

SANITARY AND IMPROVEMENT DISTRICTS

The information contained in this pamphlet is not intending to constitute legal advice but rather is intended to provide general information concerning Sanitary and Improvement Districts. If you have any legal questions concerning Sanitary and Improvement Districts, then we would urge you to contact an attorney. If you are a resident of a Sanitary and Improvement District which this firm represents, then we would ask that you contact us if you have any legal questions concerning such Sanitary and Improvement District.



11440 West Center Road, Suite "C"
Omaha, Nebraska 68144

Phone: (402) 334-0700

SANITARY AND IMPROVEMENT DISTRICTS

WHAT IS A SANITARY AND IMPROVEMENT DISTRICT?

A Sanitary and Improvement District (SID) is a municipal corporation, much like a small city or village, except that it does not have the police powers one normally associates with those entities, and in fact is specifically limited to certain functions. The primary function of a SID is to install and maintain public improvements, i.e. streets, sewers, recreational facilities, water lines, electrical and gas mains and other improvements associated with residential, commercial and industrial subdivisions.

FORMATION

A Sanitary and Improvement District is formed when the owners of real property file a petition with the Clerk of the District Court of the county in which the proposed Sanitary and Improvement District is to be located asking the District Court for a declaration for the formation of a Sanitary and Improvement District. Attached to the petition is a document entitled "Articles of Association" which includes the name of the District, the boundaries of the District, the names and addresses of the owners of the land in the District, a description of the land within the District owned by the organizers of the District, the purpose for forming the District and the name or names of owners of real estate within the District who do not join in the organization of the District. The Articles of Association are signed by all of the owners of the property within the District who agree to its formation and wherein they agree that they are willing to and do obligate themselves to pay the tax or taxes which may be levied against all the properties in the District as well as any special assessments which may be levied against the property for the costs of construction of the public facilities to the extent of the special benefit thereof. Although the law theoretically permits the formation of a Sanitary and Improvement District by less than all the property owners within the boundaries of the proposed District, from a practical standpoint most, in not all Sanitary and Improvement Districts have been formed with the consent of all the property owners within its boundaries.

GOVERNING BODY

The original petition filed with the District Court names five owners of property within the District as its proposed original Board of Trustees. Upon the execution by the Court of a decree actually forming the District, these five people are declared to be the original Board of Trustees of the District and serve until the first election which occurs on the first Tuesday after the second Monday in September which is at least 15 months after the judgement of District Court creating the Sanitary and Improvement District. Thereafter, elections are held every two years on the same date, at which election a board of five trustees is to be elected. At the first election and at the election held two years thereafter, one vote may be cast for each Trustee position for each acre of unplatted land or fraction thereof in the District and one vote may be cast for each Trustee position for each platted lot in the District. The vote is tied to the property.

GOVERNING BODY CONTINUED

The owner of the property is entitled to cast the vote. If the land of lot is owned by a husband and a wife as joint tenants or by any two or more individuals, there is still only one vote for the lot or each acre or fraction thereof for unplatted property. At the election held four years after the first election of Trustees, two members of the Board of Trustees shall be elected by the legal property owners who reside within the boundaries of the Sanitary and Improvement District and three members shall be elected by all of the owners of real estate located within the District. At the election held eight years after the first election of Trustees, three members of the Board of Trustees shall be elected by the legal property owners who reside within such Sanitary and Improvement District and two by all owners of property within the District. Sanitary and Improvement Districts are, for the most part, formed by developers of installing public improvements, in order to subdivide and sell the lots, in a residential subdivision, as lots are sold and residents move in, the purpose of the election states is to give those persons who reside within the District and increasing voice in the affairs of the District as it develops.

