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State Authorizes Rental Inclusionary Housing Requirements

One of the 15 housing-related bills signed recently by Governor Brown could have especially significant implications for market-rate, residential rental projects in many jurisdictions, as the new legislation, AB 1505, will authorize cities and counties to adopt inclusionary housing requirements for rental units. AB 1505 takes effect January 1, 2018. Nearly a decade ago, the Court of Appeal held that the Costa-Hawkins Rental Housing Act prevented local agencies from imposing inclusionary requirements on rental units that did not receive governmental assistance. *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396 (2009). The Costa-Hawkins Act grants residential landlords the right to set initial rental rates at the commencement of a tenancy. In *Palmer*, a city sought to require a rental housing developer either to construct affordable units that would be subject to rent restrictions for at least 30 years or to pay an in lieu fee the city would use to build affordable units elsewhere. The court held that the city's inclusionary housing ordinance conflicted with and was preempted by the Costa-Hawkins Act's vacancy decontrol provisions. Through AB 1505, the Legislature expressly declared its intent to supersede the *Palmer* decision "to the extent that decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances." The Legislature sought "to reaffirm" local agencies' authority to apply affordable housing requirements to rental projects. To do so, AB 1505 specifies that cities and counties may adopt ordinances that "require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by," households at or below moderate-income levels. AB 1505 requires inclusionary housing ordinances to provide alternative means of compliance that may include in-lieu fees, land dedication, off-site development of units, or rehabilitation of existing units.

Authors