

TODAY'S WEBINAR:

# Buying and Selling Properties with Illegal Units



Fried,  
Williams &  
Grice Conner

EDRINGTON  
& ASSOCIATES



# Meet Our Speakers



**Steven Williams**  
PARTNER



Fried,  
Williams &  
Grice Conner

- Founding Partner at Fried, Williams & Grice Conner
- Representing Bay Area property owners since 1999
- Practice areas include:
- Commercial and residential leasing
- Rent and eviction control
- Purchase/sales transactions
- Neighbor disputes



**Philip Barthman**  
SR. BUILDING INSPECTOR



EDRINGTON  
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- Alameda County Building Inspector, 20+ years
- Electrician, 35+ years
- Former Instructor, Laney College, Electrical Code
- ICC Commercial Combination Inspector
- ICC Combination Inspector
- ICC Building Inspector
- ICC Electrical Inspector
- ICC Plumbing Inspector
- ICC Mechanical Inspector



**Steven Edrington**  
PRESIDENT



EDRINGTON  
& ASSOCIATES

- CCIM, CPM
- Real Estate Broker, 25+ yrs.
- Executive Director and lobbyist for EBRHA, 11 yrs.
- Rental property owner and manager, 15+ yrs.
- Investor and developer
- Constructed and consulted on ADUs since 2017
- Expert witness, 12+ yrs, wrongful eviction, standard of care, habitability, etc.
- DRE# 01129470

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# Agenda

- ADU History and Overview
- Illegal Units and Their Risks
- Legalizing a Unit as an ADU
- Financing, Rent Control, and more

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# Disclaimer

This presentation is an overview only and should not be construed as legal advice. Our comments are general in nature and may or may not apply to your specific situation. Always consult competent legal counsel before you or a client engage in terminating a tenancy.

# What is an ADU?



Image: Adapt Dwellings, Inc.

- Also known as:  
In-law units, granny flats
- A secondary house or apartment with its own:
  - Kitchen and bath
  - Sleeping area
  - Separate entrance

# More About ADUs...

- Have been gaining popularity with new state laws in 2017 and 2020
- Previously, very few jurisdictions allowed them officially
- The Bay Area therefore has many unpermitted (illegal) units dating back to post-WWII era

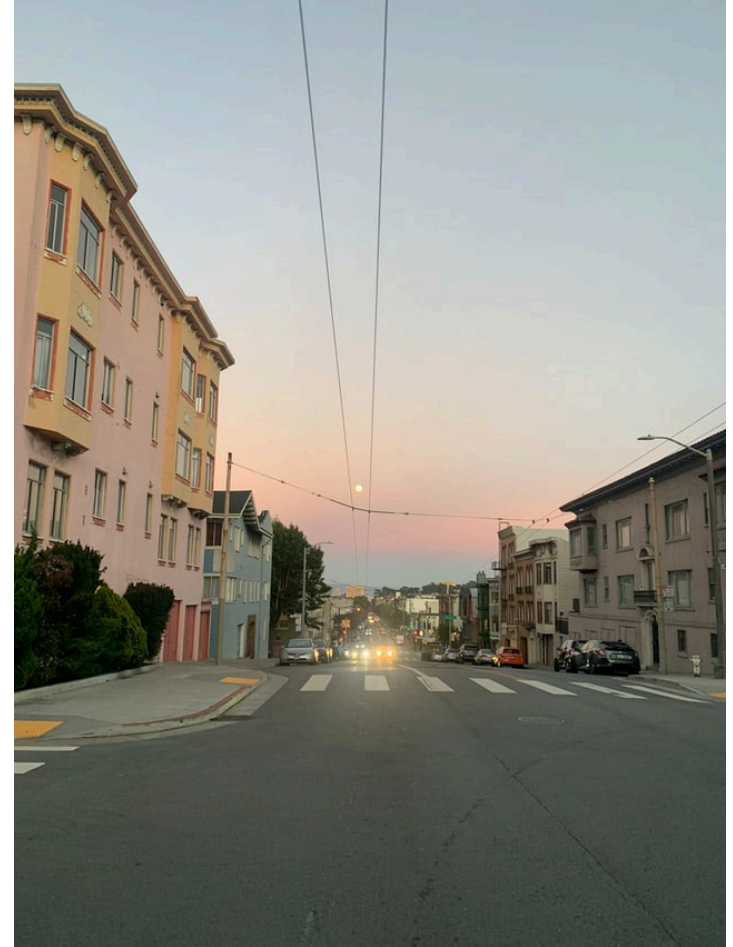


Photo by [Moriah Bender](#) on [Unsplash](#)

# Why ADUs?



Image: Adapt Dwellings, Inc.

