

# AB 1033: Permitting Separate Sale or Conveyance of Accessory Dwelling Units as Condominiums

(Government Code Sections 65852.2)

March 2024

## Overview

**Assembly Bill (AB) 1033** (Government Code Sections 65852.2) allows local agencies to adopt an ordinance to permit the separate sale or conveyance of accessory dwelling units and the primary dwelling unit as condominiums. AB 1033 would allow ADUs to be considered a separate property and sold independently from the primary residence.

## Purpose

This document is intended solely as a technical overview of new legislation. It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel before taking any action to implement these changes.

## Summary and Considerations for Local Jurisdictions

If a local agency elects to implement the sale of accessory dwelling units, then it should repeal all provisions in the municipal code that restrict the sale or transfer of an accessory dwelling and adopt appropriate text to permit accessory dwellings to be sold separately from the primary unit. AB 1033 requires a specific list of provisions to be included in a local ordinance if an agency decides to permit the separate sale or conveyance of accessory dwelling units. Pursuant to Government Code Section 65852.2 (a)(10), the ordinance must include the following:

- (A) The condominium must qualify as a common interest development pursuant to the California Davis-Stirling Common Interest Development Act (Civil Code Sections 4000 et seq).
- (B) The condominium must be created in conformance with all applicable objective requirements of the Subdivision Map Act (Government Code Sections 66410 et seq) and all objective requirements of a local subdivision ordinance.
- (C) A safety inspection of the accessory dwelling unit must be conducted before recording the condominium plan.
- (D) The subdivision map or condominium plan cannot be recorded against the property until the lienholder(s) consents. The lienholder can opt to not consent, effectively

prohibiting the subdivision. Or the lienholder may consent provided that certain terms and conditions are met.

(E) The homeowner will be required to notify providers of utilities, including water, sewer, gas, and electricity, of the condominium creation and separate conveyance.

(F) If the property is in a planned development with an existing association, the property owner must first obtain the express written authorization of the existing association before recording a condominium map.

### **Required Written Consent**

Prior to recordation of the initial or any subsequent modifications to the condominium plan, written evidence of the lienholder's consent shall be provided to the county recorder along with a signed statement from each lienholder that states as follows:

“(Name of lienholder) hereby consents to the recording of this condominium plan in their sole and absolute discretion and the borrower has or will satisfy any additional terms and conditions the lienholder may have.”

### **Noticing Requirements**

A local agency that adopts an ordinance to allow for the separate conveyance of an ADU must also provide a standard notice on all submittal checklists, attached at the end of this document, about the process for converting the development into condominiums

## Standard Notice per Government Code Section 65852.2(a)(10)(E)

**NOTICE:** If you are considering establishing your primary dwelling unit and accessory dwelling unit as a condominium, please ensure that your building permitting agency allows this practice. If you decide to establish your primary dwelling unit and accessory dwelling unit as a condominium, your condominium plan or any future modifications to the condominium plan must be recorded with the County Recorder. Prior to recordation or modification of your subdivision map and condominium plan, any lienholder with a lien on your title must provide a form of written consent either on the condominium plan, or on the lienholder's consent form attached to the condominium plan, with text that clearly states that the lender approves recordation of the condominium plan and that you have satisfied their terms and conditions, if any.

In order to secure lender consent, you may be required to follow additional lender requirements, which may include, but are not limited to, one or more of the following:

(a) Paying off your current lender.

You may pay off your mortgage and any liens through a refinance or a new loan. Be aware that refinancing or using a new loan may result in changes to your interest rate or tax basis. Also, be aware that any subsequent modification to your subdivision map or condominium plan must also be consented to by your lender, which consent may be denied.

(b) Securing your lender's approval of a modification to their loan collateral due to the change of your current property legal description into one or more condominium parcels.

(c) Securing your lender's consent to the details of any construction loan or ground lease.

This may include a copy of the improvement contract entered in good faith with a licensed contractor, evidence that the record owner or ground lessee has the funds to complete the work, and a signed statement made by the record owner or ground lessor that the information in the consent above is true and correct.