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Expanding the Right to Rent Out under Davis-Stirling; AB 3182 Eliminates Grandfathered Rental Restrictions for Common Interest Developments

"We must marshal all available resources to address the housing and homeless crisis," said Assembly Member Phil Ting in his call-to-arms for AB 3182. Ting's bill proposed to amend the Davis-Stirling Act to eliminate a "loophole" that grandfathered-in rental bans that were in effect before January 1, 2012. Ting argued, "There are millions of homes across the state that have the potential to be rented to Californians in need of housing but are prohibited from being leased under outdated HOA rules." California's lawmakers were sufficiently persuaded: AB 3182 became effective on January 1, 2021.

Davis-Stirling regulates Common Interest Developments (CIDs), which are a form of real estate development in which owners have an exclusive interest in a unit or lot and share an undivided interest in common area property. CIDs, generally, are governed by Homeowner's Associations (HOAs) and include planned unit developments, condominiums, community apartment projects, stock cooperatives, and limited equity housing cooperatives (LEHCs). There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or almost one quarter of the state's housing stock.

AB 3182 makes unenforceable any provision in an HOA's governing documents that prohibits, has the effect of prohibiting, or unreasonably restricts owners from renting their units, including accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs), to a renter, lessee, or tenant. This law does not prohibit HOAs from adopting and enforcing bans on short-term rentals for fewer than 30 days. It does not, however, require HOAs to permit such short-term rentals.

Legislative commentary on the bill acknowledged that low owner-occupancy rates may have a negative effect on financing opportunities and insurability for CIDs. Recognizing this, the law allows HOA's to set an overall rental cap of not less than 25% of the total number of individual dwelling units, exclusive of ADUs and JADUs, in the development. Any such rental cap will not apply to owners who were renting out their units before the January 1, 2021, effective date of the law.

In the case of LEHCs, these limits on rental restrictions are problematic since state law mandates that the governing documents of LEHCs require share owners to sell their stock if

they cease to be permanent residents. The purpose of permanent residency requirements for LEHCs is to help ensure participatory governance by residents, to avoid profit-motivated investor activity, and to promote the availability of affordable housing. As enacted, however, AB 3182 raises thorny issues of statutory interpretation, creates difficulties in enforcing otherwise reasonable rental restrictions in the LEHC context, and sets up a conflict in trying to comply since AB 3182 states that HOAs must amend their governing documents by December 31, 2021, to remove any conflicting provisions or face liability for civil penalties of up to $1,000.

For further information regarding AB 3182 or assistance with common interest developments, including cooperatives, please contact Jeff Streiffer, Karen Tiedemann, Erin Lapeyrolerie, or any other attorney at Goldfarb & Lipman LLP.