Featured Article

California's AB 1033 May Be A Game Changer For The Development Of Accessory Dwelling Units

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You may have read or heard a lot about Accessory Dwelling Units or ADUs (also colloquially known as Mother-in-Law Suites) recently as building restrictions have been relaxed over the last several years allowing property owners to take advantage of additional lot space, or space within the primary residence, to add value to their property. Let's not forget the benefits of getting the in-laws out of your personal space! However, what you may not know is that when the California legislature recently passed Assembly Bill 1033, it opened up a whole new world of opportunity to homeowners, developers, and investors by allowing for the ADU to be partitioned and sold separately from the primary dwelling unit on the property.

> ***"January 2024, a new opportunity arises: the ability to sell one or more ADUs separately from the primary residence!"***

For those unfamiliar with the evolution of laws governing ADUs, or ADUs in general, this article provides a quick recap before examining the implications of the new statutory amendments, set to take effect January 2024, concerning ADU sales.

ADUs are fully functional separate housing units that can be attached to, or wholly detached from, the primary residence such as a guest house, casita or converted garage. Typically, homeowners create ADUs to provide income opportunities or for family reasons (i.e., to care for loved ones while still maintaining a sense of independence and a level of privacy for all involved). Prior to 2020, cities adopted regulations that greatly restricted ADUs and, in effect, often made it impossible for homeowners to build them. However, multiple bills were signed into law since, preventing municipalities from imposing such harsh restrictions on ADUs with the aim of addressing the housing crisis in California. For example, cities cannot impose minimum lot size requirements, minimum ADU square footage requirements, maximums on unit size less than 850 square feet for a one-bedroom or 1,000 square feet for a two-bedroom, parking requirements, and height limits under 16 feet for detached ADUs. Cities cannot mandate that the ADU be owner-occupied or require that all existing structures be brought up to code as a condition of permit approval. Further, cities are required to ministerially approve or deny a permit application within 60 days without a discretionary hearing, and if the permit is denied, the city must identify the deficiencies in the application and describe how those can be remedied. Moreover, if the city fails to render a timely decision, the application for permit is deemed approved. Finally, homeowners' associations, try as they might, cannot block an owner from building an ADU.

Given the recently relaxed standards, many homeowners have taken the initiative to build an ADU, or two, on their property. Indeed, the current law mandates that local agencies *must* allow at least two ADUs – one standard and one junior ADU (an ADU no larger than 500 square feet located within the primary residence). Similarly, investors and developers have used this opportunity to construct ADUs on multiple family lots, thereby increasing the property's value and maximizing income production.

However, come January 2024, a new opportunity arises: ***the ability to sell one or more ADUs separately from the primary residence!*** AB 1033 amends Government Code section 65852.2 to allow property owners with ADUs to sever, and convey, the real property interests by creating condominiums. Currently, the separate sale of an ADU is only permitted under very limited circumstances involving an ADU constructed by a qualified non-profit corporation, a low or moderate income buyer, and a recorded tenancy in common agreement. Further, the sale must be accompanied by significant deed restrictions, namely, both the primary residence and ADU must be preserved for low-income housing for 45 years. Thus, the current state of the law does not present significant investment opportunities.

Beginning January 1, 2024, private owners, investors, and developers may be able to take advantage of the new law and sell separate interests in ADUs ***without the burdensome deed and buyer restrictions concerning low-income housing***. At the outset, it is important to note that, while existing law *requires* local agencies to allow a separate sale or conveyance of an ADU under the limited circumstances referenced above, the amendment

is *permissive* as to whether a local agency can adopt an ordinance allowing for the private party separate sale of ADUs and only provides for the minimum requirements for such regulations, meaning that this opportunity may vary greatly from city to city. However, if a municipality adopts such an ordinance, there are mandatory minimum prerequisites that an owner must tackle.

First, the separate property interests must be created as condominiums pursuant to the Davis-Stirling Common Interest Development Act and in conformity with the Subdivision Map Act.

A. The Davis-Stirling Common Interest Development Act

The Davis-Stirling Common Interest Development Act governs the creation of residential real estate developments in which exclusive rights to use/ownership of land are coupled with undivided interests in land that is owned or enjoyed in common with others, such as condominiums. Here, the AUD(s) and the primary residence will have exclusive rights and the remainder of the lot (or at least a portion thereof) would be a common interest area to allow ingress and egress to the occupants. In creating these interests, the act requires that a declaration and a condominium plan be recorded. Further, a homeowners' association must be created to manage the property.

B. The Subdivision Map Act

The Subdivision Map Act grants local governments the power to regulate how their communities grow by requiring them to enact local ordinances that property owners must comply with to obtain approval to divide their land into smaller parcels. Thus, regulations will vary by county or city. The act prescribes the form of the subdivision map and the general approval process after which the city clerk delivers the map to the county recorder. If a landowner fails to obtain approval, the act allows local agencies to prohibit the sale, lease, or financing of a parcel until approval is obtained and permits the filing of civil or criminal actions for violations. However, an owner may remedy any violations and apply for a certificate of compliance.

Please note that compliance with these acts are not the only requirements to selling your newly built ADU(s). All lenders and the existing HOA, if applicable, must approve the creation of separate property interests.

The above are the minimum requirements for local ordinances but, again, they may not be the *only* requirements because municipalities are not limited in other restrictions they can impose on the partition and sale of ADUs. Before building your new ADU(s) with dreams of selling it off and pocketing a nice profit, we strongly recommend that you contact an attorney to understand the specific laws in your particular city or county.

Disclaimer: The above information is intended for information purposes alone and is not intended as legal advice. Please consult with counsel before taking any steps in reliance on any of the information contained herein.

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