

Date of Hearing: April 19, 2023

**ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT**

Buffy Wicks, Chair

AB 1033 (Ting) – As Amended March 9, 2023

**SUBJECT:** Accessory dwelling units: local ordinances: separate sale or conveyance

**SUMMARY:** Requires cities and counties that have a local accessory dwelling unit (ADU) ordinance to allow ADUs to be sold separately or conveyed from the primary residence.

**EXISTING LAW:**

- 1) Establishes ADU law, including that:
  - a) An ADU is defined to mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It must include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated on.
  - b) An ADU cannot be sold or conveyed separately from the primary residence, except as under the circumstances described in (2) below.
  - c) A local agency must ministerially approve, within specified timelines, an application for a building permit within a residential or mixed-use zone to create one or more ADUs that meet all state and local requirements.
  - d) A local agency is limited in its ability to establish local development standards that differ from specified standards for such issues as height, square footage, and setbacks.
  - e) Starting January 1, 2025, a local agency may impose an owner-occupant requirement on a parcel containing an ADU. (Government Code (GC) Section 65852.2)
- 2) Requires a local agency to enable an ADU to be sold or conveyed separately from the primary residence if all of the following occur:
  - a) The ADU was built by a nonprofit corporation that receives a property tax exemption because they sell properties to low-income families who participate in a special no-interest loan program;
  - b) The property contains a deed restriction that it must be affordable to a low-income family for 45 years;
  - c) The property is sold to a lower or moderate-income household via a tenancy in common agreement with the primary residence;
  - d) The purchaser must use the ADU as their primary residence; and

- e) The purchaser of the ADU is subject to a repurchase option such that, if they desire to sell the property, they must first offer to sell it to the qualified nonprofit corporation from whom they purchased the ADU. (GC 65852.26)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

**Author's Statement:** 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."

**Second Units as a Solution to the Housing Crisis:** In California, most of the land suitable for housing has already been developed. The remaining developable areas are typically far from job centers, in high-risk wildfire areas, and/or land that is environmentally sensitive or important for agriculture. Therefore, addressing the housing crisis in an environmentally responsible way will require an increase in density in already developed areas.

Increasing density can occur in multiple ways. In recent decades, this has often meant high-density housing near major transit stops. However, such housing is both expensive to build, and limited in geographic scope. Recently, there has been a national trend to allow for more "gentle density," e.g., ADUs, duplexes, four-plexes, townhomes, and other moderately dense developments that were common before the imposition of zoning. In recent years, the Legislature has taken a more active role in facilitating such gentle density. In 2016, AB 2299 ((Bloom), Chapter 735, Statutes of 2016) and SB 1069 ((Wieckowski), Chapter 720, Statutes of 2016) permitted ADUs by right on all residentially-zoned parcels in the state. By permitting an ADU as a second unit on all single-family lots, these laws effectively doubled their allowed density.

Prior to the Legislature requiring ministerial approval of ADUs in 2017, ADUs were less than one percent of permitted new construction. Now they are approximately 10 percent, at over 9,600 completed units in 2022.<sup>1</sup> Additionally, because ADUs are typically smaller than the average home in a community, they tend to be more affordable than other market-rate units. A survey of ADU owners found that, in the Bay Area, ADUs rents were affordable to households making the median income.<sup>2</sup>

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<sup>1</sup> Per the Department of Housing and Community Development's "APR Dashboard", page 2: <https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard>

<sup>2</sup> Chapple et al, Implementing the Backyard Revolution: Perspectives of California's ADU Owners, UC Berkeley Center for Community Innovation, April 2021, Table 3: <https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf>

***Homeownership Opportunity for Lower Income Households:*** Homeownership is the primary mechanism for American households to create and maintain wealth. The financial outcomes between homeowner and renter households are stark: the median net worth of homeowners (\$337,000) is almost 60 times larger than that of renters (\$5,700).<sup>3</sup>

Not all households have access to homeownership. The statewide median home price is nearly \$800,000.<sup>4</sup> At that price, only 17 percent of households can afford to purchase the median priced single-family home.<sup>5</sup> This figure is less than half of the national average, and less than half of the rate at the start of the pandemic.<sup>6</sup> Additionally, homeownership outcomes are worse for Latinx and Black households. While 68 percent of white households are currently homeowners, only 49 percent of Latinx and 41 percent of Black households are homeowners.<sup>7</sup> Approximately 12 percent of Black and Latinx households can afford the current median price of a single-family home in California.<sup>8</sup>

One potential pathway to homeownership for moderate- and lower income households could be through the sale or conveyance of ADUs. The average size of a single-family home in California is 1,860 square feet.<sup>9</sup> By comparison, the average size of an ADU in California is less than one-third of that, at 615 square feet.<sup>10</sup> Presuming a commensurate reduction in price, the purchase of an ADU would be affordable to lower income households.<sup>11</sup>

This bill requires cities and counties that have a local ADU ordinance to allow ADUs to be sold or conveyed separately from the primary residence.

***Arguments in Support:*** Supporters of the bill argue that it will help facilitate the production of ADUs and the sale of moderately-priced housing. According to the Bay Area Council, a cosponsor, “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.”

***Arguments in Opposition:*** Opponents of the bill argue that the current language, while well-intentioned, would put homeowners’ assets at risk. They argue that the sale of an ADU, without the proper parameters, could put homeowners at risk of violating federal loan terms, and fails to

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<sup>3</sup> US Census Bureau, “The Wealth of Households: 2020,” August 2022:

<https://www.census.gov/content/dam/Census/library/publications/2022/demo/p70br-181.pdf>

<sup>4</sup> California Association of Realtors Housing Affordability Index. Data for the 4<sup>th</sup> quarter of 2022.

