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## Frequently Asked Questions Regarding Community Development Districts

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

**Q:** What is a Community Development District?

**A:** A Community Development District (“District” or “CDD”) is a special-purpose unit of local government established pursuant to and governed by Chapters 189 and 190, Florida Statutes. A CDD is a type of, and the most popular form of, Special District. Special Districts are similar to cities and counties, except that Special Districts are organizations of local special-purpose government rather than general-purpose government. A CDD’s special powers are generally limited to funding, installing, operating, and maintaining public infrastructure. Other forms of Special Districts include Water Control Districts, Housing Authority Districts, and Fire Control Districts. Chapter 189 of the Florida Statutes addresses Special Districts generally, while Chapter 190 is devoted specifically to CDDs.

CDDs have become a popular form of special-purpose government in Florida and there are currently more than 600 throughout the state. The structure CDDs provide can benefit residential and/or commercial developments by ensuring infrastructure is in place when needed, by meeting the concerns of permitting agencies with respect to long-term maintenance of infrastructure, and by providing access to capital for the construction and improvement of infrastructure.

Q: Why would a developer seek to establish a CDD?

A: There are several reasons. First, a CDD has access to infrastructure financing usually only available to units of local government, including the ability to sell certain types of tax-exempt bonds and the ability to levy assessments on property owners within the District. Due to the tax-exempt nature of CDD bonds, this type of financing has traditionally carried a lower interest rate than traditional financing mechanisms. Second, to the extent there are water management or recreation facilities that require long-term maintenance, a CDD is a more stable, financially diverse entity able to provide the enduring support such facilities require. Environmental permitting agencies generally prefer a CDD to a homeowners' association to maintain facilities under their jurisdiction. Third, the initial landowners retain some control over the CDD during the first six years of the District. This control ensures that the infrastructure of a development receives both the care and planning attention necessary to uphold property values, an important factor to the developer as well as the homeowners and the local general-purpose government.

Q: What powers are CDDs permitted to exercise?

A: As special-purpose local governments, CDDs possess certain legal powers similar to those held by cities and counties. CDD powers include the right to enter into contracts, to acquire and dispose of real and personal property, to adopt rules and regulations, and to obtain funds. These funds are obtained either by borrowing, issuing bonds, or levying assessments and taxes. CDDs also have certain special powers relating to the provision of basic public improvements and community facilities, such as roads, bridges, and water management services. Finally, after obtaining the consent of the local general-purpose government, CDDs have the power to construct or acquire and operate other types of facilities, including recreational amenities, fire stations, and security guardhouses.

All District powers are exercised subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies and special districts that have jurisdiction over the CDD. Similarly, the creation of a CDD does not alter the requirement of obtaining the necessary government approval for any activities or construction within the District. However, the capital improvement plans of a CDD count relative to concurrency requirements for infrastructure. By law, CDDs do not have zoning, permitting, or comprehensive planning powers.

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. For voting purposes, any fraction of an acre is rounded up to the next whole acre. The Board of Supervisors will select a District Manager who oversees the works of the district and is generally responsible for any maintenance or improvements undertaken by the District. The District Manager also formulates the District's annual budget that is presented to the Board for approval.

If the District is comprised of less than 5,000 acres of land, has 250 "qualified electors" (residents of the District registered to vote in the county in which the district land is located) living within its borders, and if six years have passed since the creation of the District, Supervisors will begin to be elected by the qualified electors rather than the landowners. If the District is greater than 5,000 acres in size, landowners continue to elect the Board Supervisors until ten years have passed and at least 500 qualified electors reside in the District.

Q: Are there any regulations applicable to the Board of Supervisors?

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 in the county or municipality containing the CDD. The Supervisors themselves are subject to the same financial disclosure requirements as other local elected officials.

