
THIRD READING

Bill No: AB 3182
Author: Ting (D)
Amended: 8/27/20 in Senate
Vote: 21

SENATE HOUSING COMMITTEE: 8-2, 8/6/20

AYES: Wiener, Durazo, McGuire, Moorlach, Roth, Skinner, Umberg,
Wieckowski

NOES: Morrell, Bates

NO VOTE RECORDED: Caballero

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 55-17, 6/11/20 - See last page for vote

SUBJECT: Common interest developments: governing documents: rental or
leasing of separate interests

SOURCE: California YIMBY

DIGEST: This bill requires common interest developments (CIDs) to allow
owners to rent or lease out their units, as specified.

*Senate Floor Amendments of 8/27/20 address chaptering conflicts with SB 1030
(Committee on Housing).*

*Senate Floor Amendments of 8/25/20 clarify that a CID may impose an overall
rental cap of 25% but no lower; clarify that homeowners who are currently renting
their homes shall not lose their right to rent due to such a cap; require CIDs to
amend their governing documents to comply with this bill by January 1, 2021, but
require them to comply with this bill regardless; provide for a civil penalty on a
CID that violates the provisions of this bill; and add a number of provisions to
address chaptering errors related to several 2019 bills pertaining to accessory
dwelling units (ADUs).*

ANALYSIS:

Existing law:

- 1) Establishes, within the Davis-Stirling Common Interest Development Act, rules and regulations governing the operation of a 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.
- 2) Deems void and unenforceable any covenant, condition, or restriction (CC&R) contained in any deed, contract, security instrument, or other instrument affecting the transfer of, or any interest in, real property, and any provision of the CID governing documents, that effectively prohibits or restricts:
 - a) Installation of a solar energy system.
 - b) Installation or use of a video or television antenna.
 - c) Installation of low-water using plants, artificial turf, and other synthetic surface that resembles grass.
 - d) Installation or use of an electric vehicle charging station within the owner's unit or designated parking space.
 - e) Display or affixation of one or more religious items on any entry door frame to a dwelling.
 - f) Construction or use of an accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) on a lot zoned for single-family residential use that meets the requirements of existing law regarding ADUs and JADUs.
- 3) Provides, under existing law relating to ADUs:
 - a) That if a locality adopts a local ADU ordinance, it must meet certain requirements and cannot impose certain requirements, as specified.
 - b) That a local agency must ministerially approve, within 60 days, an application for a building permit to create an ADU and a JADU, as specified.
 - c) That a local ordinance cannot require an applicant for an ADU to be an owner occupant.

- d) That ADUs must meet certain minimum and maximum square footage, height, and setback limits.
- e) That ADUs are subject to a tiered schedule of impact fees based on the size of the ADU, as specified.

This bill:

- 1) Provides that an owner of a separate interest (e.g., an individual dwelling unit) in a CID shall not be subject to a provision in, or amendment to, a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or lease of any of the separate interests, ADUs, or JADUs, in that CID. Repeals the existing law provision allowing rent or lease prohibitions in CID governing documents effective prior to January 1, 2012.
- 2) Authorizes a CID, however, to prohibit the short-term rental of a separate interest for a period of 30 days or less.
- 3) Authorizes a CID to impose reasonable rental restrictions that have the effect of limiting the total number of rentals of 25% or higher of the individual dwelling units in the CID. Provides that ADUs and JADUs shall not be counted toward this cap. Provides that such a cap shall not change the right of an individual owner who was renting their unit out prior to the effective date of this bill, to continue renting out their unit.
- 4) Requires CIDs to amend their governing documents to comply with this bill but January 1, 2021. Requires CIDs to comply with this bill regardless of whether the governing documents have been amended.
- 5) Provides that a CID that violates the provisions of this bill shall be liable for a civil penalty of up to \$1,000.
- 6) Adds a number of provisions to address chaptering errors related to several 2019 bills pertaining to ADUs.

Background

A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-quarter of the state's housing

stock. CIDs are governed by homeowner associations (HOAs). The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents.

ADUs are additional living spaces, either separate or attached, on single-family lots that have a separate kitchen, bathroom, and exterior access independent of the primary residence. Local ADU ordinances must meet specified parameters outlined in existing state law. According to a UC Berkeley study, *Yes in My Backyard: Mobilizing the Market for Secondary Units*, second units are a means to accommodate future growth and encourage infill development in developed neighborhoods. The study found that local regulations often impede development of ADUs. Last year, several bills, particularly SB 13 (Wieckowski, Chapter 653, Statutes of 2019) and AB 68 (Ting, Chapter 655, Statutes of 2019), relaxed multiple requirements for the construction and permitting of ADUs and JADUs. As locals have begun to implement the bills, however, stakeholders have caught multiple drafting and chaptering out errors. Those errors are addressed in this bill.