Following their election, Trustees shall meet and elect one of their number Chairperson and one of their number Clerk of the District. The Clerk shall be paid a salary not to exceed \$600 a year. Each Trustee shall be paid for each meeting of said Board which he or she attends. The duties of the Board are (1) to adopt a seal, bearing the name of the District, (2) keep record of all the Board's proceedings which shall be open to inspection by all owners of real estate in the District, (3) to pass all necessary ordinances, orders, rules and regulations for the necessary conduct of the business and to carry into effect the objects for which such Sanitary and Improvement District was formed, and (4) to appoint, employ and pay an engineer, attorney, fiscal agent and such clerical help as may be needed. If a vacancy occurs on the Board, the remaining Trustees may appoint a successor until the next regular or special election of Trustees. The County Treasurer is the Ex Officio Treasurer of all Sanitary and Improvement Districts within the County boundaries. All special assessments and all tax funds of the District are deposited with the County Treasurer.

POWERS

The Sanitary and Improvement Districts have only a few powers that are normally given to cities and villages. The Board of Trustees is first limited by the purpose which the District was formed as stated in the Articles of Association. The Articles of Association are, in turn, limited to those powers actually given to the District by statutes. Those powers are:

- (a) To acquire, improve and operates public parks, playgrounds and residential facilities.

POWERS CONTINUED

- (b) To install and pay for a system of sidewalks, public roads, streets and highways, public waterways, docks or wharfs.
- (c) To install a water system or to contract for the installation and operation of a water system with a utilities district, municipally or corporation.
- (d) To contract for water for fire protection and for resale to residents of the District.
- (e) To install and pay for a sewer system, both sanitary and storm including, if necessary, the installation of a disposal plant, outfall sewer and lift station.
- (f) To install gas and electric service lines and conduit.
- (g) To install civil defense warning systems.
- (h) To construct and contract for the construction of dikes and levees for flood protection for the District.
- (i) To contract for gas and for electricity for street lighting.
- (j) To contract for police protection and security services.

All of the above except for the water system, civil defense warning system, sanitary sewer system or sanitary and storm sewer disposal plant, and gas or electric service lines and conduit have to be constructed wholly within the District. Gas, water and electrical distribution are generally installed by the appropriate public utility and/or local municipality. The District contracts with the public utility/municipality for the installation of the system. The public utility/municipality then usually charges the consumer direct for the product used (gas, water or electricity). In some instances, where there is no appropriate public utility/municipality (usually in the case of water), the District installs and operates these systems.

A District, if located within any county which a city of the metropolitan class (i.e. Omaha) or any adjacent county, which has adopted a comprehension plan, may contract with other sanitary and improvement districts to acquire, build, improve, and operate public parks and playgrounds, and recreational facilities for the joint use of the residents of the contracting district.

When the property owners within the District determine that an authorized public improvement is required, the Board of Trustees meets and considers the advisability of the improvement. Upon an affirmative vote of the Board of Trustees, the Board proposes the adoption of a "resolution of necessity", The "resolution of necessity" outlines the type of improvement proposed to be constructed, the engineers' estimate of the cost, the location of the improvement and the method by which the cost of the improvement is to be paid.

POWERS CONTINUED

Several "resolution of necessity" are usually adopted by a District - one for each type of proposed public improvement, in addition, the District is permitted to do the work in sections which might necessitate the adoption of more than one "resolution of necessity" for any particular overall project. For instance, it is not common for a District to have several sections of paving improvements. The law requires that the proposed "resolution of necessity" be published in a "legal" newspaper within the County in which the District is located. After due publication and the posting of the proposed resolution within the property of the District, the Board of Trustees holds a public hearing. If a majority of owners representing the majority of the front footage which might be assessed for the cost of constructing the proposed improvement should object to the installation of the proposed improvement, then the resolution shall not be passed by the Board of Trustees.

After the approval of the "resolution of necessity", the Board then must advertise for bids for the proposed improvement and let a contract for the construction of the proposed improvement, after publication in the legal news paper for two consecutive weeks, to the lowest responsible bidder. The law requires that the responsible bidder shall provide the District with a duly approved Performance Bond guaranteeing completion and prompt performance of the contract.

