

## A Real Estate and Land Use Law Update

01/25/08

### Washington Real Estate Legislative Update

The Washington Legislature has been active during the 2008 Regular Session with respect to issues concerning homeowners, developers and the construction industry. Three bills in particular have received considerable attention from citizens, industry leaders and lobbyists: the condominium conversion bill, the vesting bill for development projects, and the homeowners' bill of rights.

#### **Condominium Conversion Bill**

On January 18, 2008, the Washington State House of Representatives passed a substituted version of the condominium conversion bill, HB 2014. If approved in its current form, the bill will change the relocation assistance that developers of condominium conversions must pay to residential tenants under the Condominium Act from \$500 to the equivalent of three months rent. In addition, if approved, the bill will increase the notice period for residential tenants of conversion condominiums from 90 to 120 days.

Rep. Maralyn Chase (D-32, Shoreline), the leading sponsor of the bill, also introduced several amendments to the proposed legislation. One of Rep. Chase's more controversial amendments would have allowed local governments to set a cap on condominium conversions whenever there was a combined drop in local vacancy rates below 5 percent and a net loss of rental housing over a 12-month period. The "cap amendment" failed, however, and was withdrawn prior to the bill's passage in the House. The Senate had its first reading of the bill on January 21 and subsequently referred the bill to the Committee on Consumer Protection & Housing. The Committee will likely hold public hearings on the matter, and it will eventually prepare a report to be read in open session of the Senate.

#### **Vested Rights for Development Projects**

This week, a bill proposing a dramatic change to Washington's law regarding vested rights for development projects was presented in both houses of the Washington State Legislature. Sen. Adam Kline (D-37, Seattle) is the leading sponsor of the Senate Bill, SB 6784, and Rep. Geoff Simpson (D-47, Covington) is the leading sponsor of the companion House Bill, HB 3202. If passed, the bill will require that government officials assess applications for proposed projects using the laws in effect at the time of *approval*, rather than using the laws in effect at the time the application is *filed*. Currently, a project is "vested" under the regulations in effect at the time an owner or developer files a complete application. An express purpose of this bill is to prevent real

estate developers from winning the alleged “race to the permit counter when a change is proposed.” The bill fails to address the fact that the regulatory review and evaluation process occurs prior to approval and can frequently take several months, often at great expense to the applicant. As a result, the legislation could create significant uncertainty for developers and design professionals, who would be required to submit and process land use applications without knowing whether the applicable laws will change prior to approval.

The Senate Committee on Government Operations & Elections has scheduled a public hearing on SB 6784 on January 28, 2008, at 10 a.m. The House Committee on Local Government has scheduled a public hearing on HB 3202 on January 29, 2008, at 1:30 p.m.

### **Homeowners’ Bill of Rights**

Sen. Brian Weinstein (D-41, Mercer Island) has introduced the original version of the homeowners’ bill of rights, SB 6385, in the Washington State Senate. At the same time, Rep. Brendan Williams (D-22, Olympia) has introduced a companion bill, HB 2837, in the House of Representatives.

Although the Washington Supreme Court has held that there is no cause of action for negligent construction on behalf of individual homeowners, the bill would allow homeowners – both initial and subsequent homeowners – to sue for negligent construction. The bill would apply to any person “involved” in the construction of improvements, which includes former homeowners who made improvements to their homes. Sen. Weinstein has since introduced a substitute version of the bill. The proposed substituted version would create a statutory duty of care for any construction professional involved in the construction of residential improvements. This version would also exclude former homeowners and exempt condominiums, while preserving the homeowner’s right to sue for negligent construction.

There is considerable industry opposition to the bill. In particular, the Building Industry Association of Washington is opposed to the bill out of concern that it will raise liability insurance premiums, increase the cost of new housing, and substantially increase the number of lawsuits filed against contractors.

The original version of the bill had its first reading in both houses on January 16, 2008, and was referred to the Senate Committee on Consumer Protection & Housing and the House Judiciary Committee. The Senate Committee on Consumer Protection & Housing held a public hearing for this bill on January 24, 2008. Sen. Weinstein’s substitute version of the bill was distributed at the January 24th public hearing. The bill is still subject to votes in both houses.

*Lane Powell will report the results of these bills at the end of the legislative session. For more detailed information regarding the Homeowners’ Bill of Rights, please see the Hotsheet from Lane Powell’s Construction Practice Group ([http://www.lanepowell.com/pdf/pubs/con\\_2008\\_001.pdf](http://www.lanepowell.com/pdf/pubs/con_2008_001.pdf)).*

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