
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

2021 - 2022 Regular

Bill No: AB 345
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Tax Levy: No
Fiscal: Yes

ACCESSORY DWELLING UNITS: SEPARATE CONVEYANCE

Requires local agencies to allow separate sale or conveyance of accessory dwelling units that are built by a qualified nonprofit.

Background

Habitat for Humanity. A nonprofit corporation, Habitat for Humanity builds houses for low-income persons to occupy, either by renting or owning. Habitat sells houses to individuals and families who qualify as low-income; however, they do so very differently than a typical real-estate transaction. With Habitat, they build the home, and then pick a family to live in it through its family selection process. The family buys the home at a price equal to its total development cost through a down payment and a mortgage. Habitat won't require a family to pay more than 30% of gross family income on mortgage payments. The difference between the total development cost and the fair market value is secured by the "silent second mortgage," a deed restriction that limits any family purchasing the home from reselling it. Families don't pay these silent-second mortgages, and they're generally forgiven if the family satisfies the first. Instead, the silent second mortgages serve as covenants that ensure the family doesn't profit from Habitat's work, and "run with the land," so that the site remains affordable should the initially selected family choose to move somewhere else.

Habitat, and the homes that it builds, receive special treatment for property tax purposes. The California Constitution provides that all property is taxable unless explicitly exempted by the Constitution or federal law, limits the maximum amount of any ad valorem tax on real property at 1% of full cash value, and directs assessors to only reappraise property when newly constructed, or ownership changes (Proposition 13, 1978). To determine value, the law effectively presumes that a property's purchase price in the transaction is its full cash or fair market value. However, county assessors must consider enforceable restrictions, such as zoning and environmental restrictions, when valuing property. State law spells out the enforceable restrictions that assessors must consider, in addition to any other restrictions that the assessor identifies. In 2015, the Legislature included agreements that restrict the use of property to affordable housing for at least 30 years between a property owner and certain nonprofit affordable housing developers, such as Habitat for Humanity.

The Constitution also allows the Legislature to exempt property used exclusively for charitable purposes so long as it is owned by nonprofit entities organized and operated for charitable

purposes, such as universities, hospitals, and libraries. The Legislature enacted this exemption, commonly known as the “welfare exemption.” Habitat for Humanity receives this exemption.

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 surviving joint tenants. 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, but instead goes to the deceased tenant’s heirs. In addition, each tenant in common has the right to possess the entire property, but the different tenants may have different ownership stakes in the property. To avoid legal issues, most tenants in common use a written agreement to specify their rights and responsibilities before buying the property. Tenancy in common is a frequent form of property ownership for homes built by Habitat for Humanity.

Accessory Dwelling Units. In recent years, the Legislature has taken large strides to facilitate the development of accessory dwelling units (ADUs), also known as granny flats or second units. Chief among these steps was to require local agencies to ministerially permit the creation of certain types of ADUs within the space of a single family home or in a new or converted structure in the rear of the property, regardless of what local zoning provides. Under this provision of law, a property owner may construct both a junior ADU within the single-family home and a new construction ADU on the same property. An ADU may be constructed on property that already contains an existing single-family unit or along with a proposed new single family unit. ADU law places numerous limitations on the ability of local governments to impose requirements on ADUs, such as limitations on locally-imposed minimum ADU sizes, impact fees, owner-occupancy requirements, and parking.

Separate sale or conveyance. ADU law generally prohibits property owners from selling or transferring their ADU separately from the primary residence. However, in 2019, the Legislature enacted AB 587 (Friedman) to allow cities and counties to adopt an ADU for the separate sale or conveyance of an ADU under certain conditions. Specifically, 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 and the following conditions are met:

- The property was built or developed by a qualified nonprofit corporation, defined to be a nonprofit corporation that receives a welfare exemption under state law for properties intended to be sold to low-income families who participate in a special no-interest loan program;
- The sale is to a qualified buyer, defined to be persons or families of low- or moderate-income—up to 120% of area median income;
- 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 the requirements in existing law that restrict the use of the unit for 30 years to housing at an affordable cost.
- The property is held pursuant to a recorded tenancy in common agreement that:
 - Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;

- 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;
- Requires the qualified buyer to occupy the property as the buyer's principal residence; and
- Imposes affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing and will be sold or resold to a qualified buyer.
- A deed describing the transfer is recorded in the county in which the property is located and the change of ownership is filed with the recorder, pursuant to existing law.

AB 587 was enacted at the request of Habitat for Humanity because some affiliates expressed interest in building houses with ADUs that could be used to house additional low-income families with the same opportunity as owners of primary dwellings to build equity. Since AB 587's adoption, some affiliates have reported difficulties getting local agencies to adopt the ordinances necessary to implement the bill. Habitat for Humanity California wants the Legislature to require local governments to allow the separate sale or conveyance of ADUs developed under Habitat's model.

Proposed Law

Assembly Bill 345 requires a city or county to allow an ADU to be sold or separately conveyed if it meets the conditions in existing law that ADUs must meet to qualify for separate sale or conveyance, including that it was built or developed by a qualified nonprofit.

AB 345 also adds new requirements on tenancy in common agreements for these ADUs if those agreements are recorded after December 31, 2021, specifically:

- Delineation of all areas of the property that are for the exclusive use of a cotenant. Each cotenant must agree not to claim a right of occupancy to an area delineated for the exclusive use of another cotenant, provided that the latter cotenant's obligations to each of the other cotenants have been satisfied.
- Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, improvements, and any other costs, obligations, or liabilities associated with the property, as specified.
- Procedures for dispute resolution among the parties before resorting to legal action.

AB 345 makes technical changes and includes findings and declarations to support its purposes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "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. California's median home price recently broke \$800,000 and is still climbing. 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. Mandate. The California Constitution requires the state to reimburse local agencies for the costs of new or expanded state mandated local programs. Because AB 345 requires local governments to take actions on the development of certain ADUs, Legislative Counsel says that it imposes a new state mandate. The measure states that if the Commission on State Mandates determines that the bill imposes a reimbursable mandate, then reimbursement must be made pursuant to existing statutory provisions.

3. Incoming! The Senate Housing Committee approved AB 345 at its July 1st hearing on a vote of 9-0. The Senate Governance and Finance Committee is hearing AB 345 as the committee of second reference.

Assembly Actions

Assembly Housing and Community Development Committee:	8-0
Assembly Local Government Committee:	7-1
Assembly Appropriations Committee:	16-0
Assembly Floor:	76-1

Support and Opposition (7/5/21)

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 submitted

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