Comments

- 1) *Author's statement.* According to the author, "We must marshal all available resources to address the housing and homelessness crisis. There are millions of homes across the state that have the potential to be rented to Californians in need of housing but are prohibited from being leased under outdated HOA rules. AB 3182 prohibits rental bans in HOAs to allow homeowners who want to, rent out their homes."
- 2) *Expanding the right to rent out.* SB 150 (Correa, Chapter 62, Statutes of 2011) required CIDs to allow owners to rent or lease their units, but applied prospectively, exempting governing documents adopted prior to January 1, 2012. That bill, which was sponsored by the California Association of Realtors, was opposed by the Community Associations Institute (CAI), the organization representing CIDs. CAI argued that CID rules and regulations, including renter restrictions, need to be fluid and change with conditions imposed by the mortgage market or personal needs. In addition, CAI stated that that rental rules should be uniform for all owners, not differ based on when a unit was purchased. This bill, by removing the exemption for pre-2012 governing documents, would apply the right to rent or lease out a unit in a CID, to all units.

- 3) *Home loan concerns.* CAI opposed this bill in the Assembly based on concerns that it could jeopardize financing opportunities for those looking to purchase a home in a CID. Specifically, individuals seeking loans from government entities such as the FHA or VA, or seniors seeking to refinance through a reverse mortgage, would not be covered if the owner occupancy rate falls below a certain threshold. According to the FHA website, such requirements are intended to prevent investors from profiting off the government loan program's affordable rates and less stringent lending guidelines. Most FHA loans require the purchaser to live in the home for at least one year prior to renting it out. These loan opportunities are important for low- to moderate-income households, who might otherwise be unable to afford to purchase a home. In addition, there are reports that homeowners and CIDs face difficulty with the issuance of insurance policies when more than 25% of home in the CID are rented out.

To address these concerns, the author amended this bill on July 15, 2020, to allow an HOA to impose restrictions that effectively limit the total number of rentals in the CID to 25%. The amendments also give an HOA the flexibility to raise the cap higher if needed to meet FHA or Freddie Mac requirements or to facilitate other financing or insurance needs.

- 4) *Double-referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, this bill was referred to both the Housing and Judiciary Committees but only heard in the Senate Housing Committee. The Senate Judiciary Committee noted this bill was silent as to remedies: "Presumably, the owner of the separate interest could sue for declaratory relief or an injunction perhaps, and any actual damages suffered, but as to attorney's fees, the default 'American Rule' would apply. Under the American Rule, each side pays for its own attorney fees regardless of who prevails in a legal dispute. Since that bill is likely to be substantial, the prospect of paying it will dissuade many from bothering to try to enforce their rights in the first place. This may be seen as beneficial, since it discourages litigation. On the other hand, it can be viewed as problematic, since it probably means that the underlying policy probably will not be enforced as vigorously as it would be if a one-way fee shifting clause were included." To address this concern, the amendments of August 25, 2020, add a provision for a civil penalty in the case of a CID violating the provisions of this bill.

Related/Prior Legislation

SB 150 (Correa, Chapter 62, Statutes of 2011) exempted an owner of a unit in a CID from any prohibition on renting or leasing the unit, except when the prohibition was effective on or after January 1, 2012.

AB 1927 (Knight, 2010) would have established specific procedures for a CID to follow when initially recording or amending governing documents, on or after January 1, 2011, in a manner that prohibits the rental or lease of individual units. The bill was vetoed by Governor Schwarzenegger.

AB 2259 (Mullin, 2008) would have exempted an owner of a unit in a CID from any prohibition on renting or leasing the unit, unless that provision was effective prior to the date the owner acquired title. The bill was vetoed by Governor Schwarzenegger.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/27/20)

California YIMBY (source)
Bay Area Council
California Apartment Association
Lake Wildwood Association

OPPOSITION: (Verified 8/27/20)

Community Associations Institute - California Legislative Action Committee
Daniel Burnham Court Master and Homeowners Associations
The Fairway Tennis Maintenance Association
Five Individuals

ARGUMENTS IN SUPPORT: California YIMBY, sponsor of this bill, states that HOA prohibitions against tenants act as a prohibition against the production of important types of housing needed to solve California's housing crisis because if that housing cannot be occupied by a tenant, it is unlikely in many cases to be built. California YIMBY states that new housing for tenants, and those who would be tenants, is now even more critical as the need to shelter in place from COVID-19 reveals in stark clarity that California is ill-positioned to house all of its people.

ARGUMENTS IN OPPOSITION: CAI states that this bill will jeopardize the opportunity for an HOA to access financing for critical maintenance and infrastructure issues that would otherwise have to be funded through assessment

increases on individual owner; that it could hurt first-time homebuyers' ability to obtain FHA loans, veterans' ability to obtain VA loans, and seniors' ability to refinance through reverse mortgages; and that it will increase investment buying within CIDs due to the ability to rent multiple units. In addition, The Fairway Tennis Maintenance Association states that the provision allowing HOAs to continue to ban short-term rentals would alter the compromise reached by SB 150 (Correa, 2011) by taking away the rights of homeowners while granting new rights to CIDs.

ASSEMBLY FLOOR: 55-17, 6/11/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Bonta, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Daly, Eggman, Frazier, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, O'Donnell, Petrie-Norris, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Chen, Choi, Cunningham, Megan Dahle, Diep, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Obernolte, Patterson, Voepel, Waldron

NO VOTE RECORDED: Boerner Horvath, Burke, Gabriel, Mayes, Muratsuchi, Quirk, Quirk-Silva

Prepared by: Erin Riches / HOUSING / (916) 651-4124
8/28/20 13:18:49

**** END ****