

NEW RISKS AND PROTECTIONS FOR PURCHASERS OF AFFORDABLE HOUSING PROJECTS

A new bill, AB 1216, working its way through the California legislature would substantially affect affordable housing projects whose affordable housing restrictions are expiring or terminating. Because of the significant surge of activity in the multifamily market, many affordable housing projects are currently attractive acquisition candidates for conventional buyers and investors. This proposed bill would (1) expand the list of plaintiffs entitled to enforce affordability protections and (2) provide protections to good faith purchasers of projects that failed to follow the proper notification process.

California Government Code Sections 65863.10 and 65863.11 establish a comprehensive, albeit cumbersome, regulatory scheme to address the situation where the regulatory restrictions on affordable housing projects are soon to expire. This regulatory scheme creates a system where owners of assisted housing developments who intend to terminate participation in or intend not to extend or renew participation in certain affordability programs are required to fulfill certain requirements. At least 12 months prior, and again six months prior, to the termination of the subsidy contract, expiration of rental restrictions, or prepayment of certain mortgage indebtedness, the owner must provide notice of the proposed expiration or termination to tenants, certain public entities, such as the city or county in which the development is located, the local public housing authority, and the Department of Housing and Community Development (HCD). If the owner fails to comply, any affected tenant or affected public entity can seek injunctive relief.

The Government Code Sections also require the owner to provide an opportunity to submit an offer to purchase the affordable housing project to various entities, including a tenant association and certain affordable housing developers and operators. The owner must provide notice of the opportunity to offer to purchase prior to or concurrent with the required notice to tenants and affected public agencies. Only those entities to which the owner is required to provide notice of the opportunity to offer to purchase have standing to enforce the offer-to-purchase provisions should the owner fail to comply.

AB 1216 extends standing to enforce these provisions to tenants of the assisted housing development and any affected public agency. At the same time, AB 1216 adds new protections for good faith purchasers of such properties. Many conventional buyers, as well as their lenders and investors, have long been concerned with their potential exposure under this regulatory scheme for acts of omissions on the part of sellers. Many conventional buyers do not have the expertise to determine whether this regulatory scheme has been adequately addressed. To allay these concerns, AB 1216 amends Government Code Section 65863.11(n) to read in pertinent part:

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Regardless of whether a certification [of compliance with the requirements of Government Code Sections 65863.10 and 65863.11] has been recorded as required under this subdivision, this section shall not affect the rights of a purchaser or encumbrancer for value who acts in good faith and without notice of a failure to comply with this section.

This “good faith purchaser” protection would go a long way in addressing industry concerns. In order for prospective purchasers to avail themselves of this protection, some thought should be given as to how to document the good faith reliance, such as appropriate representations in the acquisition documents.

AB 1216 is moving quickly through committee and has significant support from the affordable housing community. While its passage is uncertain, prospective purchasers of affordable housing projects should monitor this bill carefully.

If you have any questions concerning the impact of AB 1216 on Government Code Sections 65863.10 and 65863.11 transactions, please contact Cox Castle’s Affordable Housing Group:

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