

ACCESSORY DWELLING UNITS

REALTOR® Party
Hot Topic Alerts



The shortage of affordable housing in cities is a growing problem, and cities are looking at many different ways to address this problem. One strategy that is growing in popularity is the accessory dwelling unit (ADU). ADUs may be known as ["granny flats"](#) or ["mother-in-law apartments,"](#) ["carriage houses,"](#) ["guest houses,"](#) or, in Washington, D.C., ["English basements."](#) Whatever term may be used, an ADU is defined as a smaller, independent residential dwelling unit located on the same lot as a single-family home. There is no question that ADUs are popular with homeowners. In [Los Angeles](#), 20% of the permits issued for new housing construction are for ADUs. A city planner in [one Minnesota suburb](#) says that the most common response he hears from residents who are notified that one of their neighbors has applied for an ADU permit is "That's a thing? How can I do that?"

In this Hot Topic Alert, we focus on some of the issues surrounding accessory dwelling units.

We look at the different types of ADUs, and how they are important to the real estate market. We examine some of the state and local laws relating to ADUs, and the property rights issues raised by restrictions on ADUs. Finally, we look some of the ways REALTORS® are involved in the promotion of ADUs.

ADUs AND THE REAL ESTATE MARKET

Increasing the supply of affordable housing is a challenge for communities everywhere. While many cities are going the traditional route of [financial subsidies](#), other options include measures to increase housing density in order to put more housing on a limited supply of available land. [Removing restrictions](#) that limit residential neighborhoods to single-family houses is one option that is being tried. Another way of increasing density that is not as sweeping as removing housing density restrictions from the entire city is to [allow ADUs](#) in neighborhoods that are predominantly single-family.

ADUs have [great potential](#) to increase the supply of affordable housing. ADUs increase the availability of housing by [leveraging](#) the existing housing stock. They also disperse affordable housing, rather than concentrate it in a few areas. The [increased housing density](#) from the development of ADUs will thus provide more affordable units for renters.

The market for the affordable housing provided by ADUs is a large one, and it is a diverse one. The [American household](#) is no longer defined solely by the model of two parents living with children. Today, the average American household consists of only [2.6 people](#). Americans are marrying later in life, or they are living alone or with a partner. People are also [living longer](#) and find that they no longer need or want the space of a traditional single-family home. An often overlooked part of this demographic is the farmer who has [retired from farming](#) and wants to live in town, but still be near his or her former home. ADUs are also useful for families who want to help other family members live nearby, but who want them to have a [separate residence](#). A homeowner may want to furnish a living space for his or her parents, or may want to make sure a child who has just started to work and be independent has a decent place to live while still not living “at home.”

The demand for ADUs is potentially high, but what are the effects of fulfilling that demand? What happens to the neighborhood property values when ADUs are built? Many residents who oppose ADUs in their neighborhoods

[claim](#) that the increased density from ADUs will change the character of their predominantly residential neighborhoods, and cause property values to fall. There is [no evidence](#) that either supports or refutes this claim. ADUs, although growing in popularity, are still relatively rare in the housing market. [One study](#) has found that increased density has a slight negative effect on home prices; however, the same study also found that homebuyers are willing to pay a premium for features of denser, “new urbanist” neighborhoods. Some have [suggested](#) that an ADU will add value to the residence it is attached to, but the evidence for this suggestion is [largely anecdotal](#). A definitive answer to the question of how ADUs affect property values will probably not come until ADUs become a more commonplace feature of the real estate market.

THE TYPES OF ADUs

Not all ADUs are the same. According to [HUD](#), there are three main types of ADU: interior, detached, and attached. The difference between the three is the proximity of each one to the main dwelling unit. An interior ADU is one that is located within the primary dwelling place. Usually, they are built through conversion of existing space. Examples would be attics or basement areas that are converted into apartments. Detached units are those that are physically separated from the primary dwelling. They may take the form of a building constructed or converted on the property, or they may be living space added to an existing building, such as an apartment added to a detached garage. An attached ADU is one that is added to the primary dwelling without being inside the existing building, such as a room added over an attached garage.

Local ordinances and state statutes set out some things that all ADUs will have to have in common. While [some laws](#) may say only that an ADU is a “habitable” unit contained on one lot, the usual definition is that an ADU must have its [own cooking, sleeping, and sanitation facilities](#). A room that is rented without its own bathroom and kitchen will thus not be an ADU. Some laws require that an ADU must have its own [legal means of ingress and egress](#), while others say



that an ADU [“may” have a separate entrance](#).

