

The Sacramento Report
Governor Agrees Landlords Are Not Immigration Cops
By Greg McConnell,

Governor Schwarzenegger, agreeing that landlords should not be forced to serve as de facto immigration cops, signed AB 976 into law. The new law goes into effect on January 1, 2008 and will prohibit local governments from passing local ordinances that require landlords to inquire about a tenant's immigration status and report that information to local governments. Given the public's intense interest in immigration issues, AB 976 received nationwide attention and was covered in all of the major newspapers throughout the country.

Why AB 976 is Necessary and Important

A few years ago the city of Escondido following the lead of Hazelton, PA and other cities around the country, passed a law that made it a crime for landlords to rent their properties to undocumented immigrants. The law required landlords to verify the immigration status of their tenants and contained very significant penalties for non-compliance.

Landlords hated the Escondido law and their dislike had nothing to do with immigration policy. They hated the law because it put them in a lose-lose position. If they complied with the law, tenants and ACLU types would sue them for housing discrimination. If they did not comply with the law, Escondido would punish them severely. These competing interests could break small landlords who would be thrust into costly litigation with no win in sight.

The Escondido law was challenged in court by the Mexican American Legal Defense and Education Fund and other "social justice" groups. Ultimately, the city decided to drop the law rather than defend the costly suits. (Ironically, the city got a taste of what its law would have imposed on landlords – extremely costly litigation.)

Nevertheless, landlords were not convinced that the issue was dead and feared that other cities in Southern California would try to adopt similar laws. They introduced AB 976 as a preemptive strike to prevent that from happening.

One of the interesting things about the effort to pass AB 976 was that this bill was a small owners' production. It was introduced by a relatively small local landlord association and supported by landlords in Southern and Northern California. The effort gathered momentum when the sponsors were able to attract support from tenant groups and the ACLU.

This is a strategy that is required these days because very little gets passed in Sacramento that is not bi-partisan. Democrats have a huge majority voting block that is heavily influenced by "progressives" and that makes it very difficult to pass pro-business legislation. Republican legislators can influence issues that require a two thirds vote, like the budget, but have little success in passing simple majority bills that are not supported

by Democrats. And the Governor, while he seems inclined to veto legislation that hurts business, he has no independent ability to pass pro-business legislation.

Of course, as with every piece of legislation that requires compromise for passage, AB 976 has had its detractors. At first there was the issue of whether the bill would affect landlords' rights to screen tenants for credit worthiness. That was handled in short order by clarifying amendments that clearly state that landlords have that right

The other issue that still has some criticizing the bill has to do with what some landlords perceive as a trade off that they claim reduces landlord rights. In order to get tenant support to prevent cities from compelling owners to track immigration status, the bill also made it clear that landlords cannot do that on their own volition. This has prompted some complaints from some landlords who argue that while they don't want to be forced to screen for immigration status, they would like to be able to do so if they choose.

I am not sure that landlords ever had the right to screen for immigration status. Many experts, including the independent legislative analysts who reviewed AB 976, have opined that existing fair housing laws prohibit discrimination based upon national origin and therefore bar screening. If they are right, nothing was traded to get support.

But even assuming that landlords might have had the right to screen, the question remains, why would a prudent landlord want to assume that risk? Given the huge litigation costs that small landlords could face from tenant groups if they check immigration status and the fines that cities would impose on owners if they did not comply with a city's law, if this is a trade off, I think it is a bargain.

As I stated in news articles that appeared throughout the country, at the end of the day, this is not about whether landlords support or oppose immigration. It is about who has the duty to enforce the laws and whether landlords should be conscripted into service as de facto immigration cops against their will.

Putting aside the issue of whether landlords should have the right to screen if they choose to do so, I trust that all would agree that preventing cities from forcing landlords into a lose-lose situation where they could face protracted litigation from cities or tenants or both is a good development.

It is rare that the Legislature passes a law that protects landlords from local regulations. Hopefully, we can get some more relief in years to come.

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