

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 587 (Friedman) – As Amended April 2, 2019

SUBJECT: Accessory dwelling units: sale or separate conveyance

SUMMARY: Creates an exception in Accessory Dwelling Unit (ADU) law for qualified nonprofit corporations to sell deed-restricted land with a tenants-in-common agreement to eligible homeowners. Specifically, **this bill:**

- 1) Creates an exception in ADU law to allow an ADU to be sold or conveyed separately from the primary residence to a qualified buyer if all the following apply:
 - a) The property 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; and,
 - 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 each qualified buyer occupies;
 - ii) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property;
 - iii) A requirement that the qualified buyer occupy the property as the buyer's principal residence; and,
 - 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;
 - d) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. Requires a Preliminary Change of Ownership Report to be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- 2) Defines the following terms:
 - a) "Qualified buyer" to mean persons and families of low or moderate income, as defined; and,
 - b) "Qualified nonprofit corporation" to mean a nonprofit corporation organized pursuant to Section 501 (c)(3) of the Internal Revenue Code that has received a welfare exemption

under Section 214.5 of the Revenue and Taxation Code for properties intended to be sold for low-income families who participate in a special no-interest loan program.

FISCAL EFFECT: None

COMMENTS:

- 1) **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. Advocates for tenancy in common argue that tenancy in common is a more affordable way of property ownership.

- 2) **Bill Summary and Author's Statement.** Existing law prohibits local ADU ordinances from allowing ADUs to be sold or otherwise conveyed separate from the primary residence. AB 587 creates an exemption to this prohibition by allowing such tenancy in common sales to occur, but only in a very limited and narrow manner where the house and ADU are built by a non-profit whose mission is to sell those units to low-income families, that both the primary house and the ADU are sold to low-income families, and that any subsequent sale also be to a low-income family. The purpose of this bill is to enable affordable housing organizations, such as Habitat for Humanity, to create ownership units for low-income families.

This bill is sponsored by Habitat for Humanity California.

According to the author, "California's housing production is not keeping pace with demand. Due to the limited availability of land particularly in coastal communities, land costs have reached an all-time high. As a result, Habitat for Humanity Monterey Bay/Santa Cruz has been working in partnership with the City of Santa Cruz to not only provide one Habitat home for a low-income family in need, but two; one being the primary residence and the second an ADU on the same parcel of land. These are built with a tenant-in-common restriction that, like the deed restrictions remain in place even when the ADU is sold. This allows the land to remain affordable in perpetuity and offers additional homes to eligible families. ADUs are built with cost-effective one- or two-story wood frame construction, which is significantly less costly than homes in new multifamily infill buildings. AB 587 will encourage the development of affordable ADUs and improve access to jobs, education and services for many Californians."

Recent amendments that require a grant deed that describes the property interests being transferred to be recorded, and a Preliminary Change of Ownership Report to be filed concurrently with the grant deed, remove opposition from the California Assessor's Association.

- 3) **Policy Consideration and Committee Amendments.** The author's intent is to have this new authority be permissive, however, that is unclear in the bill's language. In order to fix this issue, the Committee may wish to consider the following amendments:

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit ~~may to~~ be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

- 4) **Arguments in Support.** According to the California Apartment Association, this bill allows "a narrow exemption in the law for affordable housing organizations to sell deed-restricted land to eligible low-income homeowners, providing the necessary housing to those in need."
- 5) **Arguments in Opposition.** None on file.
- 6) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on March 27, 2019, and passed with an 8-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Habitat for Humanity California [SPONSOR]
California Apartment Association
California YIMBY
City of Santa Cruz

Opposition

None on file

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