# UTILIZING PUBLIC FINANCE IN REAL ESTATE DEVELOPMENT: RECENT TRENDS IN COLORADO SPECIAL DISTRICTS

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# Introduction

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# What are Special Districts?

**Title 32 Special Districts**

- Multi-Purpose: Metropolitan Districts
- Single Purpose: e.g., Water and Sanitation, Park and Recreation, Health Service, Fire Protection Districts

**Within Municipalities**

- Business Improvement Districts
- Special Improvement Districts
- General Improvement Districts
- Urban Renewal Authorities
- Downtown Development Authorities
- Municipal Charter-Specific Districts (e.g., Local Maintenance Districts)

**Within Counties**

- Public Improvement Districts
- Local Improvement Districts

# Metropolitan Districts

**Organized to provide two or more types of improvements / services:**

- street, water, sanitation, park and recreation, traffic-related safety protection, transportation, television relay and transmission, mosquito control, storm water, covenant control and enforcement

**Eligible Electors**

- Person registered to vote in Colorado who:
  - is resident of district, or
  - owns, or spouse or civil union partner, owns taxable real or personal property.
  - A person obligated to pay taxes under a contract to purchase taxable property is considered an owner.

**Financial Powers**

- Revenue
- Debt Authority

# Relevance of Special Districts in Colorado

**To the Real Estate Practitioner**

- Nearly 3,000 special districts organized in Colorado
- Due diligence

**To the Real Estate Client**

- Property taxes
- Applicable fees, rates tolls, charges
- Debt
- Governance
- Residential, commercial, and mix-use developments

# Relevance of Special Districts in Colorado, cont.

## To the Bond Market

- Investment

## To Real Estate Development and Redevelopment

- Allows development to pay its own way
- Allows long-term financing of costly infrastructure linked to useful life of infrastructure
- Cost of improvements “off balance sheet”
- Local control of improvements and services provided

# Recent Trends in Colorado Special District Finance

**The bond market**

- Current market conditions for special district bonds
  - Developed districts
  - Newly formed/developing districts
    - Large denomination bonds ($500,000 or $100,000)
    - Subordinate/cash flow bonds

**Who buys special district bonds?**

- Institutions (Funds and QIBs (Qualified Institutional Buyer))
- Retail investors – if sufficient development supports debt
- SMAs (Separately Managed Accounts

**Types of Bonds**

General obligation (G.O.)
Enterprise revenue
Special revenue bonds

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# Recent Trends in Colorado Special District Finance, cont.

- Financings initiated earlier in the development process
  - Bank loans / Bank Placements / BANs
  - Draw Down Structures – phased funding as development targets are met
- Bond refinancing/refunding
  - Increased dramatically as interest rates declined
  - Impact of Tax Cuts and Jobs Act of 2017- no advance refundings

    Taxable refinancings / current refundings

    Shorter "call" provisions (5 to 8 Years)
- Market studies and bond issuance
  - Independent, third party analysis of the market for the development
  - Market studies have become more common and practically required
  - Cost
  - Reliability is important; is it realistic?
- Revenue forecast modeling—district financings relying on several revenue streams
  - Reliability of the forecast is important to the market

# Recent Trends in Colorado Special District Finance, cont.

- Transit-oriented development (still growing)
- Oil and gas property taxation
  - A relatively “new” revenue stream
- Taxable vs. tax-exempt bonds
  - Utilizing both in the same project
- Phased financing as development occurs
- Subordinate / cash flow bonds – paid after senior bonds
- Continuing disclosure requirements -- EMMA

# Recent Trends In Special Districts

- Types of developments
  - residential
  - commercial
  - mixed-use
- Municipal Financial Advisors
  - Useful for large, multi-phase developments
  - Provide services beyond those of a traditional underwriter
- Special district rules and regulations, model service plans
  - More and more counties and municipalities are adopting specific rules and regulations regarding the organization of special districts
  - Regional improvements mill levies

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# Recent Trends In Special Districts, cont.

- Increased cooperation among special districts, counties, and cities
  - Urban renewal authorities, business improvement districts, and metropolitan districts cooperating to develop additional revenue sources to secure the repayment of infrastructure debt
  - Revenue from cities and counties to stimulate development or investment
  - Tax Increment Financing (TIF) agreements among URAs and districts located with URA plan areas allow districts to utilize TIF revenues for public improvements
- Increasing Use of Public Improvement Fees (PIFs)
  - What is a Public Improvement Fee or PIF?
    - privately-imposed fee imposed by covenant on the land – “private sales tax”
    - requires all retailers, restaurants, lodgers, and others conducting business within covenant-controlled area to impose, collect and remit a fee on transactions
    - Developer/covenant dedicates PIF revenues to overlapping special district, allowing the district to pledge PIF revenues to bonds to repay bonds

# Recent Trends In Special Districts, cont.

- Use of business improvement districts (BIDs)
  - Organized by a municipality
  - Include commercial property only (no residential)
  - Electors: Colorado voter who:
    - Makes his or her primary dwelling place in the district; or
    - Owns taxable real or personal property within the boundaries of the district; or
    - Is the holder of a leasehold interest in taxable or personal property within the boundaries of the district; or
    - Is the natural person designated by an owner or lessee of taxable real or personal property in the district which is not a natural person.
- Improvements and Services
  - broad authority to provide public improvements,
  - specific powers relating to business and economic development
- Financial Powers
  - Revenue
  - Debt Authority

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# Recent Trends In Special Districts, cont.

The Gallagher Amendment

- Required ratio: residential = 45%; all others = 55%
- Also locks commercial assessment rate at 29%
- As residential values have increased, residential assessment rate has decreased to maintain 45/55 ratio:
  - 2003-2014: 7.96%
  - 2017-2018: 7.2%
  - 2019: 7.15%
  - 2021: ??
- Solutions
  - Do nothing
  - District-specific elections
  - New districts
  - Legislative fix
  - Fees
  - Statewide Ballot Initiatives

# 2019 Legislation

- HB19-1087, Local Public Meeting Notices Posted On Website

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# Conclusion

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