

# FAQs

(frequently asked questions)

## Unwarranted (“in-law”), Legalized & Accessory Dwelling Units in San Francisco

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*This article is provided as a resource for understanding the changes which are taking place in San Francisco’s real estate community, and summarizes those changes as they are understood on the publication date. Updated versions of this article may appear on the firm’s website at [www.g3mb.com](http://www.g3mb.com)*

A surprisingly large percentage of San Francisco’s rental housing inventory consists of **illegal rental units**, often called “in-law units” or “granny flats”. In recent years the San Francisco Board of Supervisors has made it easier to legalize some of these **Unwarranted Dwelling Units (“UDUs”)**, while at the same time making it increasingly difficult for owners to remove **UDUs** from their property

Owners of property with **existing UDUs** may legalize certain of these units as **Legalized Existing Dwelling Units (“LEDUs”)** through the City’s **Dwelling Unit Legalization Program**, subject to compliance with life-safety standards and other restrictions.

Several years ago, San Francisco initiated a trial program to legalize certain empty spaces adjacent or near to existing legal dwellings as **Accessory Dwelling Units (“ADUs”)**. Originally available only in targeted neighborhoods, San Francisco’s trial **Accessory Dwelling Unit Program** has been expanded to all zoning districts that permit residential use.

An ordinance imposing a 10-year wait before nonconforming residential units may be enlarged or remodeled following an Ellis Act eviction **was struck down by the courts in May of this year** (*Small Property Owners of SF Institute v. City and County of San Francisco*, 22 Cal. App. 5th 77). **This may eliminate similar restrictions on adding ADUs.**

### What is an Unwarranted Dwelling Unit (UDU)?

**Unwarranted Dwelling Units (“UDU”)** are existing unpermitted dwelling units. UDUs are often referred to as “unauthorized”, “unwarranted” or “illegal” units, or in common parlance, “in-law” units or “granny flats”.

### What risks are associated with Unwarranted Dwelling Units?

Occupying an Unwarranted Dwelling Unit for your own purposes carries relatively little risk, as does renting the space out for storage purposes. But renting a UDU to **residential** tenants **is** risky. These units are difficult to insure and their illegal status may provide a basis for insurance carriers to deny coverage. Even when a tenant knows the illegal status of a unit before moving in, the tenant has legitimate legal causes of action against the owner for breach of the warranty of habitability and fraud, which may result in an award of monetary damages. And if the tenant ever stops paying rent, the owner may not be able to evict the tenant for non-payment of rent if the underlying lease is held to be fraudulent. Any financial upside in renting a UDU is far outweighed by the potential liabilities inherent in renting a UDU.

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## Am I permitted to legalize my Unwarranted Dwelling Unit?

Maybe. A qualifying UDU may be legalized as a **Legalized Existing Dwelling Unit** (“LEDU”) through San Francisco’s **Dwelling Unit Legalization Program** which permits *one* Unwarranted Dwelling Unit per lot to be legalized in zoning districts that permit residential use, *provided that the UDU was constructed before January 1, 2013*. Owners participating in the **Dwelling Unit Legalization Program** are required to formally register their UDU with the Department of Building Inspection (DBI) and once all life-safety conditions are met, they may legally rent the now-**Legalized Existing Dwelling Unit**. DBI determines the eligibility and enrollment in this legalization program. Properties which are *ineligible* for legalization under the **Dwelling Unit Legalization Program** may be eligible under the City’s **Accessory Dwelling Unit Program** (see below).

## What is an Accessory Dwelling Unit (ADU)?

An **Accessory Dwelling Unit** (“ADU”) is a separate, *new* residential dwelling unit that has been legally added to a residential lot through San Francisco’s **Accessory Dwelling Unit Program**. ADUs are subordinate to the primary residential unit(s) of the building and generally must fit within the existing building envelope (more below). The City’s standards for eligibility and enrollment in the **Accessory Dwelling Unit** (ADU) program are *not the same* as the standards for **Legalized Existing Dwelling Units** (LEDUs).

