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PRACTICE BRIEF · REAL PROPERTY

SB 9 Lot Splits Three Years In: Title Disputes, HOA Preemption, and Emerging Litigation

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Senate Bill 9, effective January 1, 2022, was among the most significant changes to California land use law in a generation. It required cities and counties to ministerially approve — without a public hearing, without CEQA review, without discretionary judgment — applications to split a single-family residential parcel into two lots and to add up to two units per resulting lot. In theory: one qualifying parcel could become four units, virtually by right.

In practice, SB 9 has encountered resistance, ambiguity, and a growing caseload of litigation that will define the law's actual reach for years to come.

I. The Statutory Framework

Government Code §§ 66411.7 and 65852.21 set out SB 9's key requirements. A city or county must ministerially approve a lot split if:

- The parcel is located within a single-family residential zone
- The resulting parcels are each at least 1,200 square feet
- The parcel is not in a historic district, wetlands, fire hazard severity zone, or other specified excluded area
- The applicant signs a declaration that they intend to occupy one of the units as a primary residence for at least three years after the split

> *"SB 9's owner-occupancy requirement was intended to prevent speculative land banking. It has instead become the first target for litigation — because 'intent to occupy' is difficult to verify and easy to allege falsely."*

SB 9 Lot Split — Statutory Eligibility Self-Assessment

- Parcel is located within a single-family residential zone (Gov. Code § 66411.7)
- Each resulting parcel will be at least 1,200 square feet
- Parcel is not in a historic district, wetlands, floodplain, or high fire hazard severity zone
- Parcel was not created through a prior SB 9 lot split
- Applicant can sign owner-occupancy declaration (intend to occupy one unit for ≥ 3 years)
- CC&Rs and HOA documents reviewed for lot-split prohibitions
- City objective development standards reviewed for compatibility with proposed split
- Title insurance review initiated; SB 9 endorsements identified

0 of 8 items reviewed

II. The Litigation Landscape

A. HOA Preemption Disputes

The most voluminous category of SB 9 litigation involves homeowners associations. SB 9 does not explicitly address CC&Rs that would prohibit lot splits — and HOAs have aggressively used that legislative silence to assert that their covenants continue to apply. The central question is whether SB 9's ministerial approval mandate, as an exercise of the state's police power to address the housing crisis, preempts conflicting private deed restrictions.

As of 2026, no California Court of Appeal has issued a published opinion definitively resolving this question. Trial courts have reached conflicting results. The argument for HOA preemption is structural: if private covenants can nullify a ministerial approval right granted by the Legislature, the statute is unenforceable by anyone subject to an HOA — which describes most of California's single-family housing stock. The argument against preemption rests on the general principle that the state's exercise of police power regulates governmental action, not private contractual relationships. Informal guidance issued by the California Attorney General in 2022 suggested that HOAs retain the right to enforce lot-split prohibitions in their governing documents, though that guidance is not binding authority and is contested in ongoing litigation.

The practical consequence is that SB 9 applicants in HOA-governed communities face a two-track risk: even if the city ministerially approves the lot split, the HOA may seek injunctive relief to enforce deed restrictions before the transaction closes or construction begins. Obtaining legal analysis before proceeding — not after city approval — is essential.

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B.

Title Insurance Issues

Many title insurers have declined to issue standard coverage for SB 9 lots without additional underwriting — citing the uncertainty around HOA preemption, the owner-occupancy declaration requirement, and the potential for challenge to the ministerial approval itself. This has created a secondary market for "SB 9 riders" that add cost and complexity to transactions that the statute intended to be straightforward.

C.

City Resistance and Facial Challenge

Several California cities added objective development standards that effectively made SB 9 lot splits impractical — minimum lot dimensions, setback requirements, and parkway dedication conditions that left no developable area on the resulting parcels. The Housing Accountability Act's anti-waiver provisions and Government Code § 65589.5 have been invoked by applicants challenging these local standards as inconsistent with SB 9's ministerial mandate.

WHAT PROPERTY OWNERS AND DEVELOPERS SHOULD KNOW

- Check your CC&Rs and HOA governing documents before relying on SB 9 — HOA enforcement of lot-split prohibitions is an active litigation risk; no published appellate opinion has definitively resolved whether SB 9 preempts private deed restrictions
- Obtain title insurance review early in the process; understand what endorsements are available and what risks the insurer will not cover
- Document the ministerial approval process carefully; any discretionary condition imposed by a city beyond objective development standards may be challenged under the Housing Accountability Act
- The three-year owner-occupancy declaration is both a condition of approval and a potential basis for challenge — if the declaration is false, the approval may be voidable

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SB 9 remains the law, and its promise — modestly accelerating infill development in single-family zones — is real. But the path from statutory right to completed project now runs through a more complex legal landscape than the legislation's sponsors anticipated.

Practice	Real Property
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