

Calif. Real Estate Regulations, Legislation To Watch In 2020

By Andrew McIntyre

Law360 (January 1, 2020, 12:04 PM EST) -- California lawmakers are expected to focus much of their energies on housing in 2020 as the state continues to have an affordability crisis, and real estate lawyers will have their eye on several housing-related regulations.

As the state attempts to encourage more new housing, timelines for gaining approval could see a change in 2020, and lawyers will also be carefully watching the impact of new state-wide rent control on developers.

But lawyers will also be watching a highly anticipated ballot initiative that could drastically change the way commercial properties are taxed.

Here, Law360 looks at three areas of legislation and regulation California real estate attorneys will be watching in 2020.

Affordable Housing

In 2019, California failed to pass Senate Bill 50, which would have expedited the entitlement process for new housing along transit corridors, but lawyers expect lawmakers to again attempt to speed up the development process for new housing over the next year.

"There are going to be more housing battles ahead in 2020," said Frank Petrilli, a partner at Arent Fox LLP.

At issue in part is the impact that California Environmental Quality Act, or CEQA, has on new development. Most major projects face challenges under CEQA, and getting entitlement is costly and lengthy. Lawmakers have been trying to come up with ways to offer certain housing projects faster pathways to approval, and lawyers expect that battle to continue in 2020.

"There's not enough supply and it takes too long to build," said Ankush Israni, an associate at Stroock & Stroock & Lavan LLP. The idea, Israni said, is "trying to limit the hoops you have to jump through to build new homes" and "cut[ting] the red tape for development."

Israni said the ultimate goal is to streamline more new housing.

“The most ... legislation that’s going to be enacted in 2020 is going to be around trying to alleviate some of those problems,” Israni said.

But adding more stock to the supply is only part of the picture.

California has also been seeking to put in place rent control, and the state achieved that in 2019. Assembly Bill 1482 put in place rent controls that cap rental raises at 5% per year, although lawyers say the move is complex, because it could actually discourage new development of for-rent housing, and developers could instead opt to build in other states that don’t have rent controls.

“The implications for that are going to be far reaching,” said Jane Hinton, a partner at Hunton Andrews Kurth LLP. “There will be more discussion. It could have chilling effect on ... housing development.”

Property Assessment

California properties for more than 40 years have had protection from property tax increases, and voters in November 2020 will decide whether to remove that protection from commercial properties.

Under the 1978 law Proposition 13 properties do not get assessed every year, as is the norm in many states, but instead only get assessed when the property or a majority stake in the property is sold. Property taxes can still rise but tax increases are capped at 2% a year under Prop 13.

While lawyers say there’s little hope for voters to approve lifting the protection from residential properties, voters next November will get a chance to lift that protection from commercial properties. The attempted change is known as the split roll, indicating that commercial properties would lose Prop. 13 protection while the law would still apply to residential properties.

Lawyers, though, caution that the change to the four-decade-old law could have ripple effects.

“I would think there would be a ton of unintended consequences,” said Marc Liverant, a partner at Morgan Lewis & Bockius LLP. “The tax increases would be passed onto the tenant, and the tenant would pass them onto the customer. That would have a huge economic impact.”

Attorneys also say it’s unclear how mixed-use properties would be treated under the change.

“A lot of property is mixed-use. Part residential and part office. How does that get taxed?” Liverant said.

Proponents of the change have already gotten the signatures required to have the question on the 2020 ballot, but backers of the change are now at work on an amended initiative.

The new version of the initiative is aimed at providing more clarity to voters on where the additional tax revenue would go, said Amy Forbes, a partner at Gibson Dunn & Crutcher LLP.

“It makes it clear where the money goes. It’s a Schools and Community First initiative,” Forbes said. “Most people are ... worried at this point about the split roll,” she added, referring to the commercial real estate community.

Co-Living

While California continues to struggle with the question of how to deal with the affordable housing crisis, the state is also increasingly looking at the co-living model, and lawyers expect to see more movement on that front in 2020.

The idea, Israni said, is to allow for as many as three units in areas that had been zoned only for single-family construction.

California Governor Gavin Newsom recently signed multiple bills into law to encourage more development of co-living and shared spaces, and lawyers expect to see more of such development in 2020 as a result.

One bill, a combination of Assembly Bills 68 and 881, speeds up the permitting process for so-called accessory dwelling units, or ADUs, while Assembly Bill 670 limits the powers of homeowners associations to block such projects and Assembly Bill 671 puts a requirement that city general plans incentivize new ADU construction.

And Senate Bill 13 provides for a reduction of fees in connection with building ADUs.

As a result, lawyers expect to see more projects in the pipeline.

“We are seeing a lot of activity in the co-living space,” Hinton said. “We do represent some clients who are on the developer side and are looking at that space very carefully and are raising funds for development. We’re going to see a lot more discussion in those areas.”

--Editing by Alyssa Miller.

Correction: An earlier version of this story misspelled an attorney's name. The error has been corrected.