The legislature recently passed several new laws designed to address California’s housing crisis. The new laws are intended to make it easier to create accessory dwelling units (ADUs). While existing law provided for such units, studies showed that local ordinances, perhaps unintentionally, prevented property owners from building accessory dwelling units by imposing standards relating to lot coverage, setbacks, off-street parking, or construction.

Under these new laws, the single term “accessory dwelling units” (ADUs) shall be used to describe what in the past have been referred to as second units, granny flats/units, in-law units, or secondary dwelling units. Historically, each of these terms may have had a different definition depending upon what city or county the property was located in.

The definition of an accessory dwelling unit is now “an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.” It also includes efficiency units and manufactured homes.

The new laws are intended to limit the ability of local governments to regulate ADUs and require that local governments adopt an ADU ordinance that is consistent with the new state requirements by January 1, 2017. While local governments may enact a specific ADU ordinance, such an ordinance may not be enforced as of January 1, 2017 if that ordinance imposes requirements beyond those set forth in the new state laws.

Some of the highlights of the new laws are that:

1. ADU applications must be approved or disapproved within 120 days of receipt, and this must require only a ministerial review. This means that no discretionary review is permitted in connection with an application.

2. The permitted size of an ADU attached to an existing dwelling has been increased to 50 percent of the existing living area (up from 30 percent), with a maximum permitted increase in floor area of 1200 square feet. ADUs that are in detached buildings shall not exceed 1200 square feet of floor space. ADUs must still be consistent with existing zoning laws and general plans regulating the density of lot development.

3. With respect to parking, the new laws state that only one space per ADU or bedroom may be required, and the parking space requirement under certain circumstances may be met by utilizing setback space or as a result of tandem parking.

4. The laws provide for the approval of ADUs in existing structures provided that certain requirements are met, including that the ADU is to be contained within the existing space of a single-
family residence or accessory structure; the property is zoned for single-family residential; there is an exterior access that is independent from the existing residence; and there are sufficient side and rear setbacks from a fire safety standpoint.

(5) Applicants for the ADU must be owners/occupants of the property that is the subject of the request and the ADU must be used for rentals of terms longer than 30 days.

(6) ADUs that are contained within existing structures are not to be considered new residential uses for purposes of calculating connection fees or capacity charges. With respect to ADUs that are not located within and existing structure, a local government may require new or separate utility connections, but those charges are to be proportionate to the burden of the proposed ADU on the water and sewage systems.

The foregoing is a very general overview of a new set of laws that will be subject to further interpretation and clarification by both local government agencies and the state through our court system.

The importance of these new laws to buyers and sellers should not be overlooked. First, how will these laws impact the value of a given property? If a property has an existing ADU, can it be legalized and, if so, at what cost and over what period of time? Is this an action that a seller wants to undertake before listing the property? On the buyer’s side, investigating the potential use of a property to meet the needs of that buyer has always been an issue. The outcome of any such investigation may impact the buyer’s ability to afford the property and may also impact a lender’s qualification of that buyer and the property.

These new laws regulate planning and zoning issues. They do not address issues having to do with building codes. Planning and Zoning Departments, generally, regulate the use of property, lot coverage, development areas, etc. Building Departments regulate the construction and Code compliance of whatever improvements are made to a property. These departments are different than the Tax Assessor’s office. While records from the Tax Assessor’s office may be helpful in identifying the historical evolution of an ADU on a property, the fact that the Tax Assessor’s office previously recognized the existence of an ADU structure does not legalize that structure from the standpoint of either the Planning/Zoning Department or Building Department.

As with any other issue to be investigated by either a seller or buyer, it is always important to find qualified individuals to assist our clients. Land-use consultants generally can assist with planning and zoning issues. Some of these consultants may also be able to assist with issues regarding Building Department compliance. Other professionals who could assist in that regard include licensed general contractors, architects, and/or engineers, depending upon the specific issue. Locating these types of qualified individuals is always a challenge. One way to identify a potential land-use consultant is to ask a planner at the government office overseeing the area in which the property is located. Many times, former planners for that jurisdiction have retired and are now in business as private consultants. The same inquiry can be made at a local Building Department with regard to contractors, architects, and/or engineers who may have experience in that jurisdiction.

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