- Help address our housing shortage
- Generally, more affordable rental units
- Give property owners more income potential
- Maintain neighborhood look and feel
- State law now removes many local barriers



# Options for Single-Family Lots

PER STATE LAW – LOCAL JURISDICTIONS MAY OFFER MORE BUT NOT LESS

## 1. Build new attached structure



Image: Adapt Dwellings, Inc.

Local jurisdictions may limit size to 850 sq.ft. for 1 BR or 1000 sq.ft. for 2+ BR

- If over 800 sq.ft., total floor area can not exceed 50% of the primary dwelling
- Setbacks at least 4 ft.
- Height limit 16 ft.

## 2. Build new detached structure



Image: Adapt Dwellings, Inc.

- If no local max size, state max is 1200 sq.ft.
- Setbacks at least 4 ft.
- Height limit 16 ft.

## 3. Convert existing space (attached or detached)



Image: Adapt Dwellings, Inc.

- No maximum sq.ft. if within an existing structure
- Eligible for 150 sq.ft. expansion for ingress/egress
- Option for JADU (500 sq.ft. max and within SFR envelope)
- 1 JADU + 1 detached ADU allowed (with owner-occupancy and deed restriction)



# Options for Multi-Family Lots

PER STATE LAW – LOCAL JURISDICTIONS MAY OFFER MORE BUT NOT LESS

## 1. Convert non-habitable space



Image: Adapt Dwellings, Inc.

## 2. Build up to 2 new detached ADUs



Image: Adapt Dwellings, Inc.

Local jurisdictions may limit to 850sq.ft for 1 BR or 1000sq.ft. for 2+ BR

Local jurisdictions can limit a single property to one option, or allow both concurrently

- 2+ unit properties are allowed at least 1
- Larger properties can have 1 for every 4 existing units
- Must be within primary building envelope

- 2+ unit properties are allowed up to 2
- Includes conversion of detached garages or carports often complete rebuild
- If no local max size, state max is 1200 sq.ft.
- Setbacks at least 4 ft.
- Height limit 16 ft.

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# What is ministerial approval?

“A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.”

*Source: San Francisco Planning Department*

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# What else is in the 2020 state laws?

AB 68, AB 881, SB 13

- **Replacement parking:** not required when parking is demolished for an ADU
- **Owner-occupancy:** can not be required until 2025
- **Impact fees:** Can not be charged for an ADU under 750 sq.ft. (proportional thereafter)
- **Zoning corrections:** Correction of nonconforming zoning conditions on existing structures can not be required for permit approval
- **Building corrections:** Owner can request to delay NOV for 5 years when correction not necessary to protect health and safety
- **HOAs:** Cannot prohibit or unreasonably restrict ADUs that meet standards of Government Code

# Legalizing Unpermitted Units

Questions	Answers
What is an illegal or unpermitted unit?	One without the proper certificate of occupancy.
How do you go about legalizing one?	Address code issues, get full plan set, apply to city as an ADU. We can help.
What if there are tenants living there?	Consult legal counsel.

## **CBC 111.1 and CRC 110.1 - Use and occupancy:**

No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made, until the building official has issued a certificate of occupancy...

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# Certificates of Occupancy

- Not uncommon for a single-family home with an in-law unit to have a certificate identifying the property as having only one dwelling
- Not uncommon for Bay Area property owners to rent in-law separately to a residential tenant
- Thousands of units in the region are rented without a certificate of occupancy
  - This is technically still a violation of applicable building codes, and therefore, illegal

# Rental Agreements

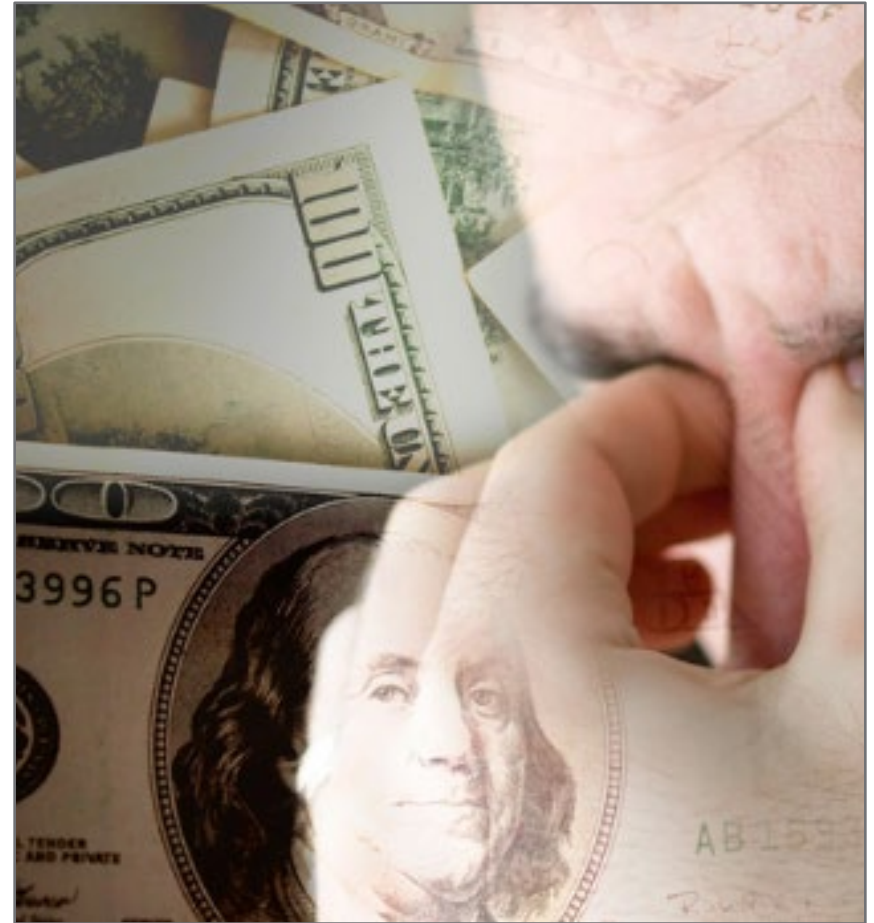
- In California, contracts entered into for an illegal purpose are void
- A rental agreement is a contract
- Tenant may walk away from lease without consequence
- Tenant may sue the landlord



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# Damages

- Rental agreement declared void.
- Return of all rent paid under rental agreement
- Mental or emotional distress
- Out of pocket expenses
- Treble Damages
- Punitive Damages
- Attorneys' fees and costs





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# Practical Course of Action

- Don't Rent Illegal Units!
- Don't represent the legality of the unit
- The tenancy and unit are protected by the Rent Ordinance, so treat them as such
- Obtain landlord insurance coverage policy
- Get help to legalize your units ASAP

# Building Code Considerations



Image: Adapt Dwellings, Inc.

- Ceiling height
- Drainage/water-proofing
- Ingress/egress (fire code)
- Windows
- Utilities
- Heating
- Sound
- Deadbolt
- Many more items...

# Garage Conversion In-Progress

**Original**



**Proposed**



Images: Adapt Dwellings, Inc.

# Garage Conversion In-Progress

**Original**



**Proposed**



Images: Adapt Dwellings, Inc.

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# Financing Options

- Existing savings/assets
- Cash-out refinance
- Home Equity Line of Credit (HELOC)
- Fixed rate 2<sup>nd</sup> mortgage
- Non-traditional options include:
  - Construction/renovation loan
  - Cash out from bank statement or DSCR loans

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# Financing Challenges

- Single-family:
  - Fannie Mae, Freddie Mac, FHA will not count rental income from the ADU in loan qualification
- 2-4 units:
  - Fannie Mae, Freddie Mac may not purchase these loans if an ADU has been added (impacts rates)
- 5+ unit buildings:
  - Commercial loans only. ADU rental income may be counted in considering loan qualification



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# Rent and Eviction Controls

- Units with a new certification of occupancy are exempt for 15 years (AB 1482)
- Rented single-family homes will lose Costa-Hawkins Exemption when adding one or more ADUs to property

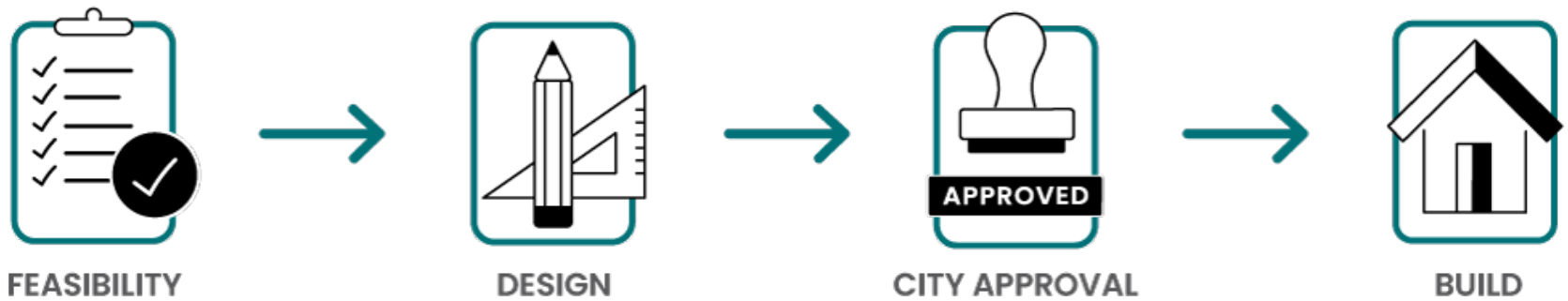


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# Reasons to Legalize

- Boost property value
- Legal rental income, less risk
- Ability to get proper insurance
- Increase legal housing supply

# Our Process



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# Contact Information

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and Expert Witness

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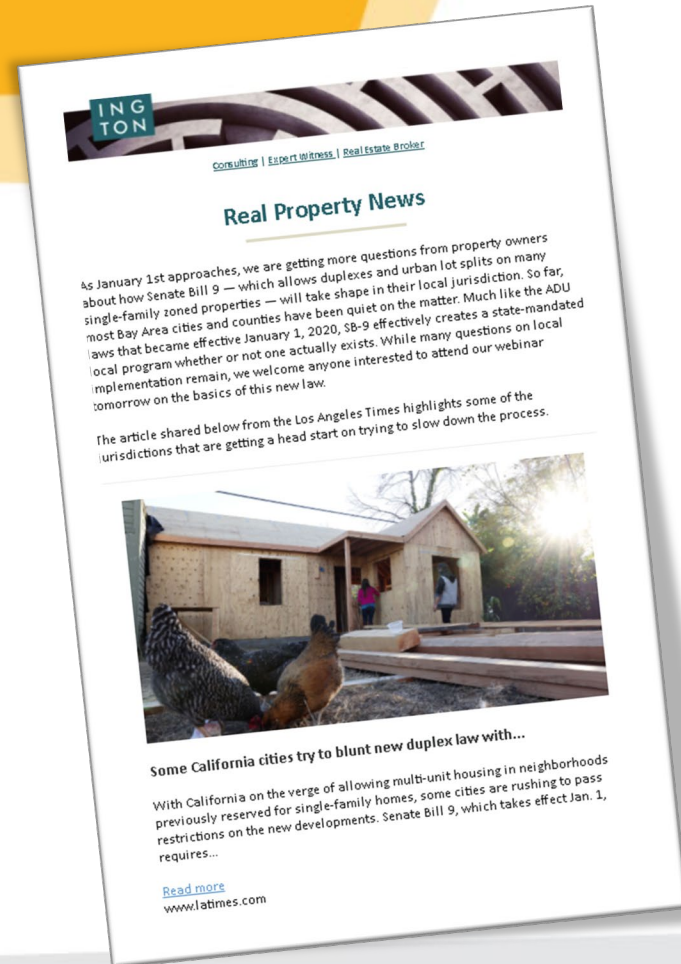
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# Q&A