FINANCING OF IMPROVEMENTS

Payment is made on progress estimates, generally issued on a monthly basis and approved by the Consulting Engineer employed by the District. The law provides that a maximum of 95% of the estimated costs are paid with at least 5% of all estimates withheld until the entire contract is completed and acceptance is recommended by the engineer, in writing, to the Board of Trustees and the work is in fact accepted by the Board of Trustees. The District does not, of course, have cash funds with which to make progress payments. In lieu of cash, payment is made by the issuance of warrants payable to the order of the contractor or anyone else performing authorized work for the District which are subsequently registered with the office of the County Treasurer so that they may be sold. The registration procedure is a simple one and, in most instances, the County Treasurer merely certifies that there are no funds in the Construction Fund of the District to redeem the warrant. From the date of the registration of the warrant until the date called for payment, the warrant bears an interest at the rate designated on the face. Warrants that are issued for capital improvements of the District become due and payable no later than 5 years from the date of issuance and warrants that are issued for operations and maintenance expenses of the District become due and payable no later than three years from the date of issuance.

FINANCING OF IMPROVEMENTS CONTINUED

Warrants are generally outstanding from the date of issue until they are funded by bonds, unless previously called and acquired from funds delivered from special assessments, taxes or other funds of the District. Interest on the warrants may be paid annually until such time as they are funded by bonds or otherwise redeemed by the issuance of additional warrants.

In as much as most contractors will not accept warrants in lieu of payment unless they are guaranteed that the warrants will be converted into cash upon registration, the District enters a contract with a municipal bond house which acts as the fiscal agent for the District. Prior to the commencement of any construction, most Districts contact several municipal bond organizations and obtain bids for the "purchase or placing" of warrants of the District given to contractors in lieu of cash. For performing this function and others, the fiscal agent is compensated by the receipt of a fee paid by the District. Municipal bond organizations which are active in the state of Nebraska are: D.A. Davidson & Co., Kuehl Capital Corporation and Ameritas Investment Corp.

Upon completion and acceptance of the work called for in each "resolution of necessity", the engineers and attorney, employed by the District, prepare a schedule and plat of assessments. The special assessment taxes are levied for that part of the costs which are of special benefit to individual lot and parcels of land within the District. In this context, the special assessments are considered and passed by the Board of Trustees sitting as a Board of Equalization following the same rule as those of the most populous municipality whose zoning jurisdiction extends over the improvements.

The law requires, in fact, that if the improvements of the District lie within the zoning jurisdiction of any city or village, then the Board of Trustees of the District, sitting as Board of Equalization, must serve notice upon the Clerk of the City that the special assessments are about to be levied, so that the city may interpose an objection to the method or amount of the special assessments to be levied by the District.

Once the special assessment taxes are actually levied, the remaining costs are considered to be the general benefit to all of the lots or parcels of land within the District and a general tax is levied for the payment of these costs. It should be noted that because the District is outside the corporate limits of any municipality, the resident of the District will not have to pay any tax imposed by the municipality on the residents of the municipality. However, the resident of the District will still be required to pay school district taxes and taxes of the county in which he resides, just as he would if he were a resident of the municipality.

FINANCING OF IMPROVEMENTS CONTINUED

Like special assessments levied by a city or village, a period of time is allowed for payment of the amount of the specials in their entirety, without interest. If no payments are made or if only a partial payment is made, the special levy is made payable in equal annual installments over a maximum 10-year period with interest on the installments as the warrant interest rate and 2% per annum in excess of the warrant interest rate if the installments become delinquent. Proceeds from the collection of special assessments collected prior to the issuance of bonds may be applied towards redemption of outstanding warrants. Bonds are not generally issued by the District until after completion of all improvements and when the District's tax base has been established, i.e. sufficient number of homes/structures have been built, the taxes from which are adequate to support the debt service requirements. In a large development, the bonds may be issued in several series to coincide with the development of the areas within the District. Bonds further provide for a certain period in which they may be called. This is an important consideration when the District lies close to the boundaries of a city or village that has a substantially better credit rating than the District which would enable the City, if the District is annexed, to call the bonds and reissue them at a lower rate. Generally, the call period on District Bonds is five years.

