



use that meets the requirements of existing law regarding ADUs and JADUs.

**This bill:**

- 1) Provides that an owner of a separate interest (e.g., an individual dwelling unit) in a CID shall not be subject to a provision in, or amendment to, a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or lease of any of the separate interests, ADUs, or JADUs, in that CID.
- 2) Authorizes a CID, however, to prohibit the short-term rental of a separate interest for a period of 30 days or less.
- 3) Also authorizes a CID to impose reasonable rental restrictions that have the effect of limiting the total number of rentals to 25% of the separate interests in the CID. Provides that ADUs and JADUs shall not be counted toward this cap.
- 4) Authorizes an HOA to adopt a higher percentage of rental restrictions in order to help buyers qualify for loans insured by the Federal Housing Administration (FHA) or guaranteed by the Department of Veterans Affairs (VA), the Federal National Mortgage Association (Fannie Mae), or the Federal Home Mortgage Loan Corporation (Freddie Mac); facilitate loan financing for the CID; or facilitate acquisition and maintenance of insurance at industry-recognized HOA rates.
- 5) Repeals the existing law provision allowing rent or lease prohibitions in CID governing documents effective prior to January 1, 2012.

**COMMENTS**

- 1) *Author's statement.* "We must marshal all available resources to address the housing and homelessness crisis. There are millions of homes across the state that have the potential to be rented to Californians in need of housing but are prohibited from being leased under outdated HOA rules. AB 3182 prohibits rental bans in HOAs to allow homeowners who want to, rent out their homes."
- 2) *Background: CIDs.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in

California comprising over 4.8 million housing units, or approximately one-quarter of the state's housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents.

- 3) *Expanding the right to rent out.* SB 150 (Alarcon) of 2011 required CIDs to allow owners to rent or lease their units, but applied prospectively, exempting governing documents adopted prior to January 1, 2012. That bill, which was sponsored by the California Association of Realtors, was opposed by the Community Associations Institute (CAI), the organization representing CIDs. CAI argued that CID rules and regulations, including renter restrictions, need to be fluid and change with conditions imposed by the mortgage market or personal needs. In addition, CAI stated that that rental rules should be uniform for all owners, not differ based on when a unit was purchased. This bill, by removing the exemption for pre-2012 governing documents, would apply the right to rent or lease out a unit in a CID, to all units.
- 4) *Home loan concerns.* CAI opposed this bill in the Assembly based on concerns that it could jeopardize financing opportunities for those looking to purchase a home in a CID. Specifically, individuals seeking loans from government entities such as the FHA or VA, or seniors seeking to refinance through a reverse mortgage, would not be covered if the owner occupancy rate falls below a certain threshold. According to the FHA website, such requirements are intended to prevent investors from profiting off the government loan program's affordable rates and less stringent lending guidelines. Most FHA loans require the purchaser to live in the home for at least one year prior to renting it out. These loan opportunities are important for low- to moderate-income households, who might otherwise be unable to afford to purchase a home. In addition, there are reports that homeowners and CIDs face difficulty with the issuance of insurance policies when more than 25% of home in the CID are rented out.

To address these concerns, the author amended this bill on July 15, 2020 to allow an HOA to impose restrictions that effectively limit the total number of rentals in the CID to 25%. The amendments also give an HOA the flexibility to raise the cap higher if needed to meet FHA or Freddie Mac requirements or to facilitate other financing or insurance needs.

- 5) *Opposition concerns.* CAI, writing in opposition to this bill, states concern that it will jeopardize the opportunity for an HOA to access financing for critical maintenance and infrastructure issues that would otherwise have to be funded through assessment increases on individual owners. CAI also states concern that this bill could hurt first-time homebuyers' ability to obtain FHA loans, veterans' ability to obtain VA loans, and seniors' ability to refinance through reverse mortgages. Finally, CAI states that this bill will increase investment buying within CIDs due to the ability to rent multiple units.

In addition, this bill was amended in the Assembly to allow a CID to prohibit rentals of 30 days or less. The Fairway Tennis Maintenance Association, writing in opposition to this bill, states that this provision would alter the compromise reached by SB 150 by taking away the rights of homeowners while granting new rights to CIDs. The Association asks that the bill be amended to allow owners to continue short-term rentals.

- 6) *Double referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committee are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Judiciary Committee.

According to the Senate Judiciary Committee:

“One issue of particular relevance to Senate Judiciary Committee jurisdiction is remedies and enforcement. As noted elsewhere in this analysis, there are a number of provisions in existing law that limit the authority of common interest developments to restrict what the owner of each separate interest may do. Several of those provisions include specific remedies in the event that there is a dispute between the common interest development and a member about application of that provision.

In the event that the owner of a separate interest wants to install a television antennae or satellite dish and believes that the common interest development is putting unreasonable obstacles in the way, for example, the member may sue the common interest development and the prevailing party is entitled to recover attorney's fees. (Civ. Code § 4725(d).) Similar provisions exist regarding installation of rooftop solar systems (Civ. Code § 714(g)) and display of the U.S. flag (Civ. Code § 4705(c).) Such two-way fee-shifting statutes heighten the

downside risk for litigants on both sides: not only may they lose the case; they may have to pay the other side's attorney bill as well.

At least two provisions limiting the authority of common interest developments to regulate their members' actions use a different approach. The provisions promoting installation of electric vehicle charging stations (Civ. Code § 4745(k) and time-of-use meters (Civ. Code § 4745.1(i)) both employ one-way fee shifting provisions: only the member gets attorney's fees upon prevailing. The idea is to promote the underlying public policy aim by rewarding the bringing of meritorious claims.

Finally, still other provisions of this nature – regarding having pets (Civ. Code 4715), displaying religious items on an entryway (Civ. Code § 4706), or growing a garden for food (Civ. Code § 4750), for instance – are like this bill and the statute it modifies: silent as to remedies. Presumably, the owner of the separate interest could sue for declaratory relief or an injunction perhaps, and any actual damages suffered, but as to attorney's fees, the default “American Rule” would apply. Under the American Rule, each side pays for its own attorney fees regardless of who prevails in a legal dispute. Since that bill is likely to be substantial, the prospect of paying it will dissuade many from bothering to try to enforce their rights in the first place. This may be seen as beneficial, since it discourages litigation. On the other hand, it can be viewed as problematic, since it probably means that the underlying policy probably will not be enforced as vigorously as it would be if a one-way fee shifting clause were included.”

#### **RELATED LEGISLATION:**

**SB 150 (Chapter 62, Statutes of 2011)** — exempted an owner of a unit in a CID from any prohibition on renting or leasing the unit, except when the prohibition was effective on or after January 1, 2012.

**AB 1927 (Knight, 2010)** — would have established specific procedures for a CID to follow when initially recording or amending governing documents, on or after January 1, 2011, in a manner that prohibits the rental or lease of individual units. *This bill was vetoed by Governor Schwarzenegger.*

**AB 2259 (Mullin, 2008)** — would have exempted an owner of a unit in a CID from any prohibition on renting or leasing the unit, unless that provision was effective prior to the date the owner acquired title. *This bill was vetoed by Governor Schwarzenegger.*

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

**POSITIONS:** (Communicated to the committee before noon on Friday,  
July 24, 2020.)

**SUPPORT:**

California YIMBY (Sponsor)  
Bay Area Council  
Lake Wildwood Association

**OPPOSITION:**

Community Associations Institute  
The Fairway Tennis Maintenance Association  
2 Individuals

**-- END --**