STATE ADU LAWS

State governments have begun to recognize the importance of ADUs and their potential to help ease critical shortages of affordable rental housing. Many states have adopted new legislation in recent years that is designed to promote ADUs.

Local zoning and land use codes represent the most significant barriers to the expansion of ADUs. States have responded by enacting laws that prohibit direct or indirect prohibitions against ADUs in local zoning codes. For example, an [Oregon law](#), effective August 8, 2019, strengthens that state’s existing prohibition against city or county charters that ban ADUs. The new law states that local or county charters may not impose owneroccupancy requirements “of either the primary or accessory structure,” and may not require the construction of additional off-street parking. Effective January 1, 2020, the Oregon law will also forbid enforcement of a “provision in a recorded instrument affecting real property” that would allow the development of a single-family home on the property but prohibit the construction of an ADU on that property.

[New Hampshire law](#) provides that a municipality with a zoning ordinance must allow ADUs “as a matter of right or by either conditional use permit...or by special exception, in all zoning districts that permit single-family dwellings.” The units that must be allowed (one per single-family dwelling) must be attached to the single-family dwelling, and must be connected to the dwelling by an interior door (the municipality may not, however, require that the interior door remain unlocked). Note that municipalities in New Hampshire may allow [detached ADUs](#), but are not required to do so. The ADU law in [Washington state](#), enacted in 1993, provides that all counties planning under the state’s [Growth Management Act](#), counties with populations over 125,000, and cities with populations over 20,000 must adopt zoning standards that conform to the state’s

[model accessory dwelling unit ordinance](#). That ordinance allows the construction of ADUs that meet specific development, design, and owner-occupancy standards.

Other state laws take a less prescriptive course. [California law](#) recognizes ADUs as an essential component of the state’s housing supply, so the state [allows local agencies](#) to provide by ordinance for the creation of ADUs. The ordinances must designate areas in which ADUs will be allowed, and must impose standards on ADUs “that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.” [Florida law](#) permits the adoption of an ordinance to allow ADUs “in any area zoned for single-family residential use.” Such an ordinance may be adopted “[u]pon a finding by a local government that there is a shortage of affordable rentals within its jurisdiction.”

A new law in [Maine](#), effective September 19, 2019, states that municipalities are “encouraged to seek creative approaches to assist in the development of affordable housing, including ...[p]rovisions for accessory dwelling units.” In [North Carolina](#), every municipality with a population of at least 90,000 is required to prepare a report on affordable housing that details the strategies being employed to limit the cost of privately developed housing, including the extent to which municipalities are engaged in “[c]reating or allowing for, and reducing regulations related to, accessory dwelling units in residential zones.” The report must be submitted to the Joint Legislative Oversight Committee on General Government and the Fiscal Research Division on or before October 1, 2019.

LOCAL ADU ORDINANCES

Many cities, particularly those with high housing costs, are taking steps to allow the construction of ADUs. Seattle has enacted an [ordinance](#) that eliminates off-street parking requirements and owner-occupancy requirements for ADUs. The new Seattle ordinance will also allow two ADUs to be constructed on the same lot. The ordinance went into effect August 8, 2019. In [San Francisco](#), ADUs are allowed on any lot located in an area that allows residential use. The ADU must be constructed entirely within the existing built envelope of an existing building or within the existing built envelope of an existing and authorized auxiliary structure on the same lot. San Francisco also has a program that allows the “[legalization](#)” of ADUs that were built or added without permits.

[Boston](#) experimented with an ADU Pilot Program from October 2017 to May 2019. The Pilot Program allowed the construction of ADUs in owner-occupied dwellings with three or fewer units. The City offered [guidance and advice](#) on the design and construction of ADUs. The City also offered [no-interest loans](#) for ADU construction to eligible homeowners. Over the eighteen months the Program was in operation, [more than 50 homeowners](#) received assistance in moving from ADU design to construction. The

Pilot Program was so successful that the zoning changes in the Program have been made [permanent](#), and the Mayor’s FY2020 budget has recommended that \$650,000 be provided for no-interest loans under the Program.