## Wait – Aren’t Legalized and Accessory Dwelling Units the same thing?

No. **Legalized Existing Dwelling Units** (LEDUs) are *existing illegal units* which have been legalized through the City’s Dwelling Unit Legalization Program. **Accessory Dwelling Units** (ADUs) are *new* units that have been created within an existing structure through the City’s more recent **Accessory Dwelling Unit Program**. (Some illegal units may be eligible for legalization under *both* programs).

## How do I determine whether my existing Rental Unit is legal?

Legal units have current Certificates of Final Completion (“COFC”) or Certificates of Occupancy (“COO”) establishing that the dwelling unit is authorized. Evidence of the COFC or COO can be found on the Report of Residential Building Record (“3-R Report”) for the property. 3-R Reports, which are summaries of a property’s permitting history, can be obtained from the Department of Building Inspection (<http://sfdbi.org/3RReport>). An experienced attorney may also recommend other ways of establishing the legality of a unit.

## Is my Unwarranted Dwelling Unit subject to Rent Control?

Yes. The San Francisco Rent Board has ruled that *regardless of the year constructed, Unwarranted Dwelling Units are subject to the SF Rent Ordinance* (which usually applies only to buildings built before 1979), because no Certificate of Occupancy was ever issued for the UDU. Consequently, even UDUs constructed *after 1979* may be subject to San Francisco’s Rent Ordinance (including rent increase limits and eviction restrictions).

## How can I remove an Unwarranted Dwelling Unit from my property?

In most circumstances, with great difficulty, if at all. In the past, San Francisco’s Department of Building Inspection routinely issued over-the-counter permits for the removal of UDUs. Now, property owners must appear at a public hearing before the Planning Commission to review any application that would result in the removal of a dwelling unit, whether by demolition, merger, or conversion to non-residential use. Because the City is currently seeking to *increase* housing in San Francisco, obtaining the Planning Commission’s vote to *eliminate* a housing unit can be extremely difficult.

## Can the City require me to legalize my Unwarranted Dwelling Unit?

Yes. Property owners served by the City with a Notice of Violation (“NOV”) for renting an illegal unit must either legalize or remove the UDU, or face substantial fines. If an owner of a UDU with an open NOV is unable to evict the occupying tenants, the only available means for curing the NOV may be to legalize the UDU. Moreover, the City’s Planning

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Department currently disfavors the demolition of *any* housing units, even illegal ones, and has become an obstacle to obtaining the permits required for demolition of illegal units. City Planning prefers – and may insist – that the owner legalize the unit instead of removing it, even if the unit is vacant. The capital improvement costs required to legalize the dwelling unit may be costly and cannot be passed through to an existing tenant.

### Can adding an LEDU or an ADU affect my ability to convert my property to condominiums?

Legalizing an Unwarranted Dwelling Unit as an **LEDU**, or adding a new legal **Accessory Dwelling Unit**, will increase the number of dwelling units on the lot, and in so doing may affect a building's eligibility for conversion to condominium apartments. Consult an experienced attorney on what rules are likely to apply to your particular property.

### What are the benefits of adding a Legalized or Accessory Dwelling Unit to my property?

There may be both social and economic benefits to adding a Legalized or Accessory Dwelling Unit to a property. These units may be a solution for multi-generational families who wish to live within close proximity to one another. Or they may offer an opportunity to generate additional rental income.

### Are there any negative impacts of adding Legalized or Accessory Dwelling Units to my property?

The risk/reward analysis for adding a Legalized or Accessory Dwelling Unit to a property is a subjective endeavor; the effects of either program apply to both the immediate property owner as well as all subsequent owners. Legalized and Accessory Dwelling Units are *permanent additions to the lot*. They cannot be destroyed or removed (although in rare instances they may be merged with the primary unit with permission from the City Planning Department). Legalized dwelling units may increase the assessed value of the property (with a higher annual property tax bill), depending on whether the building was originally purchased with the existing illegal in-law unit and the degree of construction which occurs to bring the unit into compliance. Adding a **Legalized Existing Dwelling Unit** to some single-family homes previously exempt from San Francisco's Rent Ordinance could put the home and the new unit under rent control, with future rent increases for *both* units limited to the Rent Board's annual allowable rent increase amount.

