

Date of Hearing: March 15, 2021

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 345 (Quirk-Silva) – As Amended March 9, 2021

SUBJECT: Accessory dwelling units: separate conveyance

SUMMARY: Facilitates the sale of an accessory dwelling unit (ADU) to a qualified buyer. Specifically, **this bill:**

- 1) Requires rather than authorizes a local agency to allow ADUs to be sold separately from the primary residence if the ADU meets specified conditions.
- 2) Adds that any tenancy in common agreement for the sale of an ADU recorded after December 31, 2021 must include:
 - a) All areas of the property that are for the exclusive use of a co-tenant, as specified;
 - b) 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; and
 - c) Procedures for dispute resolution among parties prior to legal action.
- 3) Adds clarifying language and cross references in ADU law to this provision to allow separate conveyance of ADUs.
- 4) Provides that, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs must be made, as specified.

EXISTING LAW:

- 1) States that ADUs are an essential component of the state's housing supply (Government Code Section 65852.150).
- 2) Allows local governments to choose whether or not to adopt a local ordinance regarding ADUs (Government Code Section 65852.2). Those local ordinance are required to:
 - a) Designate areas within the jurisdiction of the local agency where ADUs may be permitted, subject to certain requirements;
 - b) Impose standards on ADUs that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places;

- c) Allow that an ADU may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence, except as specified below in 3).
- 3) Authorizes that a local agency may allow, by ordinance, ADUs to be sold separately from the primary residence if they meet specified conditions (Government Code Section 65852.26). These conditions include that:
- 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, as specified;
 - c) The property is held pursuant to a recorded tenancy in common agreement, including:
 - i. That 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.
 - iv. Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
 - d) A grant deed naming the grantor, grantee, and a description of the property interests being transferred that must be recorded in the county in which the property is located, as specified; and
 - e) If requested by a utility that is providing service to the primary residence, that the ADU has a separate water, sewer, or electrical connection to that utility.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: According to the author, "AB 345 would make a modest change to current law, removing existing barriers for nonprofit affordable ownership developers building homes for very low- and low-income Californians. This measure allows the separate sale of ADUs (in limited circumstances) as the default in California, rather than requiring local jurisdictions to first pass ordinances, which can be drawn out processes. By removing this requirement, and adding language clarifying the tenant in common agreement, this measure will allow nonprofits, like Habitat for Humanity to expand their reach, offering additional ownership opportunities."

Background:

ADUs and the Housing Crisis: ADUs have proven to be an important to solving California's housing crisis. Over the past few years, the legislature has enacted a number of bills to ease zoning restrictions and expedite approval processes of ADUs at the local level. According to the Department of Housing and Community Development, there has been a 30 percent year-to-year increase in ADU production. However, the market potential for ADUs is greater: a 2020 report from the UCLA Lewis Center for Regional Studies (Monkkonen et al) determined that there is economic feasibility for at least 1.5 million new ADUs in California.

The Habitat for Humanity Model: There are several non-profit organizations in the state that leverage public funding and philanthropy to facilitate the purchase of homes by lower income households. The most well-known of these is Habitat for Humanity, which is a global organization with over 40 local affiliates in California, and which requires that their home purchasers contribute "sweat equity" to the construction of their own home. The average Habitat for Humanity homeowner has an income that is less than half of the area's median income. Additionally, over 80 percent of Habitat's homebuyers are people of color. Habitat for Humanity and similar organizations build or rehabilitate about 1,000 units a year in California.

Separate Ownership of ADUs: Until 2019, state law prohibited local ADU ordinances from allowing ADUs to be sold or otherwise conveyed separately from the primary residence. AB 587 (Friedman, Chapter 657, Statutes of 2019) created an exemption to this prohibition. AB 587 allows for 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. Both the primary house and the ADU are sold to low-income families, and that any subsequent sale must be to a low-income family. This bill enabled affordable housing organizations to create additional ownership units for low-income families.

Habitat for Humanity has expressed concern that the law is discretionary because it requires a local government to pass an ordinance to allow for the separate conveyance of an ADU. This has provide to be an additional barrier to providing very low- and low-income Californians with opportunities to achieve wealth and equity through ownership. In addition, the current language does not clearly define the tenant in common agreement elements, creating ambiguity for nonprofit developers looking to utilize this ownership structure.

Purpose of this Bill: This bill makes it easier for qualified non-profits, such as Habitat for Humanity, to sell ADUs to low- and moderate-income households. Numerous studies have shown that homeownership offers families an opportunity to create economic security and build wealth.

This bill would facilitate the sale of ADUs to low- and moderate-income households in two ways:

- Requires cities and counties to allow such sales. Currently, local agencies have discretion over whether to allow such sales, and if so, requires them to pass an ordinance to do so.
- Adds additional language that would increase the clarity and efficacy of the legal agreements between the homeowners.

Arguments in Support: Supporters argue that this bill will help reduce the time and cost necessary to make ADUs available to low-income households. According to Habitat for Humanity, this bill “eases barriers to development, allowing us the opportunity to increase land use, and double the number of low income families we serve through homeownership.”

Arguments in Opposition: No opposition on record.

Related Legislation:

AB 587 (Friedman), Chapter 657, Statutes of 2019: This bill allowed an ADU to be sold or conveyed separately from the primary residence to a qualified buyer under specified circumstances.

Double referred: This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Habitat for Humanity California (Sponsor)
California YIMBY
Housing Action Coalition
San Francisco Bay Area Planning and Urban Research Association

Opposition

None on file

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