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## Tax Credit Alert

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### Minnesota court ruling stalls foreclosure on historic rehabilitation project

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Investors and developers interested in property rehabilitation opportunities should take note of a state court's ruling in favor of parties committed to historic preservation.



#### What's the Impact

- / This ruling reflects an important recognition of different types of financing for developments, including the use of historic tax credits.
- / Experienced counsel can advise on tax instruments available for protecting and preserving the nation's historic structures.

On August 9, 2021, Judge Susan Burke of the Hennepin County District Court in Minnesota granted a temporary restraining order in favor of the owner/developer of the historic Dayton's Complex in downtown Minneapolis to postpone a foreclosure originally scheduled to proceed on August 23, 2021.

The oldest portion of the Dayton's Complex is the flagship Dayton's Department Store Building, which was constructed in 1902. The building is of great historical and cultural value, and the National Park Service has designated it on the National Register of Historic Places. A large scale

renovation of the property, known as the Dayton's Project, commenced in 2017, with the goal of turning the complex into a glamorous new arena for dining, shopping, and entertainment for Minneapolis residents. The project was supported in part through the allocation of historic tax credits (HTCs) through the federal Historic Tax Credit Program.

Plans to open the Dayton's Project to the public were put on hold due to COVID-19 and further disrupted as a result of civil unrest in Minneapolis stemming from the George Floyd murder. Since then, a myriad of legal and financial issues has arisen related to leasing and use of the property, the latest being an attempt by one of the financiers, New York-based Monarch Alternative Capital LP, to foreclose on its loan based on technical defaults.

In response to the efforts to foreclose, owner/developer 601 Minnesota Mezz LLC filed a lawsuit in the Hennepin County District Court and requested a temporary restraining order to prevent the foreclosure.

On August 9, Judge Burke granted 601 Minnesota Mezz LLC's request for a temporary restraining order, finding that a change in ownership at such a late stage would cause significant harm not only to 601 Minnesota Mezz LLC but to the State of Minnesota, as a new owner may not share the same commitment to the historic preservation of the complex. Specifically, the court held that "[p]laintiffs will suffer irreparable harm if they lose control over the management of the Dayton's Building, a unique property of eminent historic importance to the City of Minneapolis and the State of Minnesota. Public policy for historic preservation and the revitalization of the Minneapolis downtown will be undermined if the project is taken over by a buyer that does not share the same commitment to historic preservation of this recognizable Minneapolis landmark." In so ruling, the court recognized the importance of not only the historic aspects of the project but the federal and state HTCs as well, even though 601 Minnesota Mezz LLC failed to make a strong showing that it would ultimately prevail on the merits of the case.

Although the case continues, this ruling reflects an important recognition of different types of financing, including through use of HTCs, and the importance of these instruments in protecting and preserving the nation's historic structures.<sup>1</sup>

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<sup>1</sup> A copy of the opinion can be accessed [here](#).