

## Oral Testimony

My name is Kol Peterson. I'm based in Portland, Oregon. I have developed and lived in ADUs since 2010. In 2018, I published Backdoor Revolution, the Definitive Guide to ADU Development. I also edit AccessoryDwellings.org and BuildinganADU.com and sit on the board of the Casita Coalition. I spearheaded the growth of ADUs in Portland beginning back in 2010, and now work as a technical consultant through AARP to help other jurisdictions and states to improve their ADU codes.

It is amazing that you all are considering strong ADU legislation. In the four other states that have passed preemptive legislation, including California, Oregon, and more recently in Montana and Washington, the legislators are being seen as heroes by average people in their state, who are experiencing the same affordable housing issues that we all are. This will be true in Colorado when this legislation passes.

There are three main points I'll make today about owner occupancy. They are as follows.

- 1) Local Governments do not have the political ability to eliminate owner occupancy or off street parking requirements, which are two of the most critical facets of a strong ADU ordinance and without fail, the most controversial. State legislators that see that ADUs are a part of the solution, are helping cities to get unstuck.
- 2) ADUs, unlike *all* other housing types, such as the ones we live in and are surrounded by everywhere, are not developed by professional developers, but by amateur mom and pop homeowners. These amateur first time developers can't obtain good financing in part because of owner occupancy requirements. Owner occupancy requirements reduce values of the properties with ADUs, making them only an exclusive housing option for wealthy. Owner occupancy restrictions make properties with ADU undesirable to the average buyer, who want the freedom to do with their property as they wish. The restrictions make them undesirable to the average buyer, who wants the freedom to do with their property as they wish.
- 3) We would never consider limiting single family homes to only owners, because  $\frac{1}{3}$  of all of the single family homes in the US are rental units. Owner occupancy ordinances say it's permissible for an owner occupant and a renter to live on the same lot. But, it's not ok for two renter households to live on the same lot. Owner occupancy requirements are a form of renter ban. While we don't think of it that way, that's what it is. Imagine if we said that single family homes couldn't be rented, or duplexes, or any other housing type.

Because the increase in housing is always riddled with obstructionism in local government, we need states to step in to help municipalities get over this regulatory hurdle to help enable the

fledgling grassroots affordable housing type a chance to flourish. Thank you for taking the necessary steps to get cities and jurisdictions to get unstuck.

### ***End of oral testimony***

### **Further Resources on Owner Occupancy Restrictions for ADUs**

Owner occupancy is a form of discrimination toward renters, and potentially a violation of fair housing laws. Nonetheless, owner occupancy requirements are very common for this one particular form of housing--ADUs. Owner occupancy is a form of discrimination toward renters, and potentially a violation of fair housing laws.

Where this matter has been tested in the courts, it has been found to be unconstitutional. <https://www.carolinajournal.com/court-sides-with-property-owner/> Nonetheless, owner occupancy requirements are very common for this one particular form of housing--ADUs.

These standards also result in the production of *unpermitted* ADUs, which do not help cities or states in meeting their housing production goals.

### **On the ADU Financing**

I'm attaching two bank letters that illuminate how owner occupancy regulations obstructs the ability for people to finance ADUs. So, indeed, some banks and credit unions appear unwilling to have their mortgages tied to properties that have onerous deed restrictions.

Banks cannot be owner occupants and in foreclosure would be in violation of the law, have to evict tenants, and therefore just won't lend. This tenant displacement concern causes banks to be reticent to lend on such properties. This limits the ability to develop ADUs to only the very wealthy.

### **On Speculative ADUs**

ADUs tend to be developed by average homeowners, unlike every other form of housing in America, which tend to be developed by professional developers.

Overview of Seattle EIS that shot down claims from an affluent neighborhood that allowing ADUs would increase tear-downs and displacement. It would do neither.

<https://www.sightline.org/2018/05/24/seattles-new-environmental-study-on-accessory-dwellings-obliterates-obstructionists-claims/>

Research that the majority of ADUs are developed by homeowners, not speculative developers <https://accessorydwellings.org/2019/01/14/adu-permit-trends-in-portland-in-2017-and-2018/>

## **Not Reproducing Poor ADU Legislation**

As a practical matter, there are no examples of any jurisdictions in the country with significant ADU adoption that have owner occupancy standards on the books.

Indeed, there's ample contemporary research on this topic laid out now by an ample range of academic, non-partisan, non-profit institutions that have spent a great deal of time and effort on this topic. There is broad consensus here that owner occupancy requirements are a primary obstacle to ADU development.

- <https://www.aarp.org/livable-communities/housing/info-2021/adu-model-state-act-and-local-ordinance.html>
- <https://alec.org/model-policy/accessory-dwelling-units-act/>
- <https://www.mercatus.org/research/policy-briefs/state-accessory-dwelling-unit-laws>
- <https://www.brookings.edu/articles/how-owner-occupancy-regulations-are-contributing-to-the-housing-crisis/>

Sincerely,

Kol Peterson

Accessory Dwelling Strategies LLC

Editor of AccessoryDwellings.org

Author of Backdoor Revolution, the Definitive Guide to ADU Development



FIRST REPUBLIC BANK  
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January 19, 2018

[REDACTED]

RE: City of Santa Barbara Covenant

[REDACTED]

You have contacted us in connection with your loan secured by the residence at [REDACTED] Santa Barbra CA 93103. Specifically, you are seeking our consent as Lender in connection with a proposed Accessory Dwelling Unit Covenant.

Pursuant to your Deed of Trust, if any part of any interest in the property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. Please see Deed of Trust, Section 18.

The proposed Accessory Dwelling Unit Covenant would place certain limitations on this property, and as such could be construed as a transfer of interest in the property. First Republic Bank is not able to provide consent to such transfer at this time.

Please feel free to contact me should you have any questions.

Sincerely,

Karin V. Napel  
[REDACTED]  
[REDACTED]g Director  
[REDACTED]public Bank

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AMERICAN RIVIERA  
BANK

March 5, 2018



RE: City Of Santa Barbara ADU Covenant

Dear Mr. Bloomst,

I have reviewed the Accessory Dwelling Unit Covenant and as a lender I have a number of concerns:

1. The Covenant does not provide the lender with protections in the case of a foreclosure or deed in lieu of foreclosure as the restriction will affect marketability of the property. The covenant requires at least one of the units be owner-occupied. In a market where there is a demand for investment property, this limits the pool of potential buyers, thus affecting the sales price and marketability of the property. A potential homeowner or home purchaser may have a difficult time obtaining conventional financing with this deed restriction;
2. Your covenant states that owner needs to occupy the residence, if the lender forecloses, the lender can clearly not occupy the property and will be in violation of your proposed covenant.
3. The borrower could be in violation of their deed of trust already on the property since they have agreed to the covenant being added and it effectively transfers some of their rights from the property to the City which could trigger a due on sale clause;
4. A sunset clause will not address lender concerns as the lender cannot owner-occupy the property and it still does not provide for lenders protections in case of foreclosure or deed in lieu of foreclosure.

Please do not hesitate to contact me with further questions.

Sincerely,

Lori Murray

NMLSR#742373

SVP/Residential Lending Manager

805-730-4987