The District is also required to submit its annual budget to the overarching local government which has the option to review and comment on it. By law, the Board of Supervisors must adhere to competitive bid requirements when entering into contracts for construction, maintenance, or professional services when the contract price will exceed certain statutory limits. The CDD must also file a public facilities report with the applicable local government. These requirements, as well as the myriad of governmental reporting and auditing requirements imposed on CDDs by statute, ensure that CDDs are particularly visible and accessible in relation to other entities exercising responsibility over the development of community infrastructure.

Q: How is a CDD different than a Homeowners' Association?

A: While other kinds of special districts and homeowners' associations ("HOAs") may address certain issues relevant to developments, none of them have the specific powers necessary to provide the infrastructure of a community in the manner contemplated by the legislature when CDDs were created. In addition to their inability to effectively finance major capital improvements, HOAs generally do not meet regulatory agency requirements for stable, perpetual entities for long-term infrastructure maintenance. Further, HOAs do not operate under the same open meeting, public records, and financial disclosure laws as CDDs. CDDs can operate District facilities and perform the maintenance tasks traditionally completed by HOAs. HOAs, however, can perform one function that CDDs cannot, namely the general enforcement of deed restrictions and the exercise of architectural control.

Q: How will a CDD finance the construction of a community's infrastructure?

A: CDDs commonly issue tax-free bonds early in the life of the District. These bonds will consist of a combination of two types of bonds. One type are long-term bonds that are repaid via the collection of non-ad valorem assessments imposed on property owners within the District or by the collection of fees, rents, or charges for the use of District facilities. Another type are bonds (usually with a term of seven years or less) that are repaid by the landowners (usually the developer or the builders) when the sale of a finished lot or home is closed. As a result of using bonds repaid by property owners within the CDD, the cost of the infrastructure of the CDD is paid for primarily by those who will enjoy the benefits of the community rather than the entire class of taxpayers living in the city or county.

Q: What are non-ad valorem special assessments?

A: Non-ad valorem special assessments are annual monetary assessments on the properties within a CDD based not upon the value of the property but rather upon the relative benefit the infrastructure and operations of the CDD provide to the property in proportion to the benefit received by the other tracts of land within the CDD. The benefit provided to each individual tract is typically calculated with the aid of an economic consultant. The Board of Supervisors can levy two types of non-ad valorem assessments: benefit special assessments and maintenance special assessments. Benefit special assessments are used to amortize the debt assessed against each lot, parcel or acre for the facilities and

infrastructure acquired or constructed by the District. Maintenance special assessments fund District operations and the maintenance of District facilities. Each year, the Board of Supervisors holds a public hearing to set its budget and determine the amount of these assessments. Because the assessments are set during a public meeting, District residents can learn each year's assessment in advance.

Q: How are homeowner defaults on assessments handled by a CDD?

A: CDDs may use the procedures for levying and collecting assessments provided in 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 Districts permitted to issue revenue bonds?

A: Districts may issue revenue bonds for appropriate projects. Revenue bonds may be secured by and made payable from the income generated from any project, from any revenue-producing undertaking or activity of the District, from special assessments, from a pledged security, or from any other source. 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: Do homeowners in a Community Development District pay more for the same level of services that homeowners in non-CDD communities receive?

A: No. A homeowner will pay for infrastructure development, including the construction and ongoing maintenance of improvements, regardless of what financing mechanism is used to fund the infrastructure. It is usually more desirable for a homeowner to incur a portion of these costs through an annual assessment rather than having to qualify for an additional amount of money when a home mortgage is obtained.

Q: What kind of disclosure is required when real property within a CDD is sold?

A: CDDs are required by statute to take affirmative steps to fully disclose 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 Statute 190.048 requires that all contracts for sale of land within a CDD must include the following language:

**THE (Name of District) COMMUNITY DEVELOPMENT DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS 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 CDD to the developer and ultimately to the builder and homeowner/purchaser. These safeguards ensure that one who purchases property within a CDD is aware that there may be costs or assessments associated with enjoying the infrastructure provided by the District.