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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2021 - 2022 Regular**

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<b>Bill No:</b>	AB 345	<b>Hearing Date:</b>	7/1/2021
<b>Author:</b>	Quirk-Silva		
<b>Version:</b>	6/16/2021		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Erin Riches		

**SUBJECT:** Accessory dwelling units: separate conveyance

**DIGEST:** This bill requires cities and counties to allow a qualified nonprofit corporation to sell an accessory dwelling unit (ADU) separately from the primary dwelling unit on the property, and revises the conditions for a tenancy in common agreement entered into pursuant to such a sale.

**ANALYSIS:**

*Existing law:*

- 1) Allows for an ADU to be sold or conveyed separately from the primary residence to a qualified buyer if all of 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 buyer and the nonprofit corporation, as specified.
  - 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 buyer an undivided, unequal interest in the property based on the size of the dwelling each buyer occupies.
    - ii) A repurchase option that requires the buyer to offer the nonprofit corporation the right of first refusal if the buyer decides to sell or convey the property.
    - iii) A requirement that the buyer occupy the property as their principal residence.

- iv) Affordability restrictions on the sale and conveyance of the property to ensure it will be preserved for low-income housing for 45 years, consistent with existing law for owner-occupied units, 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 where the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed.
- 2) Defines “qualified buyer” as persons and families of low- or moderate-income.
  - 3) Defines “qualified nonprofit corporation” as a nonprofit corporation that has received a welfare exemption for properties intended to be sold to low-income families who participate in a special no-interest loan program.

**This bill:**

- 1) Requires, rather than authorizes, local governments to allow an ADU to be sold or conveyed separately from the primary residence under specified circumstances.
- 2) Requires a tenancy in common agreement recorded after December 31, 2021 to include the following:
  - a) Delineation of all areas of the property that are for the exclusive use of a co-tenant, as specified.
  - b) Delineation of each co-tenant’s responsibility for the costs of taxes, insurances, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property, as specified.
  - c) Procedures for dispute resolution among the parties prior to legal action.
- 3) Includes a number of technical and clarifying changes.

**COMMENTS:**

- 1) *Author’s statement.* “Before the COVID-19 pandemic, our state was facing the nation’s worst housing crisis and in the past 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 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. The increased cost of land, construction, and insurance especially in wildfire-prone communities all contribute to keeping the American Dream out of reach. ADUs are an important tool to solve California's housing crisis and can help get more families into homes."

- 2) *Background: ADUs.* ADUs, also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, are additional living spaces on single-family lots that have a separate kitchen, bathroom, and exterior access independent of the primary residence. These spaces can either be attached to, or detached from, the primary residence. Local ADU ordinances must meet specified parameters outlined in existing state law. Local governments may also adopt ordinances for JADUs, which are no more than 500 square feet and are bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink and stove, but is not required to have a bathroom.
- 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 as well as the right to survivorship, meaning that if one 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, their 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 indicate that tenancy in common is a more affordable method of property ownership.
- 4) *Facilitating homeownership opportunities.* Several nonprofit organizations in California 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 requires homebuyers to 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% of Habitat’s homebuyers are people of color. Habitat and similar organizations build or rehabilitate about 1,000 units a year in California.

Although existing law generally prohibits the sale of an ADU separately from the primary dwelling on a parcel, recent legislation (AB 587, Friedman, 2019) provided an exception. AB 587 established a process by which a nonprofit affordable housing developer like Habitat can sell an ADU separately from the primary residence, as tenants in common. This enables developers such as Habitat to build a house and ADU and then sell them to low-income families (subsequent sales must also be to low-income families).

As AB 587 has been implemented, however, affordable housing developers have expressed concerns about a potential barrier to these projects in that local governments are required to pass ordinances to allow for these ownership models to occur. In addition, AB 587 did not clearly define the elements of the tenant in common agreement. This bill seeks to address these issues by removing the requirement for local jurisdictions to pass an ordinance as a prerequisite for the development and sale of these projects, and by clarifying and streamlining the process to govern the tenancy in common relationship between developers and homeowners.

5) *Double referral.* This bill will also be heard by the Governance & Finance Committee.

#### **RELATED LEGISLATION:**

**AB 561 (Ting, 2021)**— authorizes the State Treasurer’s Office to establish and administer the Help Homeowners Add New Housing Program (Program) to help homeowners qualify for loans to construct additional housing units on their property, including ADUs and JADUs. *This bill will be heard by the Senate Housing Committee on July 8<sup>th</sup>.*

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

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

**POSITIONS: (Communicated to the committee before noon on Friday,  
June 25, 2021.)**

**SUPPORT:**

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

**OPPOSITION:**

None recieved

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