

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1033 (Ting) – As Amended April 20, 2023

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

SUMMARY: 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. Provides that any such ordinance shall include all of the following requirements:
 - a) The condominiums shall be created pursuant to the Davis-Stirling Common Interest Development Act.
 - b) The condominiums shall 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 shall 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 shall be satisfied, or all the lienholders shall provide their consent to the recordation of the map to the county assessors.
- 2) Makes other technical and non-substantive changes to ADU law.
- 3) Provides that no reimbursement is required pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

EXISTING LAW:

- 1) Establishes ADU Law, which among other provisions establishes the following:
 - a) Defines ADU 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.
 - b) Requires local agencies to 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.
 - c) Provides that a local agency may establish local development standards for both attached and detached ADUs, except that they cannot establish the following:

- i) A minimum square footage requirement for either an attached or detached ADU that prohibits an efficiency unit.
 - ii) A maximum square footage requirement for either an attached or detached ADU that is less than 850 square feet, or 1,000 square feet for an ADU that provides more than one bedroom.
 - iii) A height limit of less than 16 to 25 feet, depending on the specified circumstance.
 - iv) Specified requirements that preclude development of an ADU of at least 800 square feet and that four-foot side and rear yard setbacks, including minimum or maximum size, limits on lot coverage, limits on floor area ratio, requirements for open space, requirements for front setbacks, and minimum lot size.
- d) Starting January 1, 2025, a local agency may impose an owner-occupant requirement on a parcel containing an ADU (Government Code (GC) § 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 it sells 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.
 - 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: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill allows local agencies to adopt ordinances to allow the separate conveyance of ADUs and primary residences that are 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 (HOAs), and the Subdivision Map Act, which governs the subdivision of property. The bill also requires that any ordinance allowing separate conveyance of these units to stipulate that, prior to allowing separate conveyance, all liens on the property are satisfied or that all lienholders consent to the recordation, and that a safety inspection of the ADU is conducted.

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.”

This bill is sponsored by the Bay Area Council and the Casita Coalition.

- 2) **Accessory Dwellings.** ADUs are additional living quarters that are 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 separate access 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.

- 3) **ADU Ownership Restrictions and Exceptions.** 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 this law an ADU and primary residence built on the same parcel of land may be conveyed to separate owners if the jurisdiction where the property is located adopts an ordinance allowing separate sale when certain conditions are met. Currently, in these jurisdictions ADUs may only be sold separately from the primary residence if the ADU is built by a nonprofit corporation, 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.
- 4) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Sub-metering.** 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 the 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. *The Committee may wish to consider* allowing for sub-metering when an ADU or JADU is separately conveyed.
 - b) **Technical Correction.** Existing law allows ADUs to be conveyed separately from the primary residence on the parcel if the property was built or developed by a qualified nonprofit and meets other criteria. This bill inadvertently deletes a cross reference in ADU law that authorizes separate conveyance for these ADUs. *The Committee may wish to consider* updating the cross references in ADU law to preserve this authority.
- 5) **Committee Amendments.** In order to address the policy considerations noted above *the Committee may wish to consider* the following amendments:

- a) Update cross references in Government Code Section 65852.2 and 65852.26 to continue to allow nonprofits to convey ADUs separate from the primary units.
 - b) Allow for local agencies to require sub metering on ADUs that are sold separately from the primary residence.
- 6) **Related Legislation.** AB 976 (Ting) would make permanent the existing prohibition on the ability of local agencies to require owner-occupancy on a parcel containing an ADU.
- 7) **Previous Legislation.** AB 68 (Ting), Chapter 655, Statutes of 2019, AB 881 (Bloom), Chapter 659, Statutes of 2019, and SB 13 (Wieckowski), Chapter 653, Statutes of 2019: Collectively, these bills made changes to ADU and JADU laws, including narrowing the criteria by which local jurisdictions can limit where ADUs are permitted, clarifying that ADUs must be ministerially approved if constructed in existing garages, eliminating for five years the potential for local agencies to place owner-occupancy requirements on the units, prohibiting an ordinance from imposing a minimum lot size for an ADU, and eliminating impact fees on ADUs that are 750 square feet or less and capping fees on ADUs that are 750 square feet or more to 25 percent.

AB 2299 (Bloom), Chapter 735, Statutes of 2016 and SB 1069 (Wieckowski), Chapter 720, Statutes of 2016: Collectively, these bills required a local agency 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 local agencies to impose owner-occupancy requirements.

- 8) **Double-Referral.** This bill was double-referred to the Housing and Community Development Committee, where it passed on a 6-1 vote on April 19, 2023.
- 9) **Arguments in Support.** The Bay Area Council 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.”

- 10) **Arguments in Opposition.** The California Association of Realtors writes in opposition, “Current law prohibits, with a narrow exception, an [ADU] from being sold or otherwise conveyed separate from the primary residence. AB 1033 proposes to completely reverse current law to permit ADUs to be sold or otherwise conveyed by ‘by ordinance.’ Despite what appears to be a limited change in state law, AB 1033 comes with the potential for immense unintended consequences, and the potential to mandate piecemeal ordinance development for separate conveyances statewide. AB 1033 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.”

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council [SPONSOR]
The Casita Coalition [SPONSOR]
Abodu
Bequall
California Community Builders
California State Association of Counties
City of San Jose
Coresgb, LLC
Decor Revolution
East Bay Yimby
Facebook, INC.
Grow the Richmond
Ho9 Development
How to Adu
Hpp Cares (CDE)
Inland So Cal Housing Collective
Lisc San Diego
Mountain View Yimby
Napa-solano for Everyone
National Association of Hispanic Real Estate Professionals (NAHREP)
Northern Neighbors Sf
Oak Impact Group
Peninsula for Everyone
People for Housing - Orange County
Plus Home Cosntruction
Progress Noe Valley
Rebuilding Green
Samara Living
Samara Living, INC.
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Yimby
San Luis Obispo Yimby
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
Terrahome, LLC
The Two Hundred
Ventura County Yimby
Villa
Yimby Action

More than 240 individuals

Oppose Unless Amended

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

Opposition.

None on file

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