

Date of Hearing: May 17, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 1033 (Ting) – As Amended May 1, 2023

Policy Committee:	Housing and Community Development	Vote:	6 - 1
	Local Government		5 - 2

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill allows accessory dwelling units (ADU) to be conveyed separately from the primary residence that is co-located on the same parcel.

Specifically, this bill:

- 1) Authorizes a local agency to adopt a local ordinance to allow the separate conveyance of the primary dwelling unit and ADU or ADUs as condominiums. Requires the ordinance to include all of the following requirements:
 - a) The condominiums must be created pursuant to the Davis-Stirling Common Interest Development Act.
 - b) The condominiums must be created in conformance with all applicable objective requirements of the Subdivision Map Act and all objective requirements of a local subdivision ordinance.
 - c) Before recordation of the condominium map, a safety inspection of the ADU must be conducted as evidenced either through a certificate of occupancy from the local agency or a housing quality standards report from a building inspector certified by the United States Department of Housing and Urban Development.
 - d) At the time of sale, either all liens must be satisfied, or all the lienholders must provide their consent to the recordation of the map to the county assessors.
- 2) Allows a local agency to require sub-metering on ADUs that are sold separately from the primary residence.

FISCAL EFFECT:

No state costs. Local costs are not reimbursable by the state because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates.

COMMENTS:

- 1) **Purpose.** According to the author:

The lack of home ownership opportunities in most California communities for working families is contributing to the State's growing population of renters and driving families out of state so that they can buy a home. Many neighborhoods have become de-facto gated communities, with median home prices of \$700K to \$1M keeping out all but a small percentage of Californians from ever dreaming of home ownership, reducing the state's population and harming our economy. The absence of available homes for purchase at rates affordable to moderate-income working families bars wealth-building and housing stability for Californians harmed by historic discriminatory housing policies. AB 1033 allows cities and counties the freedom to pursue homeownership programs and to create a path to wealth-building for families by repealing the current law prohibiting the separate conveyance of ADUs.

- 2) **Background.** ADUs are additional living quarters independent of the primary residence on the same lot. ADUs are either attached to or detached from, the primary residence and provide complete independent living facilities for one or more persons, including access separate from the property's primary unit. This includes permanent provisions for living, sleeping, eating, cooking, and sanitation. Over the past few years, the Legislature has passed a number of bills to ease zoning restrictions and expedite approval processes for ADUs at the local level, which has contributed to the increased supply of ADUs throughout the state.

ADU law prohibits property owners from selling or transferring an ADU separately from the primary residence. The passage of AB 587 (Friedman), Chapter 657, Statutes of 2019 created a narrow exception to this prohibition. Under AB 587, an ADU and primary residence built on the same parcel of land may be conveyed to separate owners if the jurisdiction adopts an ordinance allowing separate sale and the ADU was built by a nonprofit corporation, is held pursuant to a tenancy in common agreement that details the terms of ownership for the parties involved, and includes specific affordability restrictions on the sale and conveyance of the ADU and primary residence.

Existing law prohibits sub-metering for ADUs and junior ADUs (JADUs) that are attached to the primary residence. This prohibition is reasonable when the units cannot be split into separate properties. However, if a JADU or ADU is conveyed separately from the primary residence it is attached to, it may be necessary to sub-meter the units as they will be separately owned.

This bill allows a local agency to adopt an ordinance to allow the separate conveyance of ADUs and primary residences located on the same parcel. The bill requires any ordinance to comply with both the Davis-Stirling Common Interest Development Act, which governs homeowners associations, and the Subdivision Map Act, which governs the subdivision of property. The bill also requires any ordinance allowing separate conveyance of these units to stipulate, prior to allowing separate conveyance, all liens on the property are satisfied or all lienholders consent to the recordation, and requires a safety inspection of the ADU is conducted. Finally, the bill allows a local agency to require sub-metering on ADUs sold separately from the primary residence.

- 3) **Arguments in Support.** The Bay Area Council, co-sponsor of the bill, writes in support:

Since 2017, ADUs have shown themselves to be an effective method for reversing this trend on overall production. Because of state reforms, they have increased from about 1,000 homes per year to about 20,000. They provide homes to people that are typically affordable to low income people, because they are cheap to build, easy, and naturally smaller. However, state law mandates that ADUs are only for rental housing. AB 1033 would repeal the state's prohibition against selling ADUs. This would allow local governments to choose how and if to allow for-sale ADUs through a local ordinance. Local governments that want to allow smaller starter homes for sale will take this chance to use ADU law to create more affordable for-sale options in their communities.

4) **Arguments in Opposition.** The California Association of Realtors writes in opposition:

Despite what appears to be a limited change in state law, [this bill] comes with the potential for immense unintended consequences, and the potential to mandate piecemeal ordinance development for separate conveyances statewide. [This bill] opens the door to any form of 'conveyance' including, but not limited to, timeshares, TIC ownership models, lot splits, fractional ownership, etc. none of which, under the ADU statute, can be limited to owner occupancy. Similar to other well intended policies, this measure could result in significant market disruption as contractors could sell ADU conveyances door-to-door without appropriate disclosures to inform homeowners of the potential ramifications from entering into a conveyance contract with a third party.

5) **Related Legislation.** AB 976 (Ting) makes permanent the existing prohibition on the ability of local agencies to require owner-occupancy on a parcel containing an ADU. AB 976 is pending on the Assembly Floor.

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