All bonds are issued as general obligation bonds of the District. All monies collected from the special assessments that have been levied on the real estate within the District is set aside and constitutes a sinking fund for payment of interest and principal of the bonds. The District is also required to levy a tax annually on all taxable property in the District, which together with the sinking funds derived from special assessments is sufficient to meet the payment of interest and principal on the bonds before they become due.

The municipality having zoning jurisdiction may at its option annex the District. If and when annexation occurs, the District merges with the City and the City succeeds to all the District's property, property rights, contracts and obligations of every kind.

For example, any special assessments which the District has levied become the property of the City, and if, at the time of annexation, the District shall not have entirely assessed the improvements made by the District within its boundaries then the City may proceed to levy the costs of such improvements to the same extent as the District may have levied them.

Likewise, the general obligation bonds issued by the District prior to annexation become, after the annexation, a general obligation of the annexing municipality. After annexation, the Board of Trustees of the District ceases to exist and the District in all respects becomes assimilated into the annexing municipality.

COMPARISON TO A MUNICIPALITY

Although Sanitary and Improvement Districts have been in use since the late 1940's, the laws governing them have changed during the years and misconceptions have arisen concerning Sanitary and Improvement Districts. The basis of most of the misconceptions is the failure to distinguish between the powers of a Sanitary and Improvement District and the powers of a municipality. Although both entities have limited powers, a Sanitary and Improvement District's powers are more restricted.

The ability of a Sanitary and Improvement District to make these rules and regulations governing people's conduct has not changed over the years. The Sanitary and Improvement District does not have the power to make any civil or criminal laws. Civil and criminal laws applicable to residents of the county in which the Sanitary and Improvement District is located also apply to the residents of the Sanitary and Improvement District does have the ability to make reasonable and regulations regarding the use of District property.

The Sanitary and Improvement District does not have the power to establish zoning districts or to zone or rezone property or to establish building codes. If the Sanitary and Improvement District is within the zoning jurisdiction of a municipality, then that municipality's zoning and code regulations apply, even though the boundaries of the Sanitary and Improvement District are not within the boundaries of the municipality. If the boundaries of the Sanitary and Improvement District are not within the zoning jurisdiction of any municipality, then the zoning and code regulations of the county in which the Sanitary and Improvement District is located apply.

Like a city, the Sanitary and Improvement District has the power to acquire property through eminent domain. However, this power may only be used when it is necessary for its corporate purposes, that is, only after the Board of Trustees has determined to make and authorized improvement, which will require that private property be taken for a public purpose, may the Sanitary and Improvement District exercise the power of eminent domain. The power may be used on property both within and outside of the District's boundary.

The Sanitary and Improvement District has the authority to employ and engineer, an attorney, an accountant, and clerical help, all of whom are removal at the discretion of the Board of Trustees.

A Sanitary and Improvement District may own land, just as a municipality, however, the Sanitary and Improvement District may not own land in excess of ten acres, unless the land is actually used for a public purpose within three years of its acquisition. In short, as previously states, the major difference is that a Sanitary and Improvement District does not have the police powers normally associated with cities, towns and villages and is strictly limited to the installation, operation and maintenance of public improvements.

SANITARY AND IMPROVEMENT DISTRICTS AND RESTRICTIVE COVENANTS,

LIKE OIL, AND WATER

Restrictive covenants are restrictions placed on real estate by an owner thereof, restricting and owner in their use of the real estate encumbered by the restrictive covenants. In relation to development of land within the boundaries of a Sanitary and Improvement District, the developer of the land will first cause the formation of the Sanitary and Improvement District, and then plat and subdivide the land for sale as individual lots.

Prior to the developer's sale of individual lots, the developer will execute and record restrictive covenants against such lots for the purpose of enhancing and protecting the value, desirability and attractiveness of the lots within the subdivision. Although the developer is involved in both the formation, and possibly initial administration, of the Sanitary and Improvement District and also in the filing of restrictive covenants, a sanitary and improvement district does not have any authority to enforce restrictive covenants against any owner within the District. Restrictive covenants generally may be enforced by the developer, also called the "Declarant", or any lot owner whose property is also restricted by the restrictive covenants.

