

Date of Hearing: March 24, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 345 (Quirk-Silva) – As Amended March 9, 2021

SUBJECT: Accessory dwelling units: separate conveyance.

SUMMARY: Requires cities and counties to allow qualified nonprofit corporations to convey Accessory Dwelling Units (ADUs) separate from the primary dwelling unit on the parcel if certain conditions are met. Specifically, **this bill**:

- 1) Requires a city or county to allow an ADU and a primary residence located on the same parcel to be sold or conveyed separately to qualified buyers if all the following apply:
 - a) The ADU or the primary residence was built or developed by a qualified nonprofit corporation;
 - b) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that meets certain specified requirements;
 - c) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
 - i) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling unit that each qualified buyer occupies;
 - ii) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary residence if the buyer desires to sell or convey the property;
 - iii) A requirement that the qualified buyer occupy the ADU or primary residence as the buyer's principal residence;
 - iv) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for low-income housing and will be sold or resold to a qualified buyer;
 - v) For tenancy in common agreements recorded after December 31, 2021, the tenancy in common agreement must additionally delineate:
 - (1) All areas of the property that are for the exclusive use of a co-tenant, as specified;
 - (2) Each co-tenant's responsibility for taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property, as specified;
 - (3) Procedures for dispute resolution among parties prior to legal action; and,

- d) A grant deed naming the grantor, grantee, and describing the property interests being transferred is recorded in the county in which the property is located.
- 2) Requires a Preliminary Change of Ownership Report to be filed concurrently with a grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- 3) Defines the terms “qualified buyer” and “qualified nonprofit corporation.”

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Author’s Statement.** According to the author, “Before the COVID 19 pandemic, our state was facing the nation’s worst housing crisis and in the last year we have seen how families all over our state are on the brink of foreclosure or at risk of homelessness. Homeownership rates in California are the second lowest in the nation. California’s median home price in September reached \$712,430. The buying power for qualified low-income homeowners making 80% or below of the area median income is only \$200,000 in some areas of the state. The inventory of entry-level homes in this price range is nearly depleted in every region of the state, therefore non-profits like Habitat for Humanity have created a financing model to close the gap between the market rate and what the individual can afford, with government assistance, volunteer labor and private donations. These homes are ultimately deed-restricted in perpetuity and resale is only permitted at a below-market rate to another qualified low-income family.”
- 2) **Background.** California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. Numerous tools and measures are necessary to address the state’s housing shortage. The Legislature has long identified ADUs, also known as second units, in-law apartments, or “granny flats,” as a valuable form of housing.
 - a) **Accessory Dwelling Units.** ADUs are additional living quarters that are independent of the primary residence on the same lot. ADUs are either attached or detached to 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 at the local level, which has contributed to the increased supply of ADUs throughout the state. For example, in the City of Los Angeles, since 2017 a total of 9,247 applications have been received for ADUs. This represents an approximately 30-fold increase as compared to the citywide average in the many years well before the state law changed. Similarly, the City of Santa Rosa received 118 applications for ADUs in 2018, compared to 54 total from 2008-2016.
 - b) **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.

- 3) **Tenancy in Common.** There are several forms of property ownership in California, including joint tenancy and tenancy in common. 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).

Tenancy in common, however, does not provide any survivorship rights among the co-owners. When one tenant in common dies, the tenant’s interest in the property does not automatically pass to the surviving tenants in common. Each tenant in common has the right to possess the entire property. To avoid legal issues, most tenants in common use a written agreement to specify their rights and responsibilities before buying the property. Such agreements allow tenants to split property interests in a primary residence and a detached ADU, or even an attached ADU. Tenancy in common interests are already used to split single dwellings.

- 4) **Bill Summary.** This bill adds detail to the ownership terms that must be included in a tenancy in common agreement in order to authorize the separate conveyance of the ADU and primary residence. These terms provide additional clarity regarding the rights and requirements of each co-tenant. This bill will also require all local governments to allow the separate sale of ADUs and primary residences that meet the criteria established in existing law as well as the additional criteria included in this bill. This bill is sponsored by Habitat for Humanity California.
- 5) **Arguments in Support.** According to Habitat for Humanity, “This measure eases barriers to development, allowing us the opportunity to increase land use, and double the number of low income families we serve through homeownership.”
- 6) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

American Planning Association, California Chapter
 Habitat for Humanity California [SPONSOR]
 California YIMBY
 Housing Action Coalition
 San Francisco Bay Area Planning and Urban Research Association

Opposition

None on file

Analysis Prepared by: Hank Brady / L. GOV. / (916) 319-3958