### How many Legalized or Accessory Dwelling Units can I add to my property?

Only *one* **Legalized Existing Dwelling Unit** is permitted on each lot under Planning Code Section 207.3. Lots with *4 or fewer* legal dwelling units, including both single-family homes and condominiums, are permitted to add *one* **Accessory Dwelling Unit**; lots with *5 or more* legal dwelling units (and lots undergoing either mandatory or voluntary seismic upgrades are permitted to add an *unlimited* number of ADUs).

### Where can I build my ADU?

While not an exhaustive list, ADUs are often constructed in existing ground or basement-level garage and storage areas; cottages; detached garages; beneath cantilevered floor spaces; beneath exterior decks; or in attic spaces. In certain single-family homes, ADUs can be constructed anywhere within the buildable area of the lot (the entire lot minus all required setbacks and yards). An ADU *cannot* occupy ground floor retail or commercial space in Neighborhood Commercial Districts or in the Chinatown Business or Visitor Retail Districts. For specifics about particular properties, consult a building contractor or architect experienced in San Francisco's LEDU and ADU rules.

### Can I convert a tenant's garage space, storage, or laundry area into an ADU?

Probably not. Where a proposed ADU would convert a garage, storage or laundry space that is *included in the tenancy of an existing tenant* (i.e. a "housing service"), a property owner will need a "just cause" under Section 37.9(a) of the San Francisco Rent Ordinance to sever the housing service from the existing tenancy.

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## What are “Waiver” and “No-Waiver” ADUs?

San Francisco’s Accessory Dwelling Unit Program allows two different types of ADUs:

- “**Waiver**” ADUs – all multi-family buildings and single-family homes that need one or more waivers from the Planning Code for requirements like exposure, open space, or rear yards (see City Planning Fact Sheet: <https://tinyurl.com/y7oekotd>).
- “**No-Waiver**” ADUs – single-family homes that do not need waivers from the Planning Code (see City Planning Fact Sheet: <https://tinyurl.com/yb1ot2tf>).

## What Planning Code requirements can Accessory Dwelling Units bypass?

While most additions convert surplus storage or garage space into an ADU, owners are also allowed to convert up to 25% of an existing legal unit’s ground or basement level *dwelling* space into the ADU. And, where the resulting space on the ground or basement level would no longer be usable for other reasonable uses (e.g. parking or storage), or where waiving the 25% conversion cap would relieve any negative layout issues for the proposed ADU, the Zoning Administer may waive the 25% ground and basement level conversion limits. Other requirements that may be waived include rear yard, parking, open space, and density requirements, and may reduce the amount of open-area exposure required for an ADU. All other Planning Code requirements must be met, including bicycle parking, permeability and landscaping of front setbacks, and street trees.

## What Building Code work will be required for my Accessory Dwelling Unit?

Building, Planning and Fire Code requirements depend on the unique characteristics of your lot, building, and the design of your Accessory Dwelling Unit. Adding an ADU may require historic preservation review if the project will alter the front facade of the building. Information on ground-floor sprinkler requirements may be found here: [http://sfdbi.org/sites/default/files/IS\\_FS-05.pdf](http://sfdbi.org/sites/default/files/IS_FS-05.pdf). Additional valuable information can also be gained from hiring a private permit expeditor, licensed contractor or architect to assist you with determining how best to achieve your design goals for adding an ADU while meeting Planning, Building, and Fire Code requirements.

## Can I create an Accessory Dwelling Unit by a horizontal or vertical extension of my building?

In most cases, no. ADUs constructed under the “Waiver” portion of the ADU Program must be constructed within the built envelope of a building or nearby structure that has existed for a minimum of three years prior to application. However, in the following limited circumstances, owners may build the ADU *outside* of the existing built envelope: (1) under cantilevered or column supported rooms that existed as of July 11, 2016; (2) under decks that are no more than 10 feet in height above grade that existed as of July 11, 2016; and (3) as infill into light wells, if not visible from anywhere off-site, and if against a blank neighboring wall.