Local ADU ordinances, however, often come with restrictions. While most ordinances do not limit the use that may be made of the ADU, some do. The ADU ordinance in [St. Paul](#) states that either the primary or the accessory unit must be occupied by the owner as his or her permanent residence, and no more than one family is allowed in both the principal unit and the accessory unit together. [Santa Cruz](#) does not allow short-term rentals, such as Airbnb, in ADUs. [Honolulu](#) also prohibits the use of ADUs for short-term rentals by requiring that an ADU that is leased out may be leased for periods of no less than 180 days.

In addition to occupancy or use restrictions, local ordinances may also place restrictions on the design and construction of an ADU. For example, the [Nashville ordinance](#) relating to ADUs states that the living space of a detached ADU may not exceed 700 square feet. The ordinance also provides that a detached ADU must “be of similar style, design and material color as used for the principal structure and



shall use similar architectural characteristics, including roof form and pitch, to the existing principal structure.” A detached ADU in Nashville “may have dormers that relate to the style and proportion of windows on the detached accessory dwelling and shall be subordinate to the roof slope by covering no more than fifty percent of the roof.”

WHOSE RIGHTS ARE BEING INFRINGED?

The debate over whether to allow ADUs comes with [tension between two important interests](#). On the one hand, property owners want to [use their property](#) as they see fit, whether that use is to accommodate a family member, turn a small profit, or just to help with the monthly mortgage payment. On the other hand, the residents whose neighbor wants to construct an ADU [may be afraid](#) that allowing ADUs in their residential neighborhoods will bring about increased traffic and crowding, and may attract transient residents who will drive down the values of other properties.

Any restriction on how an owner uses his or her property may be regarded as an infringement on property rights. Some such infringements, like reasonable zoning ordinances, have [long been regarded](#) as being within the power of the state or local government to adopt for the general welfare. Property owners may [challenge restrictions](#) and may certainly complain about them. From a legal standpoint, however, a restriction on using property has to be quite dramatic before courts will take notice.

A restriction on the use of property will rarely be an [unconstitutional taking of property](#) unless there is little or no viable economic use that can be made of the property. Prohibiting or limiting ADUs on a property already occupied by a single-family home, or on which a single-family home could lawfully be constructed does not deprive an owner of all “viable economic use” of the property.

As far as infringing on the rights of neighbors, the negative impacts of ADUs are, most likely, overstated. ADUs are often [strictly limited in size](#), so even an attached or unattached ADU

will not be architecturally overwhelming. The small size also means that ADUs will appeal mostly to one- or two-person households. Some local ordinances limit the total number of people that may live on a property with an ADU. The ordinance in [Ann Arbor](#), for example, limits the number of people who may live in an ADU to “two persons and their offspring living as a single housekeeping unit.” The total number of persons residing in the primary dwelling unit and the ADU combined may not exceed “four persons plus their offspring, except when a functional family is allowed by special exception use.”

There are a number of reasons homeowners are interested in adding ADUs to their residence. One of the most [common reasons](#) is the possibility of extra income. The rent from an ADU can help with the homeowner’s mortgage payment, or it can just be a nice bit of extra income every month. Those who would rent their units need to understand that they would become landlords, and the [legal relationship of landlords to tenants](#) is a complex one. A landlord is not shielded from the laws regarding residential rentals just because he or she is renting an ADU.

ADU owners who want to rent their units may face an additional issue. Many city ordinances allow ADUs only if they are to be occupied by the owner, or a [member of the owner’s family](#). An [ordinance](#) may allow ADUs, and not explicitly prohibit rentals, but may prohibit advertising the ADU “for occupancy through any print or electronic media or through placement of signs on the property.” Typically, rental restrictions are geared more towards limiting short-term rentals, rather than long-term tenancies. Prohibiting rentals of ADUs would go against one of the main justifications for allowing ADUs in the first place, which is to increase the supply of affordable rental housing.

When a unit is rented out, the owner becomes a landlord, subject to the laws relating to residential leases. One of the laws that govern leases is the U.S. Fair Housing Act, and state laws patterned on the Act. The Fair Housing

Act prohibits landlords from discriminating against tenants or prospective tenants based on their membership in seven protected classes (race, color, religion, sex, handicap, familial status, national origin). State and local laws may contain additional protected classes. For example, the ordinances in [Boulder](#) prohibit discrimination based on, among other things, "sexual orientation, gender variance, genetic characteristics." Some potential ADU owners may hesitate to rent out their units because of such laws. One owner may have a religious objection to unmarried couples living together, while another owner who has turned the space over a garage into an apartment may see that the apartment would not be accessible to a renter with a disability.

