

Date of Hearing: May 20, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 3182 (Ting) – As Amended May 7, 2020

SUBJECT: Common interest developments: governing documents: rental or leasing of separate interests

SUMMARY: Requires common interest developments (CIDs) to allow the rental or leasing of a separate interest of a CID. Specifically, **this bill:**

- 1) Provides that any governing document that purports to prohibit the rental or lease of any of the separate interests in a CID to a renter, lessee, or tenant is void and unenforceable.
- 2) Establishes that an owner of a separate interest in a CID is not subject to a provision in a governing document or an amendment to a governing document that effectively prohibits or unreasonably restricts the rental or lease of any of the separate interests in that CID to a renter, lessee, or tenant.
- 3) Provides that the governing document of a CID may prohibit short-term rentals or leases lasting less than 30 days.
- 4) Repeals an existing provision of law which allows rental or leasing prohibitions in a CID's governing document if the document was effective prior to January 1, 2012.

EXISTING LAW:

- 1) Establishes the Davis-Sterling Common Interest Development Act which provides the framework for the regulation of CIDs. (Civil Code Section 4000 *et seq.*)
- 2) Provides that an owner of a separate interest is only subject to a prohibition on leasing or renting of a separate interest if a governing document or amendment to a governing document was effective prior to the date the owner acquired their separate interest. (Civil Code Section 4740 (a))
- 3) Provides that an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant. (Civil Code Section 4740 (b)).
- 4) Requires that, on or after January 1, 2012, no CID may include provisions or amendments to their governing document which prohibits the rental or lease of separate interests. (Civil Code Section 4740 (f))
- 5) Establishes that, prior to renting or leasing a separate interest, an owner shall provide the association verification of the date the owner acquired title to the separate interest and specified information on the prospective lessee or tenant. (Civil Code Section 4740(d))

FISCAL EFFECT: None

COMMENTS:

Author's statement: According to the author, "We must marshal all available resources to address the housing and homelessness crisis. There are millions of homes across the state that have the potential to be rented to Californians in need of housing but that are prohibited from being leased under outdated homeowners association (HOA) rules. AB 3182 prohibits rental bans in HOAs to allow homeowners who want to rent out their homes."

Background: California has over 52,000 CIDs which range in size from three to 27,000 units. CIDs make up over six million total housing units, which represents approximately one quarter of the state's housing stock. CIDs include condominiums, community apartment projects, housing cooperatives, and planned unit developments. They are characterized by a separate ownership of dwelling units coupled with shared access to common spaces and facilities, restricted by covenants and conditions that limit the use of common area, and the separate ownership interests and the management of common property and enforcement of restrictions by an association.

CIDs are regulated under the Davis-Stirling Act (Civil Code Section 1350 *et seq*) as well as the governing documents of the association, including the bylaws, declaration, and operating rules. CIDs also have Covenants, Conditions, and Restrictions (CC&Rs) which are filed with the county recorded at the time they are established. Owners in a CID are contractually obligated to abide by the CC&Rs and the governing documents of a CID, which specify the rules regarding how an owner can modify their home. However, the Legislature has passed a number of laws ensuring that HOAs cannot deny a homeowner's request to install solar energy systems, electric vehicle (EV) charging stations, low-water use plants, and artificial turf. While HOAs are allowed to impose reasonable restrictions on these types of improvements, the governing documents of an HOA cannot prohibit their use.

This bill seeks to amend the Davis-Stirling Common Interest Development Act in order to prevent HOAs from banning the rental or leasing of a separate interest in a common interest development. In 2011, SB 150 (Correa) Chapter 62, Statutes of 2011, prevented CIDs from creating new restrictions on the rental and lease of separate interests in CIDs. However, that legislation left a loophole: it allowed existing rental bans to be grandfathered in if they were in effect at the time an individual purchased their unit. This bill would remove the exemption for pre-2012 rental bans and prevent the governing documents of a CID from banning the rental or leasing of a separate interest.

California has been facing a severe housing crisis in recent years and this bill has the potential to help address it by making more housing units available for renters. Specifically, this bill would allow any owner of a unit in a CID to rent out their home provided that the rental period would be more than 30 days. While CIDs could still choose to allow short-term rentals lasting less than 30 days, nothing in this bill would require them to permit short-term rentals. Though existing law has prevented CIDs from creating new policies that prevent renting or leasing since 2012, there is no data available on how many CIDs have existing pre-2012 rental bans in place. Given the significant cost and time associated with constructing new housing, this bill has the potential to bring many more rental units to the state at virtually no cost.

However, the Community Associations Institute - California Legislative Action Committee, a group representing CIDs, points out that the current version of the bill may jeopardize financing

opportunities for those looking to purchase a home in a CID. Specifically, loans from government entities like the Federal Housing Authority and the Veterans Administration would not be covered if the owner occupancy rate falls below certain thresholds. These loan opportunities are important for low to moderate income households who might otherwise be unable to afford to purchase a home. Often they require that half of units are owner occupied, but other issues may arise for CIDs if the owner occupancy rate falls below 75 percent. For example, there are reports that homeowners and CIDs face difficulty with the issuance of insurance policies when more than 25 percent of homes are rented out.

Arguments in Support: The bill's sponsor, California YIMBY, writes in support of this bill, "HOAs can currently adopt rules that would ban tenants...prohibitions against tenants act as a prohibition against the production of important types of housing needed to solve California housing crisis, because if that housing cannot be occupied by a tenant, it is unlikely to be built in many cases." Furthermore, the note, "AB 3182 solves this issue by amending the Davis-Stirling Act...to limit the areas where CIDs can ban renters. Specifically, this bill would say that any provision of the governing documents of a common interest development...is void and unenforceable if it prohibits tenants from occupying the home."

Arguments in Opposition: Community Associations Institute - California Legislative Action Committee, a group representing Common Interest Developments writes in opposition, "AB 3182 will create a couple major issues for associations, especially condominium associations. First, we are concerned it will jeopardize the opportunity for an association to access financing for critical maintenance and infrastructure issues that would otherwise need to be funded by assessment increases. It could also jeopardize the opportunity for first time homebuyers who rely on FHA loans, veterans who rely on VA loans and create issues for seniors seeking to refinance through reverse mortgages...AB 3182 will also increase investment buying within condominium associations because of the ability to rent multiple units."

Prior Legislation:

AB 805, Torres, Chapter 180, Statutes of 2012. This bill reorganized statutes in the Davis-Stirling Common Interest Development Act, the Part of the Civil Code which establishes and regulates common interest developments.

SB 150, Correa, Chapter 62, Statutes of 2011. This bill exempted an owner of a unit in a common interest development from any prohibition on renting or leasing the unit, except in cases where the prohibition was effective on or after January 1, 2012.

REGISTERED SUPPORT / OPPOSITION:

Support

California YIMBY (Sponsor)
Abundant Housing LA
Bay Area Council
Casita Coalition
East Bay for Everyone
Inspired ADUs
3 Individuals

Opposition

Community Associations Institute - California Legislative Action Committee
3 Individuals

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