WHAT'S HAPPENING IN SACRAMENTO: ANALYZING THE IMPACT OF SENATE BILL 150

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Legislation aimed at curbing the ability of homeowners associations to restrict rentals within common interest developments gained traction in Sacramento this summer, ultimately garnering the signature of Governor Jerry Brown in July.

Senate Bill 150, which essentially rewrote the failed Assembly Bill 2259 of 2008, adds Section 1360.2 to the California Civil Code. It provides that owners within a common interest development are not subject to any restrictions in their association's governing documents which aim to prohibit rental or leasing, unless the provision was effective prior to the date the owner acquired title to his or her separate interest. However, the law does allow owners to consent to be bound by such restrictions. The law amends Section 1368 of the Civil Code to include additional disclosures by homeowners to prospective purchasers of their separate interest. Finally, the new provisions do not apply to commercial common interest developments.

The California Association of Realtors supported the bill, alleging that the imposition of rental restrictions "diminishes an owner's property rights by removing options that were available when the unit was purchased." Conversely, the Community Associations Institute opposed the measure, contending that the rules and regulations of a homeowner's association must always remain fluid, and that "renter restrictions should always be subject to review, debate, and approval by all owners." CAI also noted that renter restrictions are a property right that periodically should be uniformly and reasonably changed based on market and hardship conditions.

The Senate Judiciary Committee disagreed with CAI's position, finding that "embracing a policy that furthers the belief that renters do not maintain a certain level of life quality would unjustly discriminate against a large number of California residents who choose to rent their home." The Committee also stated that having a renter in a property is preferable to losing the home to foreclosure. According to Senator Correa, the bill's author, the legislation was intended to ensure that if an owner of a unit has the right to rent the unit at the time he or she purchased it,

that expectation is preserved as long as he or she owns the unit, irrespective of any subsequent revision of governing documents affecting the right to rent.

Less certain, however, is the new law's impact on Federal Housing Administration restrictions that require at least 50 percent of a CID to be owner-occupied to qualify for FHA financing. SB 150 may effectively cause some CIDs to exceed that threshold. Moreover, the law essentially creates two tiers of owners, rendering it subject to attack on the basis of several California Supreme Court decisions which require CC&Rs to be uniformly applied to all homeowners. Whether these issues will be litigated in the coming months remains to be seen.

From a practical standpoint, the legislation appears only to ban outright prohibitions on leasing. As Senator Correa made clear in his comments to the Senate Judiciary Committee, the bill seems aimed at preserving the availability of rental housing at a time when foreclosures have displaced a large number of Californians. Thus, homeowner's associations should still be free to change other rental policies which place lesser restrictions on leasing, such as those relating to the duration of the lease term (for example, restricting rentals to 30 days or six months). Associations should also still be able to require that rentals be for "single-family" purposes and not for less than the entire unit. However, outright prohibitions, or restrictions that impose rental ceilings by prohibiting rentals once a certain percentage of the development has been leased, would certainly be outlawed by SB 150. If an association wishes to amend its governing documents to include provisions which have the effect of prohibiting rentals, we recommend doing so prior to January 1, 2012, when the new law takes effect.

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