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Recent Legislation Further Limits School District Options in Connection with the Sale of Excess Property.

Legislation enacted in 2017 and amended last month significantly expands the range of prohibitions on a school district's ability to influence the future use of real property that it sells or transfers. When disposing of real property, school districts often desire to obtain affirmative covenants restricting the use of the property to types of uses which support its interests, such as a residential development project to add families to the community. Prior to this recent legislation, Section 1260 of the Revised School Code prohibited school districts from using negative deed restrictions prohibiting the use of disposed property for any lawful public education purpose and further prohibited school districts from refusing to lease or rent property to a party solely because the party intended to use the property for an educational purpose.

The restrictions under Section 1260 did not prevent school districts from imposing affirmative obligations on the use of disposed of property solely for a particular purpose or imposing negative covenants against using the property for certain non-educational purposes. The new legislation significantly limits the ability of school districts to use these types of affirmative and other restrictions.

In 2017, the Educational Instruction Access Act (the "Act") expanded the scope of the prohibited restrictions. The Act applies not just to school districts, but to all local government entities. The Act continues the prohibition on the use of negative deed restrictions by prohibiting a lawful public education use and continuing the prohibition on the refusal to sell, lease or rent to a party who intends to use the property for an educational purpose; then expands upon that prohibition by barring restrictions that bar educational uses expressly or by operation (i.e., have the effect of barring those uses). Although the Act provides that the governmental entity may not refuse to sell, lease or rent to an educational user, it also provides that it is not required to sell, lease or rent to the educational user. The Act also prohibits local governments from adopting an ordinance, policy or resolution which would prohibit an educational use for transferred property. Finally, the Act also provides enforcement provisions for non-compliance.

The Act was recently amended by Act 7 of 2018, which became effective on Jan. 26, 2018. Act 7 repealed Section 1260 and further expanded these prohibitions by barring the use of affirmative use deed restrictions that do not include an educational use or purpose. Act 7 also voids any affirmative or negative deed restrictions in effect on Jan. 26, 2018 that prohibit or do not permit property previously used for an educational purpose from being used for any future educational purpose.

Under the Act, as amended, a school district may now only use an affirmative deed restriction if it includes an educational purpose as one of the restricted uses. It will be interesting to see how the courts interpret the Act's provision voiding existing deed restrictions or how broadly they construe the new proscriptions on municipal actions. If you have questions regarding the impact of this legislation on prior or proposed property transfers, please feel free to contact us.

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