, such as recreational amenities, with the consent of the local general purpose government in its jurisdiction. All District powers, however, are authorized subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies and special districts having authority with respect to any area included within the District's external boundaries. By law, CDDs do not have zoning, permitting, or comprehensive planning powers. The creation of a CDD does not change any requirements for governmental approvals of any activities or construction within the District.

Q. How are CDDs governed?

A. CDDs are governed by a five member Board of Supervisors elected initially by District landowners on a one acre one vote basis. Any fraction of an acre is treated as one acre, entitling the owner to one vote. Commencing no sooner than six years following creation of the District, and only after there are at least 250 qualified electors, Supervisors whose terms are expiring will begin to be elected by qualified electors of the District. A "qualified elector" is any person at least 18 years of age who is a United States citizen, a legal resident of Florida and of the District, and who is registered to vote with the Supervisor of Elections in the County in which the District land is located.

Board meetings are governed by the open meetings law, and therefore, must be noticed in a local newspaper and conducted in a public forum. Subject to the requirements of the public records law, CDDs must make District records

available for public inspection during normal business hours. The Supervisors themselves, are subject to the same financial disclosure requirements as are other local elected officials. These requirements, as well as the myriad of governmental reporting and auditing requirements imposed on CDDs by law, ensure that CDDs are particularly visible and accessible in the relation to other entities exercising responsibility for the development of community infrastructure and services.

In addition to all of the disclosure, records and meetings requirements above, the District is required to submit its budget annually to the County and the County has the option to review and comment on it. The District must also file a public facilities report with the County covering the facilities it provides.

Q. How is a CDD different than other kinds of special districts and homeowners associations?

A. While other kinds of special districts and homeowners associations may address certain issues, none of them have the specific type of powers necessary to provide the infrastructure in the manner contemplated here. In addition to their inability to effectively finance major capital improvements, homeowners associations generally do not meet regulatory agency requirements for stable, perpetual entities for long term maintenance of permitted infrastructure. Further, HOAs do not operate under the same open meeting, public records, and financial disclosure laws as CDDs. HOAs, however, can perform one function that CDDs cannot, namely the enforcement of deed restrictions and the exercise of architectural control.

A CDD is also very different from a dependent special district established by a County for such a District, the County staff would have to take on the duties and responsibilities necessary to implement that District's programs and activities as well as the financing. Undertaking such a responsibility would have an effect on a County's borrowing capacity, credit rating and be accounted for on the County's financial statements.

Q. Why do developers seek to establish CDDs?

A. There are several reasons. First a CDD can provide access to a different capital market. While the tax free market generally provides a lower cost of borrowing (i.e., interest rate), there are the initial costs of establishing and running a District that a developer must take into account. Second, to the extent there are facilities, such as water management or recreation that require long term maintenance, a CDD is a more stable, financially diverse entity that provides a higher degree of certainty that the facility will be maintained and have the resources to maintain. Environmental permitting entities generally prefer a CDD to a homeowners association for maintenance of facilities under their jurisdiction. Maintaining the infrastructure helps maintain property values, an important factor to the developer, as well as the homeowner and the county.

Q. How are District non ad valorem special assessments determined?

A. Each property owner will pay an annual assessment to the District based on two component costs. One is the fixed amount required to amortize the debt assessed against each lot, parcel or acre for the facilities acquired or constructed by the District. The other is an annual assessment for District operations and maintenance of District facilities. The annual installation amount may vary in relation to the size and location of the property, and to the infrastructure benefit allocated to the property assessed. Each year, the District Board of Supervisors holds a public hearing to set its budget and the level of assessments. Consequently, District residents will know each year's assessment in advance.

Q. Do homeowners in a Community Development District pay more for the same amount of services than homeowners in non CDD communities?

A. No. The analysis needs to begin with the basic premise that a homeowner will pay for the infrastructure improvements, both the construction and the ongoing maintenance of those improvements regardless of what mechanism is used to finance those improvements. From that standpoint, it is more advantageous for a homeowner to incur a portion of those costs through an assessment levied on his tax bill versus having to qualify for an additional amount of money in the form of a home mortgage. The homeowner has the advantage of paying over time in the form of an assessment on the homeowners tax bill versus having to finance them at his/her mortgage interest rate.

Q. How are defaults on CDD assessments handled?

A. CDDs may use the procedure for levying and collecting assessments provided in either Chapter 170 or Chapter 197, Florida Statutes. The remedies available to the District under each method are slightly different. However, in either case, if there is a default by an owner of property within a CDD, the bondholders are permitted to look only to the defaulting property for recovery of the delinquent assessment. Chapter 190 specifically provides that the local general purpose government is not responsible for debt issued by a CDD.

Q. Are CDDs permitted to issue general obligation bonds and levy ad valorem taxes?

A. Yes. While District Boards have the power to issue general obligation bonds and to levy and assess ad valorem taxes subject to referendum approval, there is no intention to have the District issue this type of bond or impose ad valorem taxes. By law, issuance of general obligation bonds is limited to financing or refinancing capital projects or to refunding outstanding bonds in an aggregate principal amount of bonds outstanding at any one time not in excess of 35 percent of the assessed value of the taxable property within the District. An ad valorem tax levied for operating purposes, exclusive of debt service on bonds, is limited to three mills. In the event a CDD exercises its ad valorem taxing power, landowner election of Supervisors will no longer be permitted. Prior to exercising such power, all Board members must be elected by qualified electors of the District.

Q. What about revenue bonds?

A. Districts may issue revenue bonds for appropriate projects. Revenue bonds may be secured, or made payable from, the gross or net pledge of the revenues to be derived form any project or combination of projects, from the rates, fees, or other charges to be collected from the users of any project or projects, from any revenue producing undertaking or activity of the District, from special assessments, or from any other source or pledged security. All bonds issued by CDDs must be secured by a trust agreement and any bonds maturing over a period of more than five years must be validated and confirmed by court decree. (excluding refunding bonds)

Q. What are District rates, fees and charges?

A. CDDs are authorized, after a public hearing, to prescribe, fix, establish, and collect rates, fees, rentals or other charges for the facilities and services furnished by the District. Florida law provides that these revenues must be uniform, just and equitable for users of the same class.

Q. What kinds of disclosures are required with respect to the sale of real property within CDDs?

A. CDDs are required by statute to take affirmative steps to provide full disclosure of information relating to the public financing and maintenance of improvements to real property undertaken by the District . This information must be made available to all existing residents of the District and to all prospective residents. Moreover, the CDD is required to furnish developers of any residential development within the District enough copies of this information for distribution to each prospective purchaser. Finally, Florida law requires that all contracts for sale of land within a CDD must include the following language:

> The (name of the District) imposes taxes or assessments or both taxes and assessments, on this property through a special taxing District. These taxes and assessments pay the construction, operation and maintenance costs of certain public facilities of the District and are set annually by the governing Board of the District. These taxes and assessments are in addition to County and all other taxes and assessments provided for by law.

This disclosure language must appear in bold faced and conspicuous type which is larger than the type in the remaining text of the contract and must be situated immediately prior to the space reserved in the contract for the signature of the purchaser.

This contract disclosure is in addition to the information provided by the District to the developer and ultimately to the builder and homeowner/purchaser.