

# SLAPP-ing Down Anti-Housing Lawsuits with SB 439: Expansion of the Anti-SLAPP Statute

California Senate Bill 439 represents a novel adaptation of the state's anti-SLAPP (Strategic Lawsuit Against Public Participation) statute, extending the scope of a law designed to protect First Amendment activity to a new area: legal challenges against low-income housing developments. This procedural tool allows eligible affordable housing developers who find themselves as defendants in litigation to quickly dismiss certain lawsuits against them when those suits lack substantial merit.

SB 439 targets civil actions challenging the approval or permitting of "priority housing development projects," defined as projects where 100% of the units, excluding any manager's unit, are reserved for lower-income households, in accordance with section 50079.5 of the Health and Safety Code and the California Code of Regulations (Title 25, sections 6910 *et seq.*). The law would not apply to projects that mix affordable and market-rate housing, although it is possible that the legislature could expand the law in the future.

Importantly, this procedure will be available in challenges filed under the California Environmental Quality Act (CEQA), a common avenue for contesting housing projects.

Under the new law, a defendant in a lawsuit challenging a priority housing development can file a special motion to strike any part of the plaintiff's pleading within 30 days of the filing of the complaint. By doing so, the burden shifts to the plaintiff to

prove a "probability" of prevailing on the claim. The "probability" requirement compels plaintiffs to make a moderate evidentiary showing in support of their case. Because the filing of the motion causes a pause in discovery, the plaintiff cannot rely on the prospect of obtaining evidence later in the litigation, which often allows a party to fend off an early dispositive motion. Additionally, orders granting or denying the motion are immediately appealable. This also benefits a defendant. Usually, a defendant cannot seek appellate review of a ruling that denies a dispositive motion, such as a demurrer or motion for summary judgment, until judgment has been entered, which generally occurs much later in the lawsuit.

Consistent with traditional anti-SLAPP statutes, SB 439 awards attorney's fees and costs to the prevailing moving party (i.e., the defendant). A party who succeeds in defeating a special motion to strike may also recover fees and costs, but only if the court concludes the motion was frivolous.

By applying the anti-SLAPP mechanism to these cases, the legislation aims to support the development of low-income housing by deterring and swiftly resolving frivolous and unsupported legal challenges that may impede such projects.

SB 439 will amend Code of Civil Procedure sections 425.19 and 904.1.

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