

Is the Coastal Act the Key to Defeating STR Bans?

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As many of our members know, STRACA/LASTRA is following an increasing number of lawsuits challenging local ordinances that ban short term rentals (STRs). As the number of lawsuits grows, we are seeing a common thread among many of them, and that is, seeking to defeat the bans based on the regulations imposed on local municipalities by the California Coastal Act. The arguments plaintiffs are making include: a city's failure to file a Local Coastal Plan (LCP); failing to obtain a Coastal Development Permit (CDP); and failing to file an amendment to existing LCPs. All of these are required under the Coastal Act and are administered by the California Coastal Commission. Cities are giving it their all to fight back. We can't help but watch the unfolding lawsuits with bated breath to see if the Coastal Act will prove to be the law that saves STRs in California.

The key element of the Coastal Act these lawsuits all hinge upon is the definition of the term development. Development is broadly defined in the Coastal Act to include not just what one traditionally thinks of when they hear the word development (e.g. erecting new buildings), but also any change in the density or intensity of the use of land, as well as changes in access to coastal water. It is these two pieces of the definition the lawsuits cite for why the Coastal Act even comes into play. As long as the argument can successfully be made to a court that bans on STRs constitute either a change in the density or intensity of land use or a change in access to coastal water, then courts must determine if cities are then in compliance with the Coastal Act in terms of LCPs, CDPs, or amendments to LCPs. If plaintiffs can show the city in question enacted their bans without first obtaining the necessary approval of the California Coastal Commission, the quasi-judicial body that

enforces the provisions of the Coastal Act, then the bans are not likely to survive.

The challenge, for both plaintiffs and defendants, is convincing the courts that banning STRs constitutes a form of development as defined by the Coastal Act. This is difficult because it requires arguing for your preferred interpretation of the Coastal Act. If you are a city that wants to see its STR ban upheld, then you must convince the court that you have not done anything in enacting your ordinance that can fairly be considered a change in land use or a change in access to coastal waters. Whenever courts are tasked with interpreting the law, however, litigants face the possibility that the judge hearing their case is one that believes the court's job is to understand the law in light of what the framers of it originally intended. On the other hand, there are those judges who seek to understand the spirit of the law and attempt to interpret the meaning of the language in the statute in the light of societal changes that have taken place in the years since the law was originally enacted. It is this latter philosophy that has allowed for landmark decisions that have broadened the scope of the meaning of racial discrimination and sex discrimination and have allowed a wider range of people to be protected by such important laws as Title VII, The Civil Rights Act of 1964. When courts hand down decisions that create powerful new common law, we see pivotal changes in society as a result. Here to, with interpreting the term development in the Coastal Act.

Thankfully, the Coastal Commission has sought recently to clarify if STRs are in fact protected under the Coastal Act because it is very much aware of the trend toward banning them. The Commission has clearly stated, as recently as December 2016, that bans on STRs will not be supported and that all laws seeking to regulate STRs can only be enacted in compliance with LCPs and/or with the authorization of a CDP. This clarity is important to the litigants suing to end local STR bans, however, it does not completely remove the need for judicial interpretation of the Coastal Act, which does not

specifically mention STRs. Instead, the Coastal Act says this in Article 3, §30222:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Coming out so clearly against banning STRs has meant that the Commission has made it easier for plaintiffs to convince the courts, but it is not a slam dunk. And cities are fighting hard to convince the courts their bans are exempt from the Coastal Act. Nonetheless, the Commission's public stance on this issue does make this a bit of an uphill battle for cities. Indeed, there could be far reaching consequences for cities who lose these legal battles. The Commission is generally seen by municipalities as a toothless body, but that is simply not true. The Commission can seek civil penalties of up to \$30,000 for violations of unapproved development. In addition, a recent amendment to the Coastal Act gives the Commission the authority to also seek administrative penalties against violators, and these are not insignificant. They can collect up to \$11,250 a day for up to five years for each violation. Will cities that lose their fight to uphold their STR bans then be open to penalties imposed by the Commission? Only time will tell on this point.

To be sure though, the plaintiffs thus far who have sued their cities to see STR bans overturned under the Coastal Act are the trailblazers in this fight to keep STRs legal and instead have reasonable regulations enacted to protect all parties (hosts, guests, and yes even cities that can collect taxes on STR transactions). An important decision recently came down in one of these cases, *Rosenblatt v. City of Santa Monica*. In this case, the Plaintiff originally sought to overturn Santa Monica's ban by alleging the ordinance was a

violation of the dormant Commerce Clause, which prohibits state regulation of interstate commerce. Lucky for the rest of us, the complaint was amended to add violations of the Coastal Act, as that added claim is the only one that survived a recent motion to dismiss filed by the City of Santa Monica. We will be watching this case (and other similar cases) closely to see if the Plaintiff prevails. A win for this Plaintiff will be a win for the Coastal Act, and the rest of the STR industry in California.

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