

California's Legislation Allowing Separate Sale of ADUs (AB-1033)



CASE STUDY | DECEMBER 2023



1. Background

California's housing supply shortage is among the worst in the USA. One strategy that has been consistently promoted by housing advocates is to increase the supply of accessory dwelling units (ADUs). These are independent residences located on the same lot as a principal residence, whether attached to the main unit, or in a detached unit in the backyard or on the back lane. Since 1982, statewide law had granted cities the ability to permit ADUs, while still allowing cities to limit where ADUs could be located and the standards by which they had to abide. For decades, cities largely obstructed their development due to concerns about parking, neighborhood change, and impact on neighbouring property values.

Policy/program

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State

State of California (2021 population 39.2 million)

Gentle Density Types Involved

ADUs, including units attached to the principal unit and detached units in the backyard or on lanes.

In 2016, the state legislature passed the first statewide bills that required cities and counties to allow ADUs on most residential lots, pre-empting local zoning ordinances and permitting processes. These laws allow each detached residence to have one attached or detached ADU of up to 1200 sq ft and one attached ADU of up to 500 sq ft (called a Junior ADU or JADU). This legislation was followed by another dozen bills to further enhance ADU mandates. As soon as the first reforms from 2016 took effect, ADU development rapidly and steadily increased, growing from just over 1,000 ADUs permitted in 2016 to over 24,000 permitted in 2022, now making up about 19% of new housing permits.

One of the arguments in favour of ADUs is that they were supposed to increase homeownership by providing a revenue stream to would-be homeowners to help pay for a mortgage they would otherwise not be able to afford. However, research showed that many households benefitting from the new ADU laws were existing homeowners adding ADUs to cover mortgage payments, meaning that although they were increasing the supply of rental housing, they were not really contributing to increased homeownership

Outside of California, ADUs are being sold as small condominiums (also called strata lots in British Columbia), allowing first time homebuyers to purchase a condo ADU as a “starter” home. This is common practice in Oregon, Texas, and parts of Washington State, where an ADU sold as a condominium often goes for 40-60% of the price of a conventional home on a traditional single-family lot. Allowing a home and its associated ADUs to be separately sold as condominiums could provide an ownership option for the many Californians who might qualify for a mortgage but wouldn't be able to find a unit they could otherwise afford. Unfortunately, the 1982 California legislation that allowed municipalities to permit ADUs also prohibited the sale of ADUs.

In 2022, the Casita Coalition—a state-wide, multi-sector organization committed to increasing the supply of small-scale, affordable housing options—proposed a state bill that would remove this prohibition and spearheaded the movement for its adoption. The bill was passed in the fall of 2023 and goes into effect at the beginning of 2024, allowing cities and counties in California to choose to “opt in” to allowing the sale of ADUs.



2. Key Players

State

- Assemblyman Phil Ting (D-San Francisco) drafted the bill and promoted it in the legislature.

Stakeholders

- The Casita Coalition was the driving force behind the bill, providing policy research, technical and legal assistance, and mobilizing supporters
- The bill was co-sponsored by the Casita Coalition and the Bay Area Council. The former provided the vision and managed the mobilization of advocates around the bill while the latter provided staff capacity and other resources to support the passage of the bill.
- The Casita Coalition mobilized support from equity-oriented organizations who seek more homeownership opportunities such as the California Black Chamber of Commerce and the National Association of Hispanic Real Estate Professionals.
- The bill was opposed by the California Association of Realtors (CAR), the state's most powerful association of real estate professionals.
- Initially, the traditional housing industry organization aligned with CAR, including mortgage bankers, land surveyors, and land title professionals. However, continued technical research and education by the Casita Coalition addressed all substantive concerns, guided amendments, and ensured adoption.

3. Description of policy/program/project

As mentioned above, California law prior to 2024 did prohibited “separate conveyance” of a home from its ADU. AB-1033 reverses existing law and permits local jurisdictions to establish an ordinance that allows for the separate conveyance of ADUs from a primary residence. As of January 2024, property owners in participating cities with an ADU on their land will be able to sell it separately, following the same rules that apply to condominiums. Under the new law, local governments can opt in to the ADU-as-condominium approach by passing an ordinance to that effect.

As with new condominiums, homeowners building ADUs must notify the local utilities, including water, sewer, gas and electric, of the creation and separate conveyance of the unit. Each property will also have to form a condo association (called a home-owners association in California) to assess dues to cover the cost of caring for the property’s exterior and shared spaces, such as the driveway, a pool or a common roof. Similar to condominiums on one property, the home and the ADU will have two different property taxes. Thus, the bill allows two distinct parties to legally own discrete parts of the same property, with one party owning the primary residence and the other party owning the ADU.

