

## Did California Say Goodbye to the Single-Family Home? Echo Journal, author Jeanne Grove, Esq., January 2022

### Summary of SB-9

SB-9 will significantly reduce the zoning barriers to allow single family residential parcels to be split and allow for building two units on each parcel. SB-9 has two components, a zoning component and a subdivision component. The zoning component requires a local jurisdiction to approve the development of two units on any single-family property. The subdivision component requires a local jurisdiction to ministerially approve the division of a parcel. Each of the two new parcels may not be less than 40% of the original lot. Neither new lot may be less than 1,200 square feet. The applicant must provide a signed affidavit declaring an intent to occupy one of the units for a minimum of three years. The created units may not be used for short-term rental. It also prevents the serial division of lots; the division may only be done once.

Despite the broad brush that SB-9 seems to take, there are many exceptions in the new law that result in its quite limited application. First, SB-9 is limited to urbanized areas and urban clusters.<sup>3</sup> Even if the property is in an urbanized area or urban cluster, SB-9 applies only in areas that are not prime farmland, wetlands, very high fire severity zones (see <https://egis.fire.ca.gov/FHSZ/>), hazardous waste sites, earthquake fault zones, 1% annual flood hazard zones and regulatory floodways, lands identified for conservation, or habitats for protected species. Second, SB-9 does not apply to properties that have rent control restrictions (e.g., properties that were built 15 years ago or more, or have been tenant-occupied for the past three years<sup>4</sup> or are subject to the current Wildfire Anti-Price Gouging Act<sup>5</sup> or that have had an Ellis Act eviction in the past 15 years.<sup>6</sup>) SB-9 also does not allow the demolition of restricted low to moderate income housing.

### Summary of SB-10

SB-10 allows a jurisdiction to up-zone a residential or residential mixed-use zoned property to allow for up to 10 residential units on one parcel. It only applies if a parcel is within half a mile of both a major transit stop and an urban infill site. An urban infill site means the parcel is adjoined by 75% urban uses, zoned as residential or residential mixed use, and urbanized or part of an urban cluster.

Does a common interest development (CID) need to amend its governing documents in response to SB-9?

No, SB-9 does not explicitly require CIDs to amend the governing documents in order to conform to the new law. But it is important for board members who are tasked with enforcing their governing documents to understand that they may need to comply with the new requirements of SB-9. If the subject property does not fall under one of the many exceptions of SB-9 (summarized above), then the new law will allow an owner of a parcel to build two units on a parcel and/or divide the parcel into parcels, allowing for two units on each. It is recommended that CC&Rs and other governing documents be reviewed to determine whether they adequately address such a circumstance.

Does SB-9 affect the powers of an architectural committee, or board powers, when considering homeowners' alteration approval requests?

Yes and no. SB-9 and SB-10 both address density. They also prohibit a local government from imposing standards that would have the effect of preventing development under these laws. The law does not address board powers to prevent such density. If a homeowner

submits an alteration approval request, the board will need to determine whether the property is subject to SB-9, and if so, whether the CID is required to comply with it despite governing documents that may state otherwise. This question will inevitably become the subject of litigation, and courts will eventually need to determine whether CIDs must comport to the restrictions of SB-9 (and SB-10).

How does SB-9 impact leasing rules in HOAs?

SB-9 does not allow the subdivision or development of additional units on parcels that were built 15 years ago or more and are therefore subject to state rent control, properties that have been tenant-occupied for the past three years,<sup>8</sup> those that are subject to the current Wildfire Anti-Price Gouging Act,<sup>9</sup> or those that have had an Ellis Act eviction in the past 15 years.<sup>10</sup> Additionally, SB-9 may limit a homeowner's ability to erect an ADU (accessory dwelling unit) or a JADU (junior accessory dwelling unit) on their property if the property has been developed based on SB-9.<sup>11</sup> However, if an owner is allowed to develop an additional unit on the same parcel of land pursuant to SB-9, then the owner may be allowed to lease that new unit.

Does SB-9 affect occupancy regulations in an HOA?

In general, SB-9 relates to development of units, not occupancy of units. However, it does impose some occupancy restrictions on lots proposed for development. An applicant for a single-family-zoned parcel proposal for a lot split must sign an affidavit that one of the units will be owner-occupied for at least three years. If a unit is developed pursuant to SB-9, it may not be used for short-term rental.<sup>12</sup>

How does SB-9 affect maintenance/repair issues in an HOA?

Presumably, if an owner is allowed to build an additional unit pursuant to SB-9, the governing documents will also apply to that new unit, and the owner will be required to comply with the same maintenance/repair requirements with respect to that new unit.

How does SB-9 affect AB-3182?

AB-3182 generally limits a common interest development from stopping owners of ADUs from renting out those units. It also prohibits HOAs from unreasonably regulating leasing of units. AB-3182 also requires HOAs to amend their CC&Rs if they set a cap on leasing of less than 25%. By comparison, SB-9 relates to the development of additional units on a single-family parcel, including the development of ADUs. If a property owner develops units pursuant to SB-9, AB-3182 will generally allow the owner to rent those units (however, SB-9 does prohibit short-term rentals).

In summary, SB-9 and SB-10 do not include affirmative requirements directed at CIDs specifically. The new laws do not expressly prohibit a CID from restricting increased density where the state law and local zoning otherwise allow it. But the laws are likely to have unexpected effects on CIDs, particularly when it comes to architectural controls, leasing, and enforcement of the governing documents. Board members may find themselves in the middle of a battle between local control and state control over land use.

There may be questions of whether the state law preempts the control these CIDs once had.

Senator Toni Atkins, the author of SB-9, insists that SB-9 is not intended to remove any powers of an HOA and that "SB 9 would not override CID or HOA restrictions." Unfortunately, Senator Atkins' letter is not included in the bill itself, so it is of questionable value when applying the new law. For this reason, expect many issues to arise when board members and homeowners alike grapple with SB 9/10's applicability to their development and question whether an HOA may restrict or impose limits on parcels where an owner applies to increase the residential density. CIDs and their members will need to affirmatively seek court clarification when such issues arise.

In light of the questionable applicability of SB-9/10 to CIDs in the future, it is recommended that board members consult with an experienced attorney to determine whether the new laws apply to the development, and if so, whether governing documents should be amended to proactively address and prevent issues under SB-9/10 before they arise.

Author: A. Jeanne Grove, managing partner and co-chair of the Real Estate Practice Group at KD Law, practices real estate litigation, including HOA disputes. She regularly counsels HOAs on their day-to-day operations and compliance matters. Ms. Grove is also a California licensed real estate broker.

1 Government Code Sections 66452.6, 65852.21, 66411.7 (2022).

2 Government Code Section 65913.5 (2022).

3 Go to the following link for a map of the affected areas: <https://bit.ly/3FDhn27>

4 Government Code Section 65852.21(a)(3)(c)

5 Penal Code 396 (2021).

6 Government Code Section 65852.21(a)(4).

7 Go to the following link for a map of the affected areas: <https://bit.ly/3FDhn27>

8 Government Code Section 65852.21(a)(3)(c).

9 Penal Code 396 (2021).

10 Government Code Section 65852.21(a)(4).

11 Government Code Section 65852.21 and 66411.7.

12 Government Code Section 65852.21(e).

REPRINTED WITH PERMISSION OF THE ECHO JOURNAL, <https://echo-ca.org/professional-membership/>