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Housing Battles Coming To California

By **Chuck Slothower**

Law360 (January 2, 2023, 12:03 PM EST) -- Californians can expect another flurry of housing legislation in 2023 as legislators and Gov. Gavin Newsom seek to break sclerotic local approval processes, real estate and housing experts said.



California will likely see a flurry of housing legislation and litigation in 2023, real estate and housing experts say. (AP Photo/Mark J. Terrill)

Some cities will push back to preserve local control and zoning, likely leading to further litigation. And high-profile showdowns between the Newsom administration and cities over housing plans and "builder's remedy" projects that are exempt from local zoning rules are simmering.

Recent years have seen an unprecedented push by state officials to wield Sacramento's power to boost housing production, much to the chagrin of city councils and municipal planning officials in the state.

"What I'm seeing very recently is a number of jurisdictions really taking umbrage with the legislators' position, claiming that it is infringing on a local jurisdiction's police power to determine land use and zoning regulations as provided under the California Constitution," said Whitney Hodges, a partner in Sheppard Mullin Richter & Hampton LLP's San Diego office who represents developers.

California has become something of a national hotbed for new housing policies as the state has struggled with inadequate housing supply and rampant homelessness. In 2022, the Legislature passed AB 2011, which allows multifamily projects with affordable apartments by right in commercial zones. Another law,

SB 6, allowed housing in areas zoned for office, retail or parking use.

SB 9, enacted in 2021, paved the way for duplexes and other housing types in single-family neighborhoods. Resistance soon cropped up. The Bay Area suburb of Woodside gained headlines early this year for attempting to designate the entire city as mountain lion habitat.

There are rumblings in California that a coalition of cities, yet to be identified, will file suit to challenge SB 9, Hodges said. Small coastal communities are especially challenged to set aside land for housing, she said. Larger cities are working to comply.

"You're not seeing the San Franciscos, Los Angeleses, San Diegos of the world [challenging SB 9], you're seeing much smaller jurisdictions fighting this," Hodges said.

Several housing bills that did not reach the governor's mansion this year could be reconsidered by legislators.

"There was a lot that passed, but there was also a lot that failed," said Debra Carlton, chief lobbyist for the California Apartment Association, an industry group for multifamily owners. "Of those that failed, I do expect we'll see some of those again."

Carlton said the following bills from the 2021-22 session may see new life:

- A proposal from Sen. Josh Becker, D-13, would remove obstacles to converting the commercial portions of a mixed-use multifamily building to housing. The legislation aims to address the glut of vacant retail space in mixed-use buildings.

"A lot of that stuff is just gone and we don't anticipate that the commercial parts of those buildings will come back," Carlton said.

- SB 621, introduced by Sen. Talamantes Eggman, D-05, would speed redevelopment of motels and hotels to multifamily housing. Such conversions would be subject to a streamlined, ministerial approval process and not subject to a conditional use permit.
- AB 989 would establish an Office of Housing Appeals that would allow developers to appeal a local agency's decision on a project application to a housing appeals panel, which would be empowered to reverse the local decision.

California can also expect to see a push among local governments to provide incentives for more moderate-income housing, defined as affordable for those making 120% of area median family income, Hodges said.

Real estate professionals will also be dealing with the fallout of Los Angeles' new property transfer tax. Approved by voters in November, the measure to fund homeless services levies a tax on the sale of commercial or residential property valued in excess of \$5 million.

Santiago Arana, a Los Angeles real estate agent with a long list of celebrity clients, said the transfer tax will discourage new projects.

"I think it's going to stop development, which is not a good thing," Arana said. "I think it's going to cost jobs. It's going to slow down the economy."

In the Bay Area, local governments will be battling with the Department of Housing and Community Development to get their housing elements — a plan for where housing may be built — approved by a Jan. 31 deadline. If not, a "builder's remedy" kicks in, exempting projects with at least 20% affordable units from local zoning.

The pressure wrought by the housing crisis and battles between state and local officials is changing the tenor of housing and real estate regulation in California, Hodges said.

"You're seeing a lot of what used to be cooperative, collegial relationships becoming acrimonious," she said.

--Editing by John C. Davenport.

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