ENHANCING THE LIVE LOCAL ACT

ASK: Pass legislation that will enhance the Live Local Act.

BACKGROUND

During the 2023 session, the Florida Apartment Association strongly supported the passage of the Live Local Act because it created powerful tools, such as a streamlined development approval process and property tax discounts, to stimulate the creation of affordable and workforce housing. It is often difficult for developers to achieve financial feasibility for affordable and workforce housing construction projects that are rented below market rate. As a result, these projects must rely on tools like the Live Local Act's property tax discounts to make this type of rental housing development viable in Florida.

In 2024, the legislature amended the Live Local Act to allow local governments to opt out of the missing middle property tax exemption that applies to units serving residents at 80-120% of the area median income (AMI). A qualified taxing authority can opt out of the missing middle property tax exemption serving residents at 80-120% of AMI at any time so long as the necessary conditions are met, which has created significant uncertainty for lenders, developers, and housing operators. The opt-out can be adopted without a formal housing needs analysis and passed via a simple resolution, with little to no discussion at the local level.

In order to be eligible for the opt-out, a taxing authority must be in a county where the number of affordable and available units for households at 120% AMI is greater than the number of households in that income bracket based on the current Shimberg Center for Housing Studies report. However, the Shimberg Center's data is based on large MSAs, which often group counties with significantly different housing supply needs, limiting its precision.

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Dozens of local governments across the state have already opted out of the missing middle exemption, undermining the Live Local Act's impact on addressing workforce housing needs. At this time, there are no provisions to protect construction projects that are already in the pipeline, have secured financing, or even those properties that were already pre-approved for the exemption and are actively in lease-up. This uncertainty can be a project killer because an apartment community cannot formally apply and be approved by the local property appraiser for the tax exemption until after residents with the specified AMIs are actively living in the apartment homes, which may occur years after project financing is originally secured and construction is complete.

Due to the threat of an opt-out at the local level, many lenders will not even consider the exemption at the time of financing, rendering this once-powerful housing development tool potentially useless. The Live Local Act should be amended to protect housing developments in the pipeline and establish a higher bar for taxing authorities to meet before they can opt out of the missing middle property tax exemption.

HOW THIS IMPACTS THE APARTMENT INDUSTRY

Revisions to the opt-out process should:

- Protect housing developments that are already in the pipeline or in lease-up.
- Require taxing authorities to conduct a housing needs assessment and demonstrate that their jurisdiction has maintained a surplus of housing inventory for no less than 3 years before they are eligible to opt out of the missing middle property tax discount.
- Require local governments to report key metrics of Live Local Act activity, such as project approvals or tax exemptions, to the state to ensure the legislature can track the effectiveness of the policy going forward.

INCENTIVIZING ADAPTIVE REUSE

ASK: Pass legislation to allow adaptive reuse housing developments to access the property tax discounts in the Live Local Act.

BACKGROUND

The Live Local Act created two new property tax discounts for affordable and workforce housing. Under existing law, properties must have more than 70 units serving households up to 120% of AMI in order to be eligible for the missing middle exemption. Similarly, the Live Local Act also allows local governments to enact an optional property tax exemption strictly for affordable housing. In order to qualify for the "Local Option," the property must have 50 or more units with at least 20% of the units set aside for households making up to 60% of AMI.

Unfortunately, these high unit thresholds are challenging for smaller-scale adaptive reuse projects that repurpose underutilized or blighted buildings to generate new housing supply. For example, adaptive reuse projects, like converting an aging motel building into apartment homes, provide a unique opportunity to repurpose underutilized property while also increasing Florida's housing stock. However, these smaller-scale adaptive reuse projects are limited by existing structural components, which can ultimately restrict the number of housing units generated during the redevelopment process. As a result, it can be extremely difficult for some smaller-scale adaptive reuse projects to meet the 70 or 50-unit thresholds for the Live Local Act property tax discount programs.

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INCENTIVIZING ADAPTIVE REUSE

HOW THIS IMPACTS THE APARTMENT INDUSTRY

The changes proposed below would allow adaptive reuse projects to tap into the housing development tools in the Live Local Act by:

- Establishing a definition for adaptive reuse within the Live Local Act and removing the unit minimums for these developments.
- Instead of requiring a minimum number of units, adaptive reuse projects would be required to set aside at least 20% of the units on the site for affordable or workforce housing to access Live Local property tax discounts.

** Data from Florida Apartment Association's Adaptive Reuse Study: BuildFlorida2030.com/adaptivereuse*

ALLOWING ELECTRONIC NOTICES

ASK: Pass legislation to allow tenants to opt-in to receiving electronic notices.

BACKGROUND

Florida's Landlord Tenant Act, also known as Chapter 83, requires all legal notices to be in writing and delivered to the resident (via mail or hand-delivered to the residence). Housing providers already rely on various forms of electronic communication to conduct business and streamline services for apartment residents. Although housing providers already routinely communicate a variety of updates to residents via online resident portals, text messages, or email, all notices related to landlord-tenant matters must still be served in writing under Florida law.

Sending a notice via postal mail is not always reliable or timely. As such, many housing providers will deliver written notices directly to the residence and if the resident is not home, the notice may be posted to the resident's door. This method of delivery creates potential concerns for both the resident and the housing provider.

Understandably, the act of receiving a legal notice for a lease violation or nonpayment of rent that is publicly posted on a resident's door can be sensitive and uncomfortable for the resident. In addition, there are also safety concerns that arise when apartment owners and operators are delivering notice to apartment homes.

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ALLOWING ELECTRONIC NOTICES

HOW THIS IMPACTS THE APARTMENT INDUSTRY

Amending the Landlord Tenant Act to allow residents to opt-in to receiving electronic notices will:

- Modernize the notice process.
- Provide privacy for residents who elect to take advantage of this option.

PREVENTING FEDERAL HOUSING PROGRAM MANDATES

ASK: Amend Chapter 83 of Florida Statutes (Landlord Tenant Act) to prevent mandatory participation in voluntary federal housing programs.

BACKGROUND

In 2023, FAA supported the passage of HB 1417 which preempted the regulation of the landlord/tenant relationship to the state. Despite this clear preemption in the Florida Landlord Tenant Act (Chapter 83), some local governments still require housing providers to participate in voluntary federal housing assistance programs, like the Section 8 voucher program.

This local requirement is problematic because the Section 8 program involves a lengthy and complex resident qualification process that significantly differs from traditional leasing. This often leads to extended vacancies as housing providers wait for inspections and work to meet federal regulations.

Even after initial approval, the program imposes ongoing compliance monitoring, creating operational challenges. Rent payments, split between the resident and the local housing authority, are often delayed and fluctuate with the resident's income, adding administrative burdens. As a result, many housing providers participating in Section 8 rely on specialized compliance teams to manage the program's complexities.

For these reasons, the Section 8 program has remained voluntary at the federal level since it was established in the 1970's. This allows housing providers to determine if they have the expertise and staff needed to navigate the program and ensure compliance with the requirements.

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PREVENTING FEDERAL HOUSING PROGRAM MANDATES

HOW THIS IMPACTS THE APARTMENT INDUSTRY

Amending Florida's Landlord Tenant Act to expressly prohibit local governments from mandating participation in voluntary federal housing programs will provide necessary clarity to the existing preemption in state law.