

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2386 (Bloom) – As Amended March 17, 2022

**SUBJECT:** Planning and zoning: tenancy in common subject to an exclusive occupancy agreement

**SUMMARY:** Authorizes a local agency to regulate by ordinance the design and improvement of multifamily property held under a tenancy in common (TIC) subject to an exclusive occupancy agreement. Specifically, **this bill:**

- 1) Authorizes the legislative body of a local agency to regulate by ordinance the design and improvement of any multifamily property held under a TIC subject to an exclusive occupancy agreement, including by requiring instruments governing the operation and maintenance of common areas.
- 2) Specifies that nothing in the bill authorizes a local agency to prohibit the ability to hold land by TIC subject to an exclusive occupancy agreement, or limit the area within a property that can be subject to such an agreement.
- 3) Specifies that the provisions of this bill do not supersede any portion of the Ellis Act.
- 4) Incorporates definitions of “design” and “improvement” from the Subdivision Map Act (SMA), and defines “Tenancy in common subject to an exclusive occupancy agreement” as a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any portion located thereon.

**EXISTING LAW:**

- 1) Governs, pursuant to the SMA how local officials regulate the division of real property into smaller parcels for sale, lease, or financing. Cities and counties adopt local subdivision ordinances to carry out the SMA and local requirements. City councils and county boards of supervisors use the SMA to control a subdivision's design and improvements. Local subdivision approvals must be consistent with city and county general plans.
- 2) Establishes, within the Davis-Stirling Common Interest Development Act, rules and regulations governing the operation of a Common Interest Development (CID) and the respective rights and duties of a homeowners association (HOA) and its members. Requires the governing documents of a CID, and any amendments to the governing documents, to be adopted through HOA elections in accordance with specified procedures.
- 3) Prohibits, under the Ellis Act, a local agency from compelling an owner of any residential real property, except for a residential hotel meeting specified requirements, to continue to offer rental units for rental housing.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Bill Summary and Author's Statement.** This bill authorizes local agencies to regulate the design and improvement of a TIC subject to an exclusive occupancy agreement. The bill specifies that a local agency may not prohibit the ability to hold land by TIC agreement or limit area within a property for which an exclusive right of occupancy may be granted.

According to the author, "AB 2386 closes the loophole in state law that has allowed speculators to circumvent state and local laws that regulate common interest development conversions. AB 2386 would not prevent tenancy in common conversions. The measure would simply allow local agencies to create parameters to such conversions, similar to the requirements laid out in the Subdivision Map Act. AB 2386 will ensure speculator purchases do not grow rampant amongst communities with long-term tenants, ensure those interested in buying an interest receive the proper disclosure and protections, and support the orderly development of local communities."

- 2) **Property Ownership.** There are several forms of property ownership in California, including joint tenancy TIC. Joint tenants have the right to possess the entire property and have the right to survivorship, meaning that if one joint tenant dies, the joint tenant's interest automatically passes to the surviving joint tenant(s). TIC agreements are common ownership instruments. For example, family members may pool money to invest in a single rental property that they own as "tenants in common, or cotenants." TIC agreements do not provide any survivorship rights among the co-owners. When one cotenant dies, the tenant's interest in the property does not automatically pass to the surviving tenants.

TIC agreements allow cotenants of a property to split property interests in a single property. For example, under laws governing Accessory Dwelling Units (ADUs), if a property is subject to a TIC agreement, a qualified nonprofit corporation, may convey property interests in the individual parcel to separate cotenants if one interest on the parcel is in the primary residence and another interest is in the ADU located on the parcel. The TIC agreement must specify certain rights and responsibilities for the parties to the agreement, including taxes, insurance, utilities, liabilities, and a delineation of all areas of the property that are for the exclusive use of each cotenant.

- 3) **Subdivision of Land and Property Interests.** The SMA generally governs how local agencies regulate the subdivision of land whereby a single parcel is subdivided into multiple parcels that can be conveyed separately. The SMA specifically vests in local agencies the authority to regulate and control the initial design and improvement of CIDs where the division of land requires a tentative and final map, or a parcel map. The Davis-Stirling Common Interest Development Act generally regulates the formation and governance of CIDs.