## What are the Dwelling Unit Legalization Program Pre-Application steps? How do I apply for a LEDU?

Before seeking legalization of a UDU through San Francisco’s **Dwelling Unit Legalization Program**, Owners may go to the Department of Building Inspection (DBI) Unit Legalization Counter #8 on the 1st floor of 1660 Mission Street and speak informally with DBI Technical Services staff, to obtain feedback and information regarding critical code issues before completing a detailed design of their LEDU projects. (For buildings of 3 or more units, the San Francisco Fire Department also participates in pre-application discussions to offer further input on Fire Codes). If the owner wishes to proceed, a licensed contractor, architect or engineer must prepare a Screening Form, including floor plans for the entire building and a site plan showing location of all structures on the subject lot, along with evidence to establish that unit to be legalized existed prior to January 1, 2013. DBI’s Screening Form along with additional LEDU information can be found at: <https://tinyurl.com/yd7uem49>. City Planning’s separate checklist can be found at: <https://tinyurl.com/y8krowpr>.

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**What are the ADU Pre-Application steps? How do I apply for an ADU?**

Before applying for building permits through San Francisco's **Accessory Dwelling Unit Program**, Owners may make informal inquiries at the Planning Information Center on the 1st floor of 1660 Mission Street, or email questions to [CPC.ADU@sfgov.org](mailto:CPC.ADU@sfgov.org). If the owner wishes to proceed, a licensed contractor, architect or engineer must prepare a Screening Form, including floor plans for the entire building and a site plan showing the location of all structures on the subject lot. DBI's Screening Form (Attachment B) along with additional ADU information can be found at: <https://tinyurl.com/yd6338jf>. City Planning's separate checklist can be found at: <https://tinyurl.com/y8krowpr>.

**Can an Accessory Dwelling Unit be added to an existing Condominium Unit?**

Yes. Subject to any limitations which may lawfully be exerted by the Home Owner's Association (HOA) via the Covenants, Conditions & Restrictions (CC&Rs) governing the Association, an individual condominium owner may utilize a qualifying exclusive use space to build a new ADU. Or, potentially, an HOA might elect to utilize common area space to construct new ADUs during a soft-story seismic retrofit.

**Can an Accessory Dwelling Unit become its own Condominium Unit?**

Not currently. But ADUs added to buildings undergoing either a mandatory or voluntary soft-story seismic retrofit may be eligible to enter condo-conversion programs, if the SF condo lottery or other condo conversion programs become available in the future.

**Will my new Accessory Dwelling Unit be Rent Controlled?**

That depends. ADUs created through participation in the "No-Waiver" ADU program are not subject to the San Francisco Rent Ordinance. But ADUs created through participation in the "Waiver" ADU program, (including those constructed on the lot of a single-family dwelling) and requiring a complete or partial waiver of Planning Code requirements, are subject to the Rent Ordinance. For Waiver ADU Program lots, the Rent Control distinction of the new ADU is memorialized through the signing of a Regulatory Agreement ("Costa-Hawkins Agreement") between the property owner and the City.

**Will adding an Accessory Dwelling Unit affect the Rent Control status of my existing dwelling unit?**

Uncertain. Generally, single-family dwellings and condos are exempted from the rent increase limitations of the SF Rent Ordinance under California's 1995 Costa-Hawkins Rental Housing Act (see our companion FAQs, *Landlord-Tenant Issues* on the G3MH website). If both the primary dwelling unit and the new ADU are leased *together* as a single tenancy, the entire property will likely retain its exemption from the City's rent increase limitations. However, if the primary unit and the ADU are rented *separately*, the SF Rent Board reserves the right to make a case-by-case determination as to what rules will apply, looking at multiple factors such as whether the building was constructed before June 13, 1979 (the cut-off date of the San Francisco Rent Ordinance), how the primary unit was used prior to the construction of the ADU, and how both units are being used post-construction. Under the right circumstances, both the primary unit and the ADU may be exempt from caps on annual rent increases.

**What does Creating an Accessory Dwelling Unit Cost?**

For both the Waiver and No-Waiver ADU Programs, property owners are required to pay fees for the permit application and issuance. However, Building Permit Fees for the Dwelling Unit Legalization Program are waived through January 1, 2020.

