CLIENT ALERTS & INSIGHTS

Word on the Street: State AGs Set Their Sights on Data Centers and Affordable Housing

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Featured Practices: Litigation, State Attorneys General Investigations & Enforcement

Featured Industries: Real Estate, Powered Land & Data Centers, Energy

Key Takeaways

- Democratic state attorneys general are prioritizing increased oversight of data centers and aggressively expanding enforcement around affordable housing, using a mix of litigation, regulation and advocacy to address community and consumer concerns.
- Businesses in these sectors face increased scrutiny and potential enforcement actions, especially if they fail to address community concerns or create unsafe conditions. State AGs are prepared to use litigation and other tools to protect residents and promote policy goals.
- Proactively engage with state AG offices and local stakeholders, ensure compliance (e.g., environmental planning for data centers, safe and accurate housing practices), and come prepared with transparent, community-focused strategies to mitigate risk and position your business as a cooperative partner.

Introduction

The Benesch State Attorneys General team recently sat down with many Democratic state attorneys general to better understand their priorities for the remainder of the year. Two issues topped their agendas: data centers and affordable housing. A recurring theme emerged from these conversations-state AGs are carefully weighing when to use their litigation powers versus other tools like regulation, advisory guidance or advocacy. Here are key insights for businesses operating in these areas.

Key Insights from AG Conversations

a. Data Centers a Potential Third Rail

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Democratic AGs are divided on how states should approach large data center projects and what role AGs should play in this policy space. However, they all agree on one point: litigation options

have been limited so far. The only active data center litigation to date was brought by the Michigan AG seeking an unredacted copy of a contract between Oracle and a power company related to a new data center project.

Although AGs differ on whether data centers benefit their communities, they share common concerns voiced by residents: the environmental impact of massive energy consumption, rising energy costs for consumers and potential job losses as AI capabilities expand. Even AGs who support data center development raised these concerns and discussed using regulatory and advocacy powers to protect citizens from potential downsides. All the AGs present emphasized that companies building data centers should come prepared with plans to address these concerns, remain open to community input and operate as responsible local partners-something state AGs can and will help facilitate. Companies that fail to do so may face more aggressive enforcement and advocacy.

b. Affordable Housing: Enforcement Is Ramping Up

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Every jurisdiction faces an affordable housing crisis, and state AGs are deploying their full range of tools to address it. On the enforcement front, AGs are aggressively pursuing landlords who exploit vulnerable tenants. For example, the D.C. AG recently filed a racketeering suit against a landlord who misrepresented to lenders how funds would be used to improve properties-all while those properties had active, unaddressed safety hazards. Many AGs have also created specialized units within their offices to tackle affordable housing, combining affirmative litigation, regulatory enforcement and guidance, and educational and advocacy efforts to promote policies that increase housing supply and affordability at both local and state levels.

State AGs are also thinking broadly about solutions and want to build coalitions to implement them. These coalitions would include local and state officials alongside industry partners who can help increase housing supply and expand financing options. The goal is to create outcomes that benefit everyone. With limited federal action expected over the next three years, state AGs see themselves as well positioned to fill the void. Companies in this space should consider building relationships with state AGs to join these coalitions-while ensuring they are not creating unsafe conditions for consumers that could trigger enforcement action.

How to Position Your Business

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Democratic AGs intend to be active regulators, enforcers, and advocates on affordable housing and data center issues. Companies operating in these spaces should consider developing relationships with state AGs and their offices. Establishing collaborative relationships with local and state officials, as well as community stakeholders, can improve the likelihood of long-term operational success and reduce regulatory and enforcement risk.

Benesch is well positioned to help companies navigate the evolving priorities of state attorneys general in the data center and affordable housing spaces. With a deep bench of

former government enforcement attorneys and subject matter knowledge across regulatory, environmental, consumer protection and real estate issues, our team can guide clients through proactive engagement strategies, compliance risks and potential enforcement actions to achieve the best possible outcomes.