

What 'Missing Middle' Housing Looked Like In 2023

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In an article published on January 8, 2024, *Law360* discusses how "missing middle" housing has the potential to help cities address housing shortfalls. A handful of cities pointed to their success in passing zoning changes that allowed developers to build duplexes, triplexes and fourplexes without drastically changing neighborhood character. But legislation to enable this type of housing has been followed in a number of cities and states by litigation.

Whitney Hodges, a partner in the firm's Real Estate, Energy, Land Use and Environmental practice, spoke with *Law360* about recent legislation to enable this type of housing, specifically California's Senate Bill 9, which went into effect in 2022 and allows duplexes on lots where only one house was allowed before. But progress has been slow as many localities resist adjusting their ordinances to comply with the bill's dictates.

"I would say, unfortunately, S.B. 9 was incredibly controversial in California and I don't think it's had the effect the legislature intended. You're seeing a lot of governments fight back against what they're required to do, either tacitly or more overtly," said Hodges.

She cited lawsuits that the state government settled this year with Huntington Beach, near Los Angeles, and Coronado, outside San Diego, over these communities' reluctance to allow more housing within their borders.

Hodges added that besides local resistance, another challenge is that developers can't build missing middle housing that is priced affordably because of the costs of construction. It's not just supplies and labor, but the cost to carry a property and local governments' entitlement fees that make it hard to implement projects, she said.

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