



REALTORS® ASSOCIATION OF NEW MEXICO INFORMATION SHEET - PUBLIC IMPROVEMENT DISTRICT ACT - 2015

DESCRIPTION AND PURPOSE OF A PUBLIC IMPROVEMENT DISTRICT

A Public Improvement District (PID) is a means of financing the construction or improvement of local public improvements, such as streets, parks, sewer lines, drainage ways, recreational facilities etc. A PID may issue special levy bonds or general obligation bonds to pay for the improvements or maintenance. The debt service on the bonds (interest, principal etc.) is charged to the property owners within the district in the same manner as are their property taxes. In New Mexico, PIDs are governed by the Public Improvement District Act ("Act"), NMSA 1978, § 5-11-1 et.al.

FORMATION OF A PID

To form a PID, an application for formation of a PID must be submitted to the county or municipality in which the PID will be located ("Governing Body"), along with a petition signed by the owners of at least 25% of the real property proposed to be included in the PID. The Act sets forth the specific requirements of the application. Also, a general plan for the PID must be filed with the county clerk's office in the county in which the PID will be located. The Governing Body may then adopt a resolution declaring its intention to form a PID. The Act sets forth the specific requirements of the resolution. The resolution will direct that a hearing on the formation of the PID be scheduled and that notice be mailed and published as provided by the Act.

After the hearing, the governing body determines whether the PID should be formed based upon the interests, convenience or necessity of the owners, residents of the PID and citizens of the municipality or county in which the proposed PID would be located. If the Governing Body determines that the PID should be formed, it will adopt a resolution ordering that the PID be formed and that an election be held on the question of whether to form the PID.

A formation election shall include the owners of the real property located in the PID and the resident qualified electors. The term "owner" is specifically defined in the Act. Each owner has the number of votes or portions of votes equal to the number of acres or portions of acres owned by that owner in the proposed PID. A resident qualified elector is a person who resides within the boundaries of the PID and who is qualified to vote in the general elections held in the state.

APPROVAL OF PROPOSED IMPROVEMENTS

The PID is governed either by a PID board comprised of the members of the Governing Body or by a board of five directors initially appointed by the Governing Body. Before constructing any public infrastructure improvement, the PID board must approve a study of the feasibility and benefits of the public infrastructure improvement project proposed. The elements of the study are dictated by the Act. Prior to approval of a project, the PID board must provide notice and opportunity to comment to the owners and the Governing Body. For improvements undertaken by the PID after formation, the PID board must hold a public hearing on the study. After the hearing, the PID board may reject, amend or approve the report. If the report is amended substantially, a new hearing shall be held before approval of the project. If the report is approved, the PID board will adopt a resolution approving the public infrastructure improvement, identifying the areas benefited, the expected method of financing and an appropriate system of providing revenues to operate and maintain the project.

GENERAL OBLIGATION AND SPECIAL LEVY BONDS

In order to provide money for any public infrastructure purpose consistent with the general plan, the district board may call for an election to approve a general obligation bond and/or for a hearing to determine whether a special levy should be imposed.

General obligation bonds issued by the Governing Body are secured by a pledge of the Governing Body's ad valorem taxing power. The owners and resident qualified electors must vote to authorize the PID to issue general obligation bonds and a levy of property tax to pay the debt service on the bonds. The bond election may be held in conjunction with the formation election.

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The district board may also hold hearings to determine whether a special levy should be imposed and special levy bonds issued. A special levy is a charge imposed against a property in a particular locality because that property receives a special benefit by virtue of some public improvement, separate and apart from the general benefits accruing to the public at large. For example, if a special levy bond is issued to pay for road improvements on a certain street, only the houses and other buildings on that street will pay the special levy. Unless a local government has enacted an ordinance providing a greater limitation, no special levy bonds may be issued if at the time of issuance of such bonds the estimated total tax and assessment obligation for a class of property, including projected ad valorem taxes and special levies as provided in the feasibility study exceeds a threshold amount as dictated by the Act.

FAILURE TO PAY GENERAL OBLIGATION OR SPECIAL LEVY BOND TAXES/LEVIES

For both general obligation and special levy bonds, the PID board is responsible for imposing and causing the levy to be collected annually on all property within the PID that is subject to the levy to satisfy the debt service on the bonds, at the same time and in the same manner as property taxes are levied and collected. A PID's levy constitutes a lien on all taxable property within the PID subject to the levy. Such lien(s) may be foreclosed in the same manner as other property tax liens under the laws of the state. Liens will include delinquencies and interest. Also, when owners of property located within a PID fail to pay their taxes as required, the PID board may increase the levy or rate for the remaining property owners within the PID to meet the debt obligations.