**Will I be Required to Provide Additional Parking or Utility Hookups?**

Two state laws that took effect in 2017, SB1069 and AB2299, streamline the permitting process and prevent local jurisdictions from requiring new off-street parking if public transportation is within a half mile. They also forbid utility hookup fees that are not proportionate to the size of the accessory unit. If the accessory unit is built within the primary home's existing space, no hookup fees or off-street parking can be required. SB831, a California Senate bill introduced January 4, 2018, would prohibit development impact fees on accessory units, along with utility hookup fees (unless the homeowner wants a separate meter and bill).

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**Can I offer Vacation Rentals in my new unit?**

No. Accessory and Legalized Existing Dwelling Units are *ineligible* to participate in the City's Short-Term Rental program and may not be offered as vacation rentals (Airbnb, etc.).

**Can I sell my Legalized Existing or Accessory Dwelling Unit?**

Typically, no. LEDUs, and ADUs subordinate to a single-family home and constructed through the "No-Waiver" ADU program, are *ineligible to be subdivided and sold separately* from the primary dwelling unit. ADUs constructed as a part of either mandatory or voluntary soft-story seismic retrofitting through the "Waiver" ADU program may become eligible for condominium conversion in the future. As a result, it is possible that some ADUs may one day be sold separately from the primary dwelling units to which they are subordinate.

**What Happens if I buy a Property with a Tenant already occupying an Illegal Unit?**

A purchaser of a property with a tenant-occupied Unauthorized Dwelling Unit "steps into the shoes" of the prior owner and assumes all of the risks and liabilities associated with renting an illegal unit. Accordingly, when shopping through the inventory of properties for sale it is critical to review the current Report of Residential Building Record ("3-R Report") for the property in order to confirm that each dwelling unit on the lot has an up-to-date Certificate of Occupancy, or that each of the dwelling units existed at the time the Certificate of Final Completion was issued for the property. Owners of tenant-occupied UDUs must be careful not to increase their exposure to liability. An attorney with experience handling these types of volatile landlord-tenant relationships can assist you in exploring your options and developing a plan for managing your risk as well as the health and safety of your tenants in the unwarranted dwelling unit.

**Do recent Tenant Evictions affect my ability to participate in the ADU Program?**

For the "No-Waiver" ADU program, no. But owners are barred from applying for the "Waiver" ADU program if an Owner Move-In eviction has occurred within 5 years of the application (a 10-year wait following an Ellis Act eviction may now be unenforceable due to a recent court decision). Temporary Capital Improvement evictions have no effect on the application as long as the owner properly notified the tenants of their right to reoccupy the rental unit when the work was completed.

**How do I Choose a Lawyer to Assist Me?**

***A Law Firm to be Consulted on Adding Dwelling Units Should Offer You:***

- Experienced attorneys knowledgeable in all aspects of the rules for adding housing units in San Francisco;
- A thorough understanding of the San Francisco Rent Ordinance;
- Expertise in landlord/tenant issues;
- An ability to communicate with clients clearly and understandably.

**What Sets Goldstein, Gellman, Melbostad, Harris & McSparran, LLP ("G3MH") Apart in Residential Real Estate?**

**EXPERIENCE:**

G3MH has been a respected member of San Francisco's real estate community for thirty-five years. During that time, we have provided guidance to and represented thousands of property owners in a wide range of landlord/tenant matters, TIC creation, condominium conversion, and all other aspects of residential property ownership and management.

**REASONABLE-FEES:**

G3MH provides services on an hourly basis. The hourly rate charged will be based upon the level of experience of the attorney you work with, which we will endeavor to match to the task at hand.

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**SERVICE:**

G3MH is a full-service law firm, which means that our attorneys are available to offer guidance in landlord/tenant issues, tenancy-in-common issues, condominium conversion, title transfer and vesting, trust and estate matters, easements, property tax issues, and all other real estate matters. No other firm in San Francisco offers the staffing and resources to meet your needs in every aspect of residential real estate management.

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