# Senate bill 9 (sb 9): an overview

## ***Decorative image including a duplex, house, and ADU on grass, plus a tree, two clouds, and a sun.* What it is and How it Impacts Residential Land Use**

### **Senate Bill 9 (SB 9) is a new California State Law taking effect January 1, 2022.**

Similar to previous state legislation on Accessory Dwelling Units (ADUs), SB 9 overrides existing density limits in single-family zones. SB 9 is intended to support increased supply of starter, modestly priced homes by encouraging building of smaller houses on small lots.

## SB 9 Waives Discretionary Review and Public Hearings For:

### Building Two Homes

### on a parcel in a single-family zone

*&*

### subdividing a lot into two

that can be smaller than required min. size

Used together, this allows 4 HOMES where 1 was allowed before.

**SB 9 can be used to:***Add new homes to existing parcel • Divide existing house into multiple units • Divide parcel and add homes*

## What it Can Mean for Development of New Homes

*Illustrations are based on a preliminary analysis of the law. Details are subject to change and are for informational purposes only.*

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Vacant lot |  |  | Lot with  Single-Family Home |  |  | Lot with  Nonconforming duplex[[1]](#endnote-1) |  |  | Lot with Single-family Home and an ADU |
| BEFORE | Scenario A1 - an empty lot with no units. *No units* |  |  | Scenario B1 - a lot with one unit.  *1 unit* |  |  | Scenario C1 - a lot with one duplex (2 units).  *Up to 2 units (nonconforming)* |  |  | Scenario D1 - a lot with one primary unit and 1 ADU or JADU.  *1 unit + 1 ADU/JADU* |
| ADD UNITS,  NO LOT SPLIT | Scenario A2 - a lot with two primary units and two ADUs or JADUs.  *Up to 2 units + 2 ADUs/JADUs* |  |  | Scenario B2 - a lot with two primary units and two ADUs/JADUs.  *Up to 2 units + 2 ADUs/JADUs* |  |  | Scenario C2 – a lot with one duplex (2 units).  *No additional units* |  |  | Scenario D2 – A lot with two primary units and one ADU/JADU.  *Can add 1 addtl. unit + 1 ADU/JADU* |
| ADD UNITS, NO LOT SPLIT | Scenario A3 – A lot split into two with two primary units on one side and one primary unit plus one ADU/JADU on the other side.  *Up to 4 total units* |  |  | Scenario B3 – A lot split into two with a duplex (2 units) on one side and a primary unit and an ADU/JADU on the other side.  *Up to 4 total units* |  |  | Scenario C3 – A lot split into two with a primary unit and an ADU/JADU on one side and a duplex (2 units) on the other side.  *Up to 4 total units* |  |  | Scenario D3 – A lot split into two with a primary unit and an ADU/JADU on one side and two primary units on the other side.  *Up to 4 total units* |

#### Using SB 9 Without a Lot Split:

* Without a lot split, SB 9 does not limit the number of ADUs or JADUs (B2, D2) – but other laws might.
* SB 9 ***could be interpreted*** to allow 2 new units beyond an existing unit (up to 3 units/lot, plus any allowed ADUs/JADUs).

#### Using SB 9 With a Lot Split:

* SB 9 does not require jurisdictions to approve more than 4 units total, including any ADUs/JADUs.

#### Single-Unit Developments

SB 9 can be used to develop single units – but projects must comply with all SB 9 requirements.

| DOES THE PROPERTY QUALIFY? |
| --- |
| 2-UNIT DEVELOPMENTS AND LOT SPLITS |
| 🞎 Single-family lot (usually R-1) |
| 🞎 Located in an urbanized area or urban cluster[[2]](#endnote-2) |
| 🞎 Not in state/local historic district, not an historic landmark |
| 🞎 Meets requirements of SB35 subparagraphs (a)(6)(B)-(K)[[3]](#endnote-3): |
| PROPERTY CANNOT BE: |
| 🞎 Prime farmland or farmland of statewide importance (B) |
| 🞎 Wetlands (C) |
| 🞎 Identified for conservation or under conservation easement (I+K) |
| 🞎 Habitat for protected species (J) |
| PROPERTY CANNOT BE (UNLESS MEETING SPECIFIED REQUIREMENTS): |
| 🞎 Within a very high fire hazard safety zone (D) |
| 🞎 A hazardous waste size (E) |
| 🞎 Within a delineated earthquake fault zone (F) |
| 🞎 Within a 100-year floodplain or floodway (G+H) |
| 🞎 Project would not alter nor demolish: |
| 🞎 Deed-restricted affordable housing |
| 🞎 Rent-controlled housing |
| 🞎 Housing on parcels with an Ellis Act eviction in last 15 yrs |
| 🞎 Housing occupied by a tenant currently or in last 3 yrs[[4]](#endnote-4) |