Federal Fair Housing Laws, and the laws of many states, include what is known colloquially as the "Mrs. Murphy exemption" ([42 U.S.C. § 3603 \(b\) \(2\)](#)). Mrs. Murphy is a hypothetical widow who wants to rent out rooms in her house, but who wants to be choosy about those to whom she rents. The exemption provided for her in the Fair Housing Act says that the Act does not apply to "rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence." The owner of an ADU who lives on his or her property and who has three or fewer units for rent probably will not be covered by the Fair Housing Act.

Although federal Fair Housing laws probably do not apply, ADU owners may still have to be concerned about state or local laws. For example, [California law](#) says that the exemption applies only to renting "a portion of an owner-occupied single-family house" to a roomer or boarder living in the household. [Oregon law](#) applies the exemption only if "all occupants share some common space within the residence."

THE ROLE OF REALTORS®

Auxiliary dwelling units present an opportunity for affordable housing that is economically



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feasible. Real estate professionals can play an important role in making sure that auxiliary dwelling units are a part of the housing mix, especially in communities with a too-low supply of affordable housing for permanent residents. Two REALTORS® associations provide examples of how this can be done.

In Massachusetts, the Cape Cod and Islands Association of REALTORS® has joined with other local business and civic groups in the [Smarter Cape Partnership](#). The Partnership is the driving force behind an initiative to modify the accessory dwelling unit bylaws in towns on Cape Cod to increase the number of available ADUs. Cape Cod has a growing shortage of affordable housing for permanent residents. It has long been a popular vacation destination, and the demand for vacation accommodations and second homes has put unusual pressure on the housing market. To help ease the housing crunch, the partnership has advocated in favor of a model bylaw proposed by the Cape Cod Commission. This model bylaw would make it easier for homeowners to build and rent out ADUs on their property, thus increasing the supply of year-round rental housing while preserving the unique characteristics and environment of the communities on the Cape. The efforts of the Association and the Partnership are bringing success. So far, six towns across Cape Cod (Falmouth, Harwich, Brewster, Chatham, Provincetown, Orleans, and Truro) have adopted bylaws that allow ADUs on property with no tenant income restrictions or family-relationship requirement. More towns will be considering ADU bylaw articles at their

town meetings in the near future. The Association is also working with lenders [to make financing available](#) for homeowners who wish to add ADUs.

Hawai'i is another area that suffers from a lack of affordable housing, and it is another state in which ADUs are being used to help ease that shortage. In 2015, the City and County of Honolulu passed an ordinance to [allow homeowners to build ADUs](#). The ordinance defines an ADU as a living space with a full kitchen, bathroom and sleeping facilities. A homeowner may build or place an ADU on his or her property if the lot is at least 3,500 square feet, and if it contains only one single-family dwelling. In 2017, to help publicize ADUs, the [Hawai'i REALTORS®](#) partnered with other organizations, to build an ADU near the State Capitol grounds in Honolulu. The ADU was completed with a solar photovoltaic system and a ramp for accessibility.

CONCLUSION

Accessory dwelling units are increasingly being recognized as an effective means of addressing the nationwide shortage of affordable rental housing. Well-crafted state and local laws and ordinances that accommodate both the rights of property owners who wish to add an ADU and the concerns of their neighbors are critical to the success of ADUs in the affordable housing market. REALTORS® can play a significant role in promoting ADUs as an affordable housing strategy.

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ADDITIONAL STATE & LOCAL RESOURCES

State Issues Tracker: Database with over thirty real estate related issues and state laws. Examples include: Transfer Taxes, Seller Disclosures, Broker Lien Laws, Foreclosure Procedures, Sales Tax on Services, Licensing Requirements & Maintenance, etc.

White Papers: Comprehensive reports prepared for NAR on issues directly impacting the real estate industry. Examples include: Rental Restrictions, Land Banks, Sales Tax on Services, State & Local Taxation, Building Codes, Hydraulic Fracturing, Foreclosure Property Maintenance, Climate Change, Private Transfer Fees.

Growth Management Fact Book: Analysis of issues related to land use and modern growth management topics include: density – rate of growth, public facilities and infrastructure, protection of natural resources, preservation of community character, and affordable housing. All available on REALTOR® Party website under the *State & Local Resources* tab.