

Akerman Practice Update

REAL ESTATE AND ECONOMIC DEVELOPMENT

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Key Aspects of the Federal Stimulus Package Directly Affecting the Real Estate Market

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With the enactment of the American Recovery and Reinvestment Act (ARRA), the federal government presents an exciting opportunity for business owners, corporations, real estate developers, and investors in the real estate market to acquire, develop, and/or improve real property at values that have been unavailable in recent past. Under the ARRA, the federal government has directed more than \$15 billion to the states and bolstered certain financial programs that are key to the real estate market in an effort to stimulate development and effect job creation in areas most impacted by the current economic stagnation.

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The key aspects of the federal stimulus package directly affecting the real estate market include the following:

Economic Recovery Zone Facility Revenue Bonds - \$15 billion (nationally) in Economic Recovery Zone Facility Revenue Bonds is available for allocation to the states and their municipalities, providing tax-exempt financing for the acquisition of land and the new construction of facilities (including commercial and retail properties but excluding rental residential projects) in state-designated "recovery zones".



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Tax-Exempt Debt - Tax-exempt debt is available to finance the construction, renovation, expansion, or improvement of facilities used in the creation or production of intangible property, such as research and development spaces, and of facilities that are “functionally related and subordinate to” manufacturing operations, such as offices, training facilities, and warehouse space.

Higher Borrowing Limits - There are higher borrowing limits under the Small Business Administration loan programs enabling a greater pool of business owners access to affordable commercial loans.

Low Income Housing Tax Credit Programs - \$2.25 Billion is allocated for the Low Income Housing Tax Credit programs to bolster the market for the development of affordable housing.

Brownfields Redevelopment Funding - Increased funding is available for the redevelopment of brownfields and the remediation of environmentally impacted real property.

New Market Tax Credit Program - There is a \$1.5 Billion increase in the availability of federal tax credits under the New Market Tax Credit program to attract the private investment in projects located in and serving low-income communities.

“Build America Bonds” - These bonds provide a 35% or 45% direct annual subsidy for the interest payments due, or a 35% income tax credit for the holders of these bonds. Proceeds of the bonds may be used for public projects including infrastructure and any other project which a municipality, agency, or authority could finance with public funds or general obligation debt, i.e., the projects must be publicly owned and used by the public.

“Shovel Ready” Grants - Federal grants are available for “shovel ready” infrastructure projects which can support or enhance nearby private property or proposed development.

EDA Grant Funds - \$150 million (nationally) of U.S. Department of Commerce grant funds will be disbursed through the U.S. Economic Development Authority (EDA) to state and local governmental entities and eligible non-profits to generate and retain private sector jobs and to generate private investment in economically distressed areas, particularly those areas suffering from sudden and severe job loss and dislocation due to corporate restructuring, with a focus on creating high skilled, high wage-earning jobs; promoting innovation and entrepreneurship; attracting new industry; and significantly benefiting the regional economy. EDA grant funds are also available to support construction or rehabilitation of public infrastructure and facilities necessary to attract private sector jobs and investments.

Community Development Block Grants - These grants are available through the U.S. Department of Housing and Urban Development (HUD) to states (allocated in accordance with existing statutory formulas to existing HUD recipients) for use by state and local agencies, non-profits, and community-based organizations for the acquisition of real property, the rehabilitation of residential and non-residential

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structures, and the provision of public facilities and improvements amongst other eligible activities and programs geared toward job creation, neighborhood revitalization, energy conservation, or infrastructure improvement projects that can be initiated within 120 days after funds are available. The grant monies may also be used by micro enterprises and for profit entities that seek to fulfill the economic policy of HUD or to fund urgently needed community development projects that state and local HUD contracted agencies are currently unable to finance.

HUD Grants and Loans - \$250 million in grants and loans will be available through HUD beginning in June 2009 to owners of Section 202, Section 811, and project based Section 8 properties exclusively to fund the retrofitting of such properties with energy efficient utilities and other infrastructure that will result in environmental benefits. The funds will be administered by the Office of Affordable Housing Preservation, using established policy and programmatic approaches with loans being available up to \$15,000 per unit for individual eligible projects and grants being available only to owners of Section 202 and 811 projects and certain non-profit owners. Additional incentives exist in connection with the pre-development work, the rehabilitation of the units upon completion and for jobs to low-income community created by the rehabilitation work, as well as for the on-going efficient performance of the housing. Recipients of grant or loan proceeds must meet certain HUD due diligence requirements, comply with certain wage restrictions, renew the existing HUD project-based contracts for an additional 15 years beyond expiration of the existing contract, and be able to close within 120 days.

The opportunity for long term capital investments at a significant value exists now for those ready, willing, and able to seize the benefits that are available under the ARRA.

Akerman offers vast experience in accessing federal and state programmatic financing and economic incentives that lowers the cost of development. Our real estate team includes more than 140 lawyers with substantial experience in complex real estate transactions, tax certiorari, economic development incentives, development and construction projects, environmental and natural resources matters, public-private initiatives, and litigation matters.

Steven Polivy is the Chair of Akerman’s Economic Development practice group and the Office Managing Shareholder for the New York office. His practice focuses on economic development, real estate finance, and transactional real estate matters.

Brittany Sessions is a Shareholder in the firm’s New York office. Her primary area of practice involves the procurement of economic development incentives.

Robert M. Drillings is Of Counsel and focuses principally on the development and financing of governmentally-assisted low-, mixed-, and moderate-income multifamily residential housing. He previously served as Senior Vice President and General Counsel to the New York State Housing Finance Agency and the State of New York Mortgage Agency.

Akerman is ranked among the top 100 law firms in the U.S. by *The National Law Journal* NLJ 250 (2008) in number of lawyers and is the dominant Florida firm. Akerman is not only one of the largest firms in Florida, but is also recognized as a market leader on issues of national significance. Comprised of more than 500 lawyers and government affairs professionals, Akerman serves clients from 13 locations, including Miami, New York, Los Angeles, Denver, Tysons Corner, and Washington, D.C.

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