###### 

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  | | --- | | Addtl. Qualifications for  2-UNIT DEVELOPMENTS | | 🞎 Project does not remove more than 25% of exterior walls on a building that currently has a tenant or has had a tenant in the last 3 yrs *even if the rental unit itself isn’t altered* | | |  | | --- | | Addtl. Qualifications for  LOT SPLITS | | 🞎 Lot is split roughly in half – smaller lot is at least 40% of the original lot[[5]](#endnote-5) | | 🞎 Each new lot is at least 1,200ft2 [[6]](#endnote-6),[[7]](#endnote-7) | | 🞎 Lot is not adjacent to another lot split by SB 9 by the same owner or “any person acting in concert with the owner” | | 🞎 Lot was not created by a previous SB 9 split[[8]](#endnote-8) | |

****

## Limitations Applied

### 2-Unit Devs. and Lot Splits

* Agencies MUST only impose objective[[9]](#endnote-9) zoning standards, subdivision standards, and design standards (they may impose a local ordinance to set these standards)
  + These standards must not preclude 2 units of at least 800ft2
* Projects must follow local yard, height, lot coverage, and other development standards, EXCEPT:
* A local agency MAY NOT require rear or side setbacks of more than 4 feet, and cannot require any setback if utilizing an existing structure or rebuilding a same-dimensional structure in the same location as an existing structure
* Project may be denied if a building official makes a written finding of specific, adverse impacts on public health or safety based on inconsistency with objective standards, with no feasible method to mitigate or avoid impact
* Agency may require 1 parking space/unit, unless the project is:
  + Within 1/2 mile of “high-quality transit corridor” or “major transit stop”[[10]](#endnote-10)
  + Within 1 block of a carshare vehicle
* Agency must require that units created by SB 9 are not used for short-term rental (up to 30 days)
* Agency must allow proposed adjacent or connected structures as long as they comply with building codes and are “sufficient to allow separate conveyance”
* HOAs may restrict use of SB 9

|  |  |  |
| --- | --- | --- |
| 2-Unit Devs | * Without a lot split, agency cannot use SB 9 to limit ADUs/JADUs *e.g., lot can have 2 primary units+1 ADU+1 JADU* * Agency must include # of SB 9 units in annual progress report | * For properties with on-site wastewater treatment, agency may require a percolation test w/in last 5 years or recertification within last 10 years |
| Lot Splits | * Agency may approve more than 2 units on a new parcel *including ADUs, JADUs, density bonus units, duplex units* * Project must conform to all relevant objective reqs. of Subdivision Map Act * Agency may require easements for provision of public services and facilities * Agency may require parcels to have access to, provide access to, or adjoin public right of way | * Project must be for residential uses only * Applicant must sign affidavit stating they intend to live in one of the units for 3+ years[[11]](#endnote-11) * Agency must include number of SB 9 lot split applications in annual progress report * Agency cannot require right-of-way dedications or off-site improvements * Agency cannot require correction of nonconforming zoning conditions |

## **Relationships to Other Laws**

**CEQA** Does not apply to 2-unit or lot split approvals   
or ordinances implementing 2-unit or lot split provisions

**Coastal Act** Applies, but no public hearings needed for duplex and lot split coastal development permits

**Housing Crisis Act** Local ordinances cannot impose restrictions that reduce the intensity of land use on housing sites *(including total building envelope, density, etc.)*

**SB8** SB 9 projects are subject to Permit Streamlining Act deadlines

**SB478** Does not apply to single-family zones

## Key Decisions for Agencies to Make

|  |  |
| --- | --- |
| **Whether to require:**   * 1 parking space per unit * 2-units Septic tank percolation tests * 2-units Owner-occupancy * Split Public services/facilities easements * Split Right-of-way easements   **Whether to allow:**   * Creation of lots <1,200ft2 * Split >2 units/new lot | **Define:**   * Objective zoning/subdivision/ design review standards * “Acting in concert with owner” * “Sufficient for separate conveyance”   **Create:**   * Application forms and checklists * Recording of deed restrictions for short-term rentals and future lot splits * Owner-occupancy affidavit |

1. *Legally constructed but not currently permitted. Check your local ordinance for nonconforming use policies.* [↑](#endnote-ref-1)
2. Defined by the Census Bureau [↑](#endnote-ref-2)
3. See Section 65913.4(a)(6) Exclusions for full details and definitions [↑](#endnote-ref-3)
4. Lot can split, then new units added to the lot w/o the Ellis-affected building [↑](#endnote-ref-4)
5. Each lot can be smaller than required minimum lot size [↑](#endnote-ref-5)
6. This number can be lowered by local ordinance [↑](#endnote-ref-6)
7. If min. size is 1,200ft2, this requires a 2,400ft2 lot, or 3,000ft2 if a 60/40 split [↑](#endnote-ref-7)
8. This does not apply to previous lot splits taken under usual Map Act procedures [↑](#endnote-ref-8)
9. “Objective” as defined by the Housing Accountability Act [↑](#endnote-ref-9)
10. See Sections 21155 and 21064.3 of the Public Resources Code for definitions [↑](#endnote-ref-10)
11. Unless the applicant is a land trust or qualified non-profit [↑](#endnote-ref-11)