SELLER'S REQUIRED DISCLOSURES

Effective July 1, 2013, **PRIOR TO** a seller whose lot is located within a PID being able to accept an offer to purchase, the seller, seller's agent or seller's broker must provide the potential buyer a written notice of the following information: 1) information that the property is within a PID; 2) the purpose of the PID; 3) an explanation that the purchaser is obligated to pay any property tax or special levy that is imposed by the PID board; 4) an explanation that the property tax or special levy imposed by the PID board is in addition to any other state, county or other local governmental taxes and assessments; 5) information that the failure to pay the property tax or special levy could result in the foreclosure of the property; 6) information that more information concerning the rate of the property tax or the amount of the assessment and the due dates of each may be obtained from the Governing Body; and 7) information that a feasibility study was completed as part of the formation of the PID and that the feasibility study is available through the Governing Body.

In addition, the seller, seller's agent or seller's broker must provide the following: For special bonds, 1) if a special levy has not been authorized by the PID board, information that a special levy has not been authorized; or 2) if a special levy has been authorized by the PID board: a) the maximum special levy that is authorized to be imposed upon the property in the PID; or b) that the special levy to be imposed on the property in the PID has been prepaid in full as provided in the rate or method of apportionment.

For general obligation bonds: 1) if general obligation bonds have not been issued, information that general obligation bonds have not been issued; or 2) if general obligation bonds have been issued: a) the amount of general obligation bonds that are outstanding; b) the amount of annual debt service on outstanding general obligation bonds; c) that the maximum rate and amount of property taxes that may be imposed upon the property in the PID are limited only by the amount of debt outstanding; and d) the estimated or projected annual mill levy or special levy per one thousand dollars (\$1,000) of assessed value as of the date of the disclosure with an explanation that the estimated levy or rate may be increased by the PID board when necessary to meet debt obligations.

All information regarding the special levy bonds and general obligation bonds, as well as information that failure to pay the property tax or special levy could result in the foreclosure of the property must be set apart in a clear and conspicuous manner and in at least twelve-point bold type. See RANM Form 4550, Public Improvement District Disclosure. There is no explicit provision in the Act that allows a potential purchaser to waive receipt of these disclosures prior to the seller accepting the offer.

LOCATING INFORMATION ABOUT THE PID

All PIDs are required to file and record with the county clerk the resolution ordering formation of the PID, the general plan of the PID and the canvass of any general obligation bond election. In addition, PIDs formed **AFTER** December 31, 2013 must file and record within 30 days before June 1 and December 1 of each year the contact information for the PID

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Board and the required information set forth in the Seller's Required Disclosure Section above. Sellers are required to disclose the information set forth in the above section regardless of when the PID was formed. Because PIDs formed prior to December 31, 2013 are not required to file with the county clerk's office the information set forth above in the Seller's Required Disclosure Section, for properties located in PIDs formed prior to December 31, 2013, sellers will likely have to obtain the Seller Required Disclosure information directly from the PID and/or the Governing Body.

SELLER'S FAILURE TO DISCLOSE THE REQUIRED INFORMATION

In the event of a finalized sale, a buyer who suffers any loss of money or property, real or personal, as a result of a violation of a Seller or Seller's agent or broker not providing this information **BEFORE** accepting an offer to purchase may bring an action to recover actual damages and may be granted injunctive relief under the principles of equity and on terms that the court considers reasonable. Additionally, the court will award attorney fees and costs to the buyer if the buyer prevails and actual damages are awarded to the buyer or to the party charged with a violation, but only if the court finds the buyer's claims were groundless. The relief provided by the Act is in addition to remedies otherwise available against the same conduct under the common law or other laws of the state.

EXCEPTIONS TO THE SELLER'S DISCLOSURE REQUIREMENTS

These Seller Disclosure Requirements do not apply to a transfer: 1) of property under a court order or foreclosure sale; 2) of property by a trustee in bankruptcy; 3) of property to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest; 4) of property by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure; 5) of property by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust; 6) of property from one co-owner to another co-owner of an undivided interest in the real property; or 7) of only a mineral interest or leasehold interest.

FOR ADDITIONAL INFORMATION ON PIDS IN GENERAL AND/OR A SPECIFIC PID, PARTIES SHOULD CONSULT WITH THE SPECIFIC PID, THE GOVERNING BODY IN WHICH THE PROPERTY IS LOCATED AND AN ATTORNEY.