An individual or entity seeking to subdivide an undeveloped parcel into multiple parcels, or convert an existing property into separate units by subdividing portions of the property, must comply with local regulations adopted pursuant to the SMA as well as the requirements of the Davis-Stirling Common Interest Development Act that govern CIDs. A TIC agreement does not formally subdivide land or property into separate parcels or units that are owned separately and is therefore not subject to the SMA.

- 4) **One Property, Several Owners.** Individuals that own a building as cotenants through a TIC agreement do not formally own separate properties, such as condominiums. Rather, they share ownership of one property. Whereas a 10-unit condominium complex is comprised of multiple properties that may be colocated in single building that is governed by an HOA, a 10-unit building with a TIC agreement is a single property that is jointly owned by several individuals. TIC agreements may also be used to effectively split a single building into property “shares” that are specified in the TIC agreement. This is accomplished when a TIC agreement specifies that individual parties to the TIC enjoy exclusive occupancy rights to certain portions of the property. Effectively, cotenants jointly own the same building, but the TIC agreement specifies which portion of the building a cotenant has exclusive rights to (and which portions they do not). This model of shared ownership may function similarly to an HOA, and the TIC agreement may stipulate conditions that are similar to those that apply to CIDs. However, as the property is never formally subdivided, the owners are not subject to laws governing the subdivision of land.
- 5) **Regulation of TIC Agreements.** In several jurisdictions, TIC agreements with exclusive occupancy provisions are used as a tool to “divide” ownership interests in a single building without formally subdividing the property. This tool allows owners to avoid regulation associated with the SMA or the Davis-Stirling Common Interest Development Act, while accomplishing the same desired outcome of selling property interests. Essentially, this precludes regulation of an action that mirrors the sale of subdivided property interests. This prohibits local agencies from requiring disclosures related to the state of the property, or conditions on the property related to the protection or displacement of existing tenants, disclosures that are normally attached to these types of transactions.
- 6) **Technical Amendments.** This bill uses definitions of “design” and “improvement” that exist in the SMA. Those definitions are specific to designs and improvements that occur when land or property is formally subdivided pursuant to the SMA. As discussed above, properties held pursuant to a TIC agreement are not formally subdivided. The Committee may wish to consider amending the bill to recast those definitions in the new Government Code Section 65850.10 created by the bill and to omit inapplicable references to subdivision actions from those definitions.
- 7) **Arguments in Support.** The City of West Hollywood writes in support, “The proposed legislation would allow a local agency to establish regulations for the proper management of TICs, which have the same characteristics as common interest developments, but unlike common interest developments, are developed without any local regulatory oversight. Such oversight is important to ensure consistency with local jurisdictions’ existing land use authority. AB 2386 would also enable local governments to create regulations for the protection of prospective buyers who, without proper disclosures and knowledge of existing law could inadvertently violate the Ellis Act as it relates to the rights of displaced former tenants.”
- 8) **Arguments in Opposition.** The California Apartment Association is opposed unless amended and writes, “ As you know, CAA has strongly defended – and the legislature has agreed with - the right of rental property owners to exist the rental housing market utilizing the Ellis Act. This is important in rent control jurisdictions where operation of rental housing has become too difficult for owners to maintain. The typical way in which the new owners

hold possession of multifamily housing when converted to ownership housing is as tenancy in common.

Your bill is imprecise and ambiguous in its intent to grant local governments the ability to regulate housing held as tenancy in common. We have provided specific language (previously provided to you) to make clear what we believe your intent to be.”

9) **Double-Referral.** This bill is double-referred to the Judiciary Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Housing Partnership Corporation  
City of Berkeley Rent Stabilization Board  
City of Beverly Hills  
City of Santa Monica  
City of West Hollywood  
Coalition for Economic Survival (CES)  
Tenderloin Housing Clinic

**Oppose Unless Amended**

California Apartment Association.

**Opposition**

None on file.

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