

WEDNESDAY, JUNE 5, 2024

PERSPECTIVE

# Some like it hot, some like it historical

By Zachary D. Schorr

**H**istoric designations for real property are more than just honorary titles; they are a powerful mix of prestige, protection, and potential pitfalls. These designations, while celebrating the architectural and cultural gems of our past, come with a complex web of legal implications that can transform the landscape of property ownership and development. Whether you are a property owner, a developer, a preservation enthusiast, or just a fan of someone like Marilyn Monroe, understanding the legal significance of these designations is crucial.

The ongoing legal battle over Marilyn Monroe's Brentwood property has reignited discussions about historic designations in Los Angeles. At the heart of the issue is the Los Angeles Cultural Heritage Commission's decision to block the new owners' demolition permit for Monroe's former home, citing its cultural significance. This house, where Monroe spent the last six months of her life before passing away in her bedroom in the house at age 36, remains the subject of a dispute concerning its historic value and significance. The new owners are seeking to demolish the house, but the Commission has, so far, prevented them from doing so.

Historic designations are generally not controversial because they are most typically sought by the owner of the property at issue. But the Marilyn Monroe case is cer-



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tainly not the first instance where a non-owner of a property seeks to use the Historic Designation Statute to prevent redevelopment and/or demolition. This brings to light what has become a hot topic in real estate, which is the voluntary and involuntary historic designation of properties.

As background, in 1962, Los Angeles became one of the first major American cities to adopt historic preservation laws. The idea behind historic designations is to ensure the cultural preservation of sites, buildings, and structures that reflect the history and culture of the City. Historical designations

are bolstered by the 2018 amended Ordinance Number 183472, which outlines the process for obtaining a historic designation of real property. Interestingly, the process does not mandate that the current owner of the property apply for or agree to the historic designation of their own property. In fact, the

owner does not have to consent to the designation. Instead, it gives the Cultural Heritage Commission authority to initiate the historic designation process by delaying a demolition permit and thereby delaying the owner's ability to demolish their property for two 180-day periods, to allow time to help preserve the potentially historic property.

Certainly some people do not agree with the involuntary portion of the law. But, that disagreement must be balanced against the City of Los Angeles' broader need to protect historic properties without some enforcement mechanisms because the high economic value of real property (and its redevelopment) often weighs against historic conservation efforts. In other words, there must be some balance against redevelopment where our shared cultural history is at stake.

As the battle over this historic property continues, it highlights the complexities and passions involved in preserving our cultural landmarks. Whether Monroe's home will stand or fall remains uncertain, but its story is a testament to the enduring impact of historic preservation.

While historic designations bring prestige and protection to properties, they also involve navigating a complex web of regulations and responsibilities. In California, for instance, Government Code sections 50280 et seq. authorize contracts with owners of qualified historic properties, offering benefits such as reduced property taxes and the ability to use the State Historic Building Code set forth in Health and Safety Code section 18912 to 18961 as opposed to the modern building code. These perks can be substantial, but they come with significant responsibilities.

Beyond the accolades and potential tax breaks, historic designations also impact real property rights. For example, California Civil Code section 1102 mandates that sellers disclose known material facts that could affect a property's desirability. If a property's historic status is not widely known or if it clashes with a buyer's redevelopment plans, this disclosure can become a significant issue. Sellers might find themselves revealing uncertain but potentially devaluing information, though, from a positive perspective, the historic designation could also enhance the property's value.

While most involuntary historic designations are fought through writs of mandate, there is no reason to think that a writ of mandate is the exclusive remedy. In fact, the property owner faced with an involuntary historic designation may consider other potential real estate claims. Although there is a dearth of published decisions on point, unhappy owners may consider bringing an inverse condemnation claim for having their property "damaged" for public use without the government providing the property owner just compensation. This is based on the Constitutional premise that private property may not be taken for public use without just compensation. There is no reason to think that this type of claim could not be brought to seek damages for an involuntary historic designation.

Additionally, historic designations can touch on equitable servitudes—restrictions that do not necessarily run with the land in the traditional sense like a recorded covenant, but still require enforcement based on principles of equity. (*Committee to Save the Beverly Highlands Homes Assn. v. Beverly Highlands Homes Assn.* (2001) 92 Cal.App.4th 1247, 1269.) Equitable servitudes still generally

require notice of the issue or covenant, which may be applicable to widely known historic properties that simply have not gone through the historic designation process.

In essence, the debate over historic designations is a balancing act between preserving our cultural heritage and respecting individual property rights. As the legal landscape evolves, these discussions will continue to quite literally shape the landscape of our City.

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**Zachary D. Schorr** is a real estate attorney at Schorr Law.

