

**A SUMMARY OF
THE MELLO-ROOS COMMUNITY FACILITIES ACT**

Introduction

The Mello-Roos Act of 1982 provides a flexible alternative method for local governments to finance public facilities. This legislation allows cities, counties, and special districts to designate specific areas as "Community Facilities Districts" (or CFD) and, with the approval of two-thirds of the qualified voters, allows these districts to issue bonds and collect special taxes to finance such projects.

Which public projects can be financed by a Community Facilities District?

Any real or tangible property which will be owned or operated by a public entity and which has an estimated useful life of five years or more may be constructed, expanded, rehabilitated, or acquired under the Mello-Roos Community Facilities Act. A Community Facilities District may finance projects with a specific benefit to the district, such as streets, water, sewer, and drainage facilities, as well as projects of a more general nature, such as parks, schools, libraries, jails, child care, and administrative facilities.

How is a Community Facilities District financed?

Community Facilities Districts can be funded on a "pay-as-you-go" basis. However, facilities are more frequently paid for using tax-exempt municipal bonds issued by the district. The principle and interest obligations on these bonds are repaid each year through the collection of a special tax. These bonds may be sold competitively or through a negotiated sale, and may have either fixed or variable rates. Most of these bonds have a 20 to 30 year maturity.

In order to prevent jeopardizing obligations to the bondholders, the Mello-Roos Act authorizes a CFD to pursue judicial foreclosure in order to collect unpaid special taxes. The ability of a district to pursue legal action is stated in a *Notice of Special Tax Lien* recorded with the County Recorder. The Mello-Roos Act also entitles a district to recover all costs and attorney's fees resulting from legal action.

How is a Community Facilities District created?

A CFD is created by an existing public entity. The legislative body of that public entity becomes the legislative body of the district. The legislative body may either institute proceedings on its own or when a petition is signed by at least 10% of the registered voters or by owners of a least 10% of the land area within the proposed district. Within 90 days of receiving a written request or petition, the legislative body must adopt a resolution stating the intention to establish a CFD. This resolution must state the name of the district, the types of facilities to be financed, and whether a special tax will be collected within the district.

This resolution also states the time and place of a public hearing on the formation of the district to be held within 30 to 60 days from adoption of the resolution. In addition, it describes the rate and method of distributing the special tax and the proposed voting procedures. Notice of this public hearing is then published in a generally circulated newspaper, and a map of the proposed district filed with the clerk of the legislative body and the County Recorder. Oral or written protests against the formation or the boundaries of the proposed CFD, or against the types of facilities proposed may be made at or prior to the public hearing.

If written protests against the district are filed by either 50% or more of the registered voters residing within the district, which ever is greater, or if owners of 50% or more of the area of land within the boundaries of the district file written protests, the proceedings are abandoned. The hearing may be continued for up to 30 days without special findings being made by the legislative body, or for up to six months if special findings are made. The proposed boundaries and properties to be included in the district can be reduced during the public hearing, but no new territory can be added. When the public hearing is concluded and the legislative body decides to establish the district, it adopts a resolution stating the validity of all prior proceedings, formation of the district, and the rate and distribution of the special tax.

Is there an election for a Community Facilities District?

Once the public hearing process is concluded and the district is formed, the legislative body calls an election of the qualified voters within the district. The voters determine whether or not to finance the district with bonded debt, and whether or not to collect a special tax within the district to pay that debt. The election is held either at the next general election or at a special election held within 90 and 180 days following the public hearing.

The qualified voters are the registered voters within the district and each voter is entitled to one vote. If, however, there are fewer than 12 registered voters within the district, the qualified voters are the landowners and each landowner is entitled to one vote for each acre or portion of an acre owned within the district boundaries. The special tax must be approved by at least two-thirds of the votes cast. When the special tax is approved, a *Notice of Special Tax Lien* is recorded with the County Recorder.

How is the special tax levied?

The rate and method of distributing the special tax are set when a CFD is formed. The special tax cannot, by law, be based on the value of the property. The special tax is based on the annual amount of principle and interest due to the bondholders, together with any expenses of administering the district. Most special taxes are distributed based on the density or square footage of development, or on a flat, per-acre charge. Most special taxes are collected together with regular property taxes on the county tax bill. Legal action can be taken to collect delinquent special taxes.

Reference: Summary and Text of the Mello-Roos Community Facilities Act of 1982, as Amended, and Related Statutes, 1989 Edition, prepared by Bowie, Arneson, Kadi & Dixon, Attorneys at Law, 4920 Campus Drive, Newport Drive, Newport Beach, California 92660.