Arguments in favour of allow ADU sales were that it will:

- Permit gentle density that will maintain the residential façade and aura of neighborhoods while creating new low-visibility units.
- Help offset the growing housing crisis by encouraging the creation of more lower-cost units.
- Enhance access to homeownership, e.g., for family members trying to get a foothold or keep a home in a challenging housing market
- Help meet state-mandated municipal affordable housing supply targets
- Encourage growth through infill rather than the spread of the urban fabric.

Adoption of the bill was complicated by the opposition of the California Association of Realtors, whose main argument was that the bill did not have enough guard rails and could create unintended consequences. Their key concern was that “condoization” of ADUs would open the door for large scale Real Estate Investment Trust (REIT) sweeps of the ADU market and to speculative ADU developers who could rapidly gentrify and transform neighborhoods with limited local input. Research from Oregon, Washington, and Texas where ADU condos are commonplace gathered by the Casita Coalition demonstrated that these concerns were unfounded and that such condos are eligible for all customary protections including clear title, and federally backed mortgages.



4. Outcomes

The bill was passed in October 2023 and took effect on January 1, 2024, so it's too early to speculate on outcomes. Many municipalities in California – including some of the largest and most influential -

are currently reviewing the implications of the bill and considering whether to opt in. For example, Santa Monica council has directed the planning director to draft an ordinance and bring it back for approval.

5. Lessons learned

Facilitators

- Point out success with similar measures elsewhere. Advocates for the bill called attention to other states where the sale of ADUs has been permitted, including Oregon, New Jersey, Washington, and Texas.
- Move forward incrementally – e.g., making the changes mandatory instead of voluntary would have attracted major opposition. Once minor changes are in place and prove benign, further change becomes more plausible.
- Anticipate objections and address them before they gain momentum. For example, advocates obtained a letter from the Federal Housing Finance Agency (which regulates mortgage lenders) saying that ADUs converted to condos would be treated as conventional condos for purposes of mortgage eligibility. This neutralized opposition to the bill from mortgage bankers.
- Get the message right. Rather than saying this measure will address the housing crisis, focus on the practical benefits, such as increasing access to homeownership for family members.
- Make it as easy as possible for municipalities to opt into the program. For example, the Casita Coalition generated a sample ordinance municipalities could use as a template and distributed it to city planners mayors and councillors across state.
- Propose ways to alleviate fears of REITs or other investors buying up ADUs. For example, the sample ordinance circulated by the Casita Coalition contained clauses that would favour sale of ADUs to family members.

Challenges

- Implementation of the bill depends on the voluntary participation of local governments, which means that advocates will have to do battle with those who want to prevent change in every city and county in the state.
- Suburban home-owners associations are typically opposed to condoization of ADUs, meaning that impacts of the bill may be diluted.
- The bill requires that a condo association be set up to define the relationship between the principal and ADU owners, a process that might be daunting for some people.



6. Next Steps

- Supporters of the bill are hoping that a few cities and counties will act as early-adopters and pass local ordinances to implement the bill.
- As experience with ADU condominium conversion spreads, the Casita Coalition will be working with their academic partners to track local implementation of the bill and gather evidence of success.
- This will provide the evidence needed to push for further legislative reform, i.e., to make it mandatory for all local governments to permit ADU sales as condos.

7. Resources

- California Legislature, 2023. AB-1033 Accessory dwelling units: local ordinances: separate sale or conveyance: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1033
- California Association of Realtors, undated. Frequently Asked Questions: Assembly Bill 1033 – Separate Sale or Conveyance of ADUs. [https://www.car.org/-/media/CAR/Documents/Your-CAR/PDF/Get-Involved/CAR_AB1033FAQ_3-\(1\).pdf](https://www.car.org/-/media/CAR/Documents/Your-CAR/PDF/Get-Involved/CAR_AB1033FAQ_3-(1).pdf)
- Casita Coalition, 2023. How to Implement New State ADU Condominium Law: <https://static1.squarespace.com/static/5f2c2d67c58236227115e0de/t/65397c083ac9fc75cf8701fd/1698266121029/AB-1033-Casita-Coalition-RJR-ADU-Condos-memo.pdf>
- Josh Alexander, 2023. Controversial new bill California AB 1033 - Everything you need to know: <https://www.youtube.com/watch?v=5Nh49udh1TY>