<https://www.car.org/marketdata/data/haitraditional>

<sup>5</sup> Ibid. This methodology presumes a down payment of 20 percent and an interest rate that reflects the current national average.

<sup>6</sup> Ibid

<sup>7</sup> <https://www.calhfa.ca.gov/community/index.htm>

<sup>8</sup> California Association of Realtors Housing Affordability Index:

<https://www.car.org/marketdata/data/haitraditional/haiethnicity>. Data from 2021.

<sup>9</sup> <https://www.ahs.com/home-matters/real-estate/the-2022-american-home-size-index/>

<sup>10</sup> Chapple et al, Implementing the Backyard Revolution: Perspectives of California’s ADU Owners, UC Berkeley Center for Community Innovation, April 2021: <https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf>

<sup>11</sup> Presuming a down payment of 20 percent and an interest rate of 7 percent, an ADU is affordable to a household earning approximately \$62,000 a year. According to the US Census, the median household income in California is slightly over \$84,000 a year (<https://www.census.gov/quickfacts/fact/table/CA/BZA210220>).

ensure consumer protection, risks homeowner's equity, and creates title deficiencies. They also argue that some of the ways that ADUs could be sold or conveyed would make the transaction ineligible for traditional financing. According to the California Association of Realtors, "California must continue to increase homeownership opportunities but with laws that properly protect homeowners, communities, and potential new homeowners, which AB 1033 in its current form does not."

***Committee Amendments:*** The author's office and sponsors have conveyed that their intent is to allow cities and counties to decide whether or not they wish to allow the sale of ADUs. However, as currently written, the bill requires any city or county with a local ADU ordinance to allow ADUs to be sold separately from the primary residence. To address this issue, **the committee may wish to amend the bill to provide local agencies the choice as to whether to allow the sale of ADUs.**

By allowing the sale or separate conveyance of ADUs, this bill would facilitate increased homeownership opportunities for moderate- and lower income households. However, as noted by the opposition to the bill, it could create unintended consequences if utilized by unscrupulous actors, or if the transaction is otherwise handled in a manner that could lead to negative consequences for property owners.

In order to ensure that the purchaser can access conventional, federally-guaranteed loans, **the committee may wish to amend the bill to limit the transactions to the conveyance of ADUs as condominiums.**

In order to ensure that the creation of condominiums and the associated subdivision of the parcel is conforms to the Subdivision Map Act, and to ensure there are not title deficiencies, **the committee may wish to amend the bill to require that the condominiums are created pursuant to the Davis-Stirling Common Interest Development Act, as described in Sections 4000 to 6150 of the Civil Code, and conform to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)) and all objective requirements of a local subdivision ordinance.**

In order to ensure that the transaction does not put the property owner in violation of their federal loan terms, to ensure that all parties with a financial interest in the property are aware of and supportive of the transaction, and to ensure that the transaction is recorded properly, **the committee may wish to amend the bill to require, at the time of sale, either all liens are satisfied, or that all the lien holders have provided a consent to the recordation of the map to the county assessors.**

In order to ensure that the building complies with current safety standards, **the committee may wish to amend the bill to require, before recordation of the condominium map, either a safety inspection of the ADU through a building permit sign off allowing occupancy from the local agency, or a Housing Quality Standards report from a United States Housing and Urban Development Certified Inspector.**

***Related Legislation:***

AB 976 (Ting) of the current legislative session makes permanent the existing prohibition on local government's ability to require owner-occupancy on a parcel containing an ADU. This bill

was passed by this Committee on a vote of 7-0, and is pending hearing in the Assembly Committee on Local Government.

AB 345 (Quirk-Silva), Chapter 343, Statutes of 2021: Requires cities and counties to allow an ADU to be sold separately from the primary residence to a qualified buyer if certain conditions are met.

AB 587 (Friedman), Chapter 657, Statutes of 2019: Allowed cities and counties to allow an ADU to be sold or conveyed separately from the primary residence to a qualified buyer under specified circumstances.

AB 2299 (Bloom), Chapter 735, Statutes of 2016 and SB 1069 (Wieckowski), Chapter 720, Statutes of 2016: Collectively, these bills required a local government to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements. These bills also allowed a local government to require owner-occupancy of the primary unit.

*Double Referred:* This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Bay Area Council (Sponsor)  
Casita Coalition (Sponsor)  
Abodu  
Bequall  
California Community Builders  
California State Association of Counties  
City of San Jose  
CoreSGB  
Decor Revolution  
East Bay YIMBY  
Facebook  
Grow the Richmond  
Ho9 Development  
How to ADU  
HPP Cares  
Inland So Cal Housing Collective  
LISC San Diego  
Mountain View YIMBY  
Napa-Solano for Everyone  
National Association of Hispanic Real Estate Professionals  
Northern Neighbors SF  
Oak Impact Group  
Peninsula for Everyone  
People for Housing - Orange County  
Plus Home Construction  
Progress Noe Valley

Rebuilding Green  
Samara Living  
San Francisco Bay Area Planning and Urban Research Association  
San Francisco YIMBY  
San Luis Obispo YIMBY  
Santa Cruz YIMBY  
Santa Rosa YIMBY  
South Bay YIMBY  
Southside Forward  
The Two Hundred  
Ventura County YIMBY  
Villa  
YIMBY Action  
Individuals - 8

**Opposition**

*Oppose Unless Amended*

California Association of Community Managers  
California Association of Realtors  
California Bankers Association  
California Building Industry Association  
California Business Properties Association  
California Business Roundtable  
California Escrow Association  
California Land Title Association  
California Mortgage Bankers Association  
Community Associations Institute - California Legislative Action Committee  
United Trustees Association

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