



Fact Sheet: AB 1406 Condo Deposit Reform

PROPOSED BILL

AB 1406 would incentivize condominium development by increasing the existing liquidated damages cap from 3% of the sale price to 6%. This change would reduce lender risk, unlock financing for condo projects, and increase the supply of more affordable, for-sale housing.

BACKGROUND

Despite significant growth in multifamily housing, very little of this new housing is available for sale. According to research conducted by Lambda Alpha International, from 2011 to 2021, for sale multifamily condominiums made up only 3% of all newly constructed housing here in California.¹ By comparison, states such as Hawaii and Washington, produce condominiums at roughly ten times California's annual rate.¹

California has strict limits on developers' use of homebuyers' deposits when constructing condo projects. There is a de facto 3% earnest money deposit cap, requiring any funds over 3% to be fully refunded to the buyer, if they decide to terminate the deal. California's 3% liquidated damages cap is the lowest in the nation. This limit restricts the financing that developers can use for construction and forces them to rely on more expensive debt. It also encourages buyers to purchase condos speculatively, increasing project risk.

Most states lack a statutorily imposed liquidated damages cap, instead relying on

courts to determine the 'reasonableness' of the liquidated damages provision of each contract. Case law in states such as New York, Colorado, and Nevada have upheld liquidated damages caps of up to 10% and higher. California's statutory cap prohibits developers from including a liquidated damages provision above 3%, even if the anticipated harm to the developer is higher than 3%. This imbalance increases the risk and cost of condominium production, limiting production.

The limited production of condominiums significantly restricts pathways to homeownership—especially in dense urban areas where land is scarce and single-family homes are financially out of reach for most Californians. According to data from the California Association of Realtors (CAR), only 15% of California households could afford the median-priced home. In comparison, 25% of all home buyers were able to afford the median-priced condo or townhome.² While Californians are ready to buy homes, the state's minuscule condominium production rate impedes homeownership.

SOLUTION

AB 1406 would encourage condominium development by increasing the liquidated damages cap from 3% to 6% while maintaining existing bonding and consumer protection requirements that safeguard purchasers' deposits. Raising the liquidated damages cap would more accurately reflect the risk and costs associated with canceled

¹ [lai_webinar_discussion_paper_-_home_ownership_in_transition-r0.pdf](https://lai.org/-/media/assets/advocacy/advocacy-reports/2021/03/lai_webinar_discussion_paper_-_home_ownership_in_transition-r0.pdf)

² <https://www.car.org/aboutus/mediacenter/newsreleases/2025releases/2qtr2025hai>

contracts and provide lenders greater certainty. This change would result in more favorable financing, reducing development costs, increasing the supply and construction of more condominiums.

By improving condominium project feasibility, AB 1406 would increase the availability of affordable entry-level homeownership opportunities and help alleviate the state's housing crisis.

SUPPORT

San Francisco Bay Area Planning & Urban Research Association (SPUR) (Co-Sponsor)
California YIMBY (Co-Sponsor)
Abundant Housing LA
California Building Industry Association
California Chamber of Commerce
California Council for Affordable Housing
Circulate San Diego
City of San Jose Mayor Matt Mahan
Council of Infill Builders
Fieldstead and Co.
The Two Hundred
Westbank Corp.

OPPOSITION

California Association of Realtors
California Land Title Association

FOR MORE INFORMATION

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