

Legal Lines

Gilchrist and Rutter



Authors: Richard H. Close, Esq., is flanked by Thomas W. Casparian, Esq., and Susy Forbath

Assembly Bill 566: Residents and cities try to take community owner rights again

The value of a manufactured home community subdivided for resident ownership is two to three times that of a rental community. Upon subdivision, community owners regain the value of the land, and residents retain the in-place value of their homes.

Under current law (CA Government Code §66427.5), manufactured home community owners have a right to subdivide their communities. Many owners have done so as part of a long-term exit strategy that will yield greater value from the community than an outright sale, and will allow the residents to eventually own and operate the community themselves.

Yet, once again, local governments and tenants groups are pushing new legislation to deny community owners their right to subdivide. Assembly Bill 566 (Nava), would make subdivision far more difficult. Similar bills, attempting to stop manufactured home community conversions, have come and gone over that past few years. So, how is this one different?

The current law was created to enable communities to be subdivided for resident ownership by providing protections and benefits for the residents and incentives for the community owner *without interference from the local government*. In a typical stick-built subdivision, the local government often will attempt to extract from a sub-divider an agreement to construct or pay for public improvements, grant dedications, impose affordable housing covenants, or other exactions.

Prior state Legislatures understood that such costly conditions dis-incentivize community owners from offering resident ownership and cause the price paid by the residents to increase, so current law

strictly prohibits local government from imposing such conditions.

Currently, once a community is subdivided, residents have the opportunity, but not the obligation, to purchase their individual homesites. If they do not wish to purchase, they may continue to rent for as long as they choose with state rent provisions superceding local rent control. If the resident chooses to continue to rent, when they decide to move (or pass away), the new resident purchases the home from them and the homesite from the community owner.

Eventually, the manufactured home community will be 100 percent resident owned, and the community owner has sold the community for its land value, not its lesser income-producing value. This creates a wonderful long-term exit strategy for community owners who sell the lots at fair market value over several years, thereby maximizing the real estate value of their community.

In total, the purchaser pays the value of a home and land, at a price which is usually far less than the cost of a stick-built house and land. The community owner receives real estate value for the land; the former renting resident receives a price for his or her home that reflects its in-place value as a real-property improvement.

AB 566 is particularly bad because it would allow local government to deny a subdivision even if community residents overwhelmingly favor a conversion to resident ownership. It provides cities with unlimited power by granting them the authority to enact local ordinances to prevent sham conversions or to preserve affordable housing.

Neither of these terms is defined in this Bill. By law, "sham conversion" has a legal definition, but we have seen many cities in recent years interpret this term

to allow them to impose any conditions they choose. In one city, council members termed a conversion a sham unless the community owner agreed to replace the septic systems with a sewer system. We have been uniformly successful invalidating such actions, but AB 566 will provide a greater hurdle for legal challenges.

Allowing ordinances to preserve affordable housing leaves local agencies to define it as they choose to, often limiting the term *affordable* to mean affordable rental housing. Resident ownership in manufactured home communities creates affordable purchase housing in cities where little if any exists.

Also, like its predecessors, AB 566 attempts to give residents a veto power over the subdivision by requiring a majority of the residents to support the project.

Requiring a majority of residents to support a conversion virtually hands them the ability to wrest whatever concessions they want from the community owner. For example, under the language of AB 566, the residents could say, “we will only support the subdivision if you (community owner) give us new roads and utilities and agree to sell the lots for \$X.”

A resident veto upsets the natural balance of bargaining power and gives the residents a license for extortion. This will only make conversions uneconomic

and discourage ownership opportunities. In communities where resident support for conversion is closely divided, a handful of unreasonable residents can ruin the opportunity for home ownership for everyone.

Even worse, using the term “majority of the residents” allows it to be interpreted as the majority of *residents residing in the community*, rather than the majority of those *residents who choose to vote*. As every elected official in the country knows, if an election had to be won by a majority of registered voters there would never be an election won.

AB 566 is a bad bill. Community owners need to be heard on this issue. We will work closely with the WMA to defeat this bill. If you would like to be notified of pending actions or of how you can proactively oppose this legislation, please email us at DefeatAB566@gilchristutter.com and we will keep you up to date and involved as this bill moves its way through the Legislature.

The ability to subdivide is your right and your community is a real estate asset, let’s not let them take the value of your land forever. ✨

Richard Close, Thomas Casparian, and Susy Forbath, together with the rest of their team, comprise the Manufactured Housing Practice Group at Gilchrist & Rutter, Santa Monica, California(www.GilchristRutter.com).
