

Refundable Money **(Development Projects)**

If you, the lender, are ever to receive any refundable moneys on a development project you lent on from a municipality, you need to have your borrower assign to you the project's Subdivision Improvement Agreement ("SIA"). If it is not assigned to you, you will not be able to claim any refundable moneys that may be available. However, your borrower will be in a position to make a claim.

After you sell a property, if the project's SIA remains in the name of your borrower, the borrower could claim the refundable moneys due for improvements your new buyer installed. I spoke to a city in Central California where twice both the old and new developer attempted to claim refundable moneys. The city told them to settle the issue themselves or in court and then come back; the city would not release the moneys.

Your loan documents should include a provision for assignment of SIA's. Soon after, if not before filing a Notice of Default (NOD) on a land/development property, check for refundable moneys. For example:

- If funds were paid to a municipality for an EIR and the EIR was not started and/or finished, request a total or partial refund.
- If offsite improvements were installed and there was a reimbursement agreement, request the reimbursement. If the improvements were not completed, ask for a partial reimbursement or it may pay to complete the improvements if a partial reimbursement is not possible.
- If a Letter of Credit was posted in lieu of improvement bonds, and the tentative map has little or no value or it may not have a reasonable number of extensions remaining, consider reverting the property back to unentitled acreage and request a bond refund.
- If any in-lieu fees were paid to construct a road or other offsite improvement, apply/negotiate for a refund. You may again have to revert the land back to unentitled acreage.
- Read the conditions of approval. There may be additional refundable moneys. Also check for conditions that will be very expensive to complete. It may make sense to negotiate to have the condition removed or altered.
- Also check for utility deposits.

NOTE

Having the SIA assigned to you may include obligations/liabilities. You need to verify that any obligations/liabilities that are not acceptable are not transferred. You also need to verify the SIA is re-assignable to whoever you sell the property to.

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