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Kick-Starting Stalled Development Projects with Public Funding

It is no news to anyone that, as a result of the continuing paucity of access to credit, there are multiple real estate development projects that are troubled, or, completely stalled. Any developer finding itself in such a position should be considering whether the project in question might be eligible for government funded assistance.

A number of readers will probably already be familiar with Tax Increment Financing ("TIF") as a possibility. TIF programs are available in many states and municipalities, and the various rules and regulations have a fair degree of variation. In general, a TIF involves a government body arranging for low cost financing to the developer by leveraging against the future increases in the tax base that are predicted to occur as a result of the development in question (or by making available funds that have already accrued as a result of the segregation of such funds in an existing TIF district). Historically, TIFs have been used to redevelop blighted areas. However, as the programs have grown in popularity, some TIF districts have been created that may expand access to funds to a wider range of projects outside of the traditional areas of creation of manufacturing jobs and affordable housing. It would be prudent for any developer that finds itself strapped for cash to look closely at the programs offered in their state or city (and the location of existing TIF districts within the applicable municipality) to see if there is a basis for making an application for financing from these sorts of programs.

Another option for developers is the recently rolled-out Recovery Zone Bonds program (the "RZB Program") from the Treasury Department. Three projects in New York City have benefitted from this program - Brooklyn's "City Point" mixed-use development project and the "Arverne by the Sea" and "Benjamin Beechwood" retail projects in Queens. The RZB Program makes funds available to finance developments in areas substantially affected by poverty, home-foreclosures and job losses. The portion of the RZB Program which will be used by private businesses to finance capital projects is structured as a traditional tax-exempt private activity bond (i.e., the government issues the bonds on behalf of a developer, sells the bonds to a purchaser, and the proceeds from the sale of the bonds is distributed to the developer as a loan). Under the RZB Program, areas of each state are allocated a certain amount of funds. In the event a development project is planned or is stalled within one of the designated areas, it would be worth checking into whether such project would qualify under the RZB Program. The press release giving a general description of the RZB Program can be found here: <http://www.ustreas.gov/press/releases/tg168.htm> and the amount of funds allocated to each particular area can be found here: http://www.treas.gov/press/releases/docs/rzballocation-local_AR-ZS.pdf.

If you have a need for legal advice on any of the above matters, please contact any of the following partners in our [Distressed Real Estate](#) Group:

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Firm Facts

Duval & Stachenfeld LLP now has a close-to-30 lawyer Real Estate Practice Group (one of the largest in New York City) and a close-to-40 lawyer Distressed Real Estate Practice Group (one of the largest in the U.S.). The Firm prides itself on its ability to handle a real estate matter (whether or not distressed) from any angle in the "capital stack". This background is of particular use to our clients in the Firm's Distressed Real Estate Practice Group, in that when representing one party in the capital stack, we are able to understand the thinking and motivations of the other parties.

Please contact Caitlin Velez at (212) 672-3747 or newsletter@dslip.com with any questions or comments.

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