

Repeal of Costa Hawkins Could Preclude Developers of New Buildings From Ever Selling Condominiums If Their Projects Have a Recorded Condominium Map But No Public Report

In past years, we have advised clients that as long as no unit in a multi-unit new condominium project is rented before its condominium map is recorded, later sales of units do not fall under the city's condominium conversion ordinance, which does not at this time allow conversion of buildings of more than two units. We also advise clients that under the Costa-Hawkins Act, the new units are not under rent control during the time they are rented (before sale), as they represent newly built construction built after February 1, 1995.

Civil Code § 1954.52(a) states that there is an exemption from rent control for dwellings or units for which certificates of occupancy were issued after February 1, 1995 (so as not to discourage construction of new residential units). However, the potential repeal of Costa Hawkins this November, followed by the expected move by the City of San Francisco to no longer exempt from rent control all buildings for which certificates of occupancy were issued after February 1, 1995, means that property owners should now consider not only recording a condominium map, but also obtaining a Bureau of Real Estate "Public Report/White Report," in order to preserve the right to sell units after renting them out. In other words, recording a condominium map before renting a unit, without taking the further step of obtaining a Public Report, may no longer exempt new construction (which is later rented) from our two-unit, local condominium conversion restriction.

Developers of buildings of more than two units are no longer simply relying on the recordation of a condominium map before units are rented. For that reason, we are now obtaining public reports for new construction which a developer is renting and has no plans to convert to condominiums for many years to come. This kind of Public Report is referred to as a "shelf" Public Report, as it may sit on a shelf for many years before being used to sell units. Or it may never be used at all. After obtaining a Public Report, the property owner must also make sure that it is renewed every five years in order to avoid later enacted laws on rent control or later enacted restrictions on selling the units at a later time.



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