

[Senate Bill 1056](#) (Beall)

Date: May 9, 2018 (Amended)

Program: Property Taxes

Sponsor: California Community Land Trusts

Revenue and Taxation Code Section 214.18

Effective: Upon enactment, but operative January 1, 2019

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Summary: Beginning January 1, 2019, provides that property owned by a community land trust (CLT) qualifies for the welfare exemption if specified conditions are met. Also provides that the exemption cannot be denied if the vacant land does not have a residential structure in the course of construction.

Summary of Amendments: Since the previous analysis, this bill was amended to clarify contracts serving as enforceable restrictions and provide that a CLT will be liable for property taxes for the exempt period if property is not developed or rehabilitated within five years of acquisition.

Fiscal Impact Summary: Indeterminable.

Existing Law: Welfare Exemption. Existing law provides that low-income rental housing owned and operated by a qualifying nonprofit organization¹ may be exempt from property tax under the welfare exemption, provided various conditions and requirements are met. The law allows an unlimited exemption for rental housing owned by a nonprofit organization if it receives government financing or low-income housing tax credits.²

Lower Income Household Definition. Property tax law defines lower income households by cross reference to the Health and Safety Code (HSC).³ In general, lower income households are those households with incomes that do not exceed 80 percent of the Area Median Income (AMI) adjusted for family size; income limits are established for all geographic areas of the state. The law also requires the California Department of Housing and Community Development (HCD) to annually publish these income limits based on data by the U.S. Department of Housing and Urban Development (HUD). Existing law⁴ allows owners of low-income rental housing properties receiving federal low-income housing tax credits to continue to claim the property tax exemption on units occupied by tenants whose household income increases after move-in to a level above the lower income limit up to the federal law related limit of 140 percent of AMI, provided that the units remain rent-restricted.

Course of Construction. [Section 5](#) of article XIII of the California Constitution was enacted in recognition of the fact that the welfare exemption authorized under article XIII, [section 4\(b\)](#) does not apply to vacant, unused property held for future qualifying use. Section 5 extends the exemption to buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for exemption. Section 5 is implemented by RTC sections [214.1](#) and [214.2](#). RTC section 214.1 defines property used exclusively for religious, hospital or charitable purposes to include facilities in the course of construction, together with the land on which the facilities are located as may be required for their convenient use and occupation. RTC section 214.2 states that as used in

¹ A qualified organization may also be an eligible limited liability company or a limited partnership in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company.

² Revenue and Taxation Code (RTC) section [214\(g\)\(1\)\(A\)](#) and section [214\(g\)\(1\)\(B\)](#).

³ HSC section [50079.5](#). Additionally, the BOE annually reports the household income limits to assessors.

⁴ RTC section [214\(g\)\(2\)\(A\)\(iii\)](#). See Letter To Assessors No. [2017/055](#).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

RTC section 214.1 "facilities in the course of construction" includes the demolition or razing of a building with the intent to replace the building with a facility to be used exclusively for religious, hospital or charitable purposes. "Facilities in the course of construction" must have activity connected with the construction or rehabilitation of a new or existing building or improvement that results in physical changes visible to any person inspecting the site where the building or improvement is located.⁵

Community Land Trusts. Federal law, the Cranston-Gonzales National Affordable Housing Act (Act), allows CLTs to obtain organizational support, technical assistance, education, training, and community support from the government in fulfilling their housing mission.⁶ The Act defines "CLT" to mean a community housing development organization not sponsored by a for-profit organization, with a specified board membership, that is established to carry out the following activities:

1. Acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
2. Transfer ownership of any structural improvements located on the leased parcels to the lessees; and
3. Retain a preemptive option to purchase any structural improvement at a price determined by formula designed to ensure that the improvement remains affordable to low and moderate income families in perpetuity.

Fair Market Value of Enforceably Restricted Property. Existing law requires the assessor to reassess property to its fair market value when sold (i.e., "change in ownership"). The law provides that the property's "purchase price" is rebuttably presumed to be its "fair market value."⁷ It also provides that "purchase price" means the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise.

Nonprofit-Imposed Restrictions. When determining a property's fair market value, California property tax law requires the assessor to consider the effect of property use restrictions, such as zoning or development limitations, that are legally enforceable and imposed by government.⁸ Similarly, when determining land value, the law requires the assessor to consider the effect of *government-imposed* restrictions on land use.⁹

In the case of a *nonprofit organization-imposed* use restriction, such as a CLT-imposed resale price restriction, generally the law prohibits the assessor from considering its negative value impact.¹⁰ However, the law allows four exceptions:

⁵ Assessors' Handbook Section [267](#), *Welfare, Church, and Religious Exemptions*, pages 27-28.

⁶ [42 U.S.C. 12773](#)

⁷ RTC [section 110](#)(b).

⁸ RTC section 110(a) and [Carlson v. Assessment Appeals Board I](#) (1985) 167 Cal.App.3d 1004: "Enforceable restrictions," defined in RTC Section 402.1, include only governmentally imposed land restrictions.

⁹ RTC section [402.1](#)(a)

¹⁰ [Carlson v. Assessment Appeals Board No. 1](#) (1985) 167 Cal.App.3d 1004: In determining the fair market value of property, an assessor is only required to consider governmentally imposed land restrictions. The legislative purpose of this section is to allow an assessor to consider restrictions necessary to implement the public policy of encouraging and maintaining effective land use planning. Thus, the assessor properly refused to consider deed restrictions placed on a parcel of land when determining the value of the property where such restrictions were for the benefit of the seller, involved no public policy regarding land use planning, and in no way benefited the public.

- Homes on land with a 30-year use restriction as owner-occupied housing available at affordable cost that are sold at cost to low income families by qualifying nonprofit organizations¹¹ with no-interest financing (i.e., "silent second mortgage").¹²
- Land easements granted to nonprofit organizations to preserve and protect land in its natural state.¹³
- Greenway easements granted to nonprofit organizations to create paths along urban waterways.¹⁴
- Homes with CLT-imposed restrictions that have a renewable 99-year ground lease and limited equity due to resale price restrictions that are sold to low and moderate income buyers.¹⁵

For purposes of this restriction, a CLT is defined in RTC section 402.1(a)(11)(B)(ii) as a nonprofit corporation organized pursuant to Internal Revenue Code section [501\(c\)\(3\)](#) that satisfies all of the following:

- Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.
- All dwellings and units located on the land owned by the nonprofit corporation are sold to a qualified owner to be occupied as the qualified owner's primary residence or rented to persons and families of low or moderate income.
- The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years.

Purchase Price Presumption. Existing law requires the assessor to reassess property from its prior Proposition 13-protected "base year value" to its fair market value when sold (i.e., a "change in ownership"). The law provides a rebuttable presumption that the purchase price paid in the transaction is the property's "fair market value" if the sale was an open market transaction, as specified.¹⁶

Long Term Leases. Existing law provides that the creation of a lease for a term of 35 years or longer triggers a change in ownership of the property subject to the lease.¹⁷ This requires the assessor to reset the property's base year value.

Proposed