

April 26, 2016

## Colorado Court Decision Creates Uncertainty for Development Using Metro District Public Financing

On April 21, 2016, the Colorado Court of Appeals issued a decision related to the Landmark project in Greenwood Village ([Landmark Towers Association v. UMB Bank](#), hereinafter “Marin”). The decision calls into question the validity of previously held elections for the vast majority of the 1,475 metropolitan districts in Colorado because the court concluded that the qualification of electors using option contracts was not valid in that case.

The vast majority of the more than 1,400 metro districts in Colorado have used the same method to organize and to authorize more than \$9 billion in debt for construction of public improvements throughout the state over the last several years. Although it is likely that the case will be appealed, that process could take years and its outcome is uncertain. This situation obviously creates uncertainty exists for districts, developers and property owners regarding the potential for challenge to existing districts and their financing. This uncertainty has chilled the public finance and lending markets. We are aware of several pending transactions that have been canceled or postponed.

BHFS attorneys are participating in a working group of stakeholders representing developers, districts and bankers in crafting legislation proposed to be introduced before the end of the 2016 Colorado legislative session that would generally validate previously held elections, which may have used this method of qualifying electors or directors. A longer-term solution for how electors may properly be qualified going forward will likely be the subject of conversations with various stakeholder groups throughout the summer and fall, and may result in additional legislation being introduced in the 2017 legislative session.

Meanwhile, developers of projects that rely on metro districts for financing public improvements will likely have questions about the Marin case and its potential to impact their projects.

Please contact [Carolynne White](#) ([cwhite@bhfs.com](mailto:cwhite@bhfs.com), 303.223.1197) to get an expanded analysis of this court case or the proposed legislation in relation to a specific project or matter.

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