



# Second Units & Density Bonuses

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**The Problem:** Second unit law and density bonus law are two important state housing laws enacted two decades ago that have not lived up to their potential due, in part, to unreasonable obstacles imposed by local governments.

**Second Unit Law:** Second units can be a valuable addition to a locality's housing stock and assist older homeowners in maintaining independence. They are also a "smart growth" way to add to the stock without using additional land or infrastructure.

Existing second unit law allows creation of second units in residential zones. Development standards (parking, etc.) are set by state law if localities do not adopt a second unit ordinance, but localities have considerable leeway to set their own standards governing second units if they adopt an ordinance.

**Recent Legislation:** AB 1866 (Wright) (Gov. Code Section 65852.2) provides that after July 1, 2003, the permit process for second units is ministerial, which means without a public hearing or discretionary approval. Local governments will be required to implement a process for second units (like the process for obtaining a permit for a room addition, for example) in which the applicant is entitled to the permit if he or she complies with local standards—obviating the need for time-consuming, contentious, costly public hearings.

**Density Bonus Law:** Existing density bonus law requires local governments to grant density bonuses of at least 25 percent, plus additional incentive(s) or equivalent concession/incentives, to developers who construct at least: 20% of their units for lower income households, 10% for very low-income households, or 50% for senior citizens.

**Recent Legislation:** AB 1866 (Wright) (Gov. Code Section 65915), also amends density bonus law, effective January 1, 2003, in a number of important ways.

**Development Standards:** AB 1866 provides that local governments may not apply development standards that make it impossible to develop housing at the density permitted by density bonus law. In numerous cases, local governments adopt a zoning plan in order to meet their fair share housing obligation but then adopt development standards that make it impossible to build at the density provided for in the zoning plan. Such development standards undercut state housing law and local planning goals, exacerbate the housing shortage and increase housing costs. AB 1866 explicitly provides that localities are not required to waive or reduce important environmental, historic or health and safety standards, but they will have to waive or reduce development standards (open space, park-

ing, setback, lot size, height, etc.) to the extent needed to build the housing at the density established by the local government's own plan.

**Concessions/Incentives:** Existing law requires local governments to grant an additional concession/incentive needed to make affordable housing projects feasible, but localities often do not offer concessions or incentives that are meaningful. AB 1866 provides that the local government must grant the concession/incentive the applicant *requests* unless the locality finds that the concession/incentive is not needed to make the affordable housing feasible (or adversely impacts the environment, health and safety or historic resources).

**Condominiums:** AB 1866 makes moderate income condos eligible for a density bonus. This is an important incentive to increase production of this relatively affordable housing type.

**Attorneys Fees:** AB 1866 provides for attorneys fees against localities that violate density bonus law.

**Monitoring Needed:** AB 1866 was sponsored by the California Assn of Realtors, CRLA Foundation and Western Center on Law and Poverty. Californians should closely monitor local government implementation of these changes to second law and density bonus law and consider all available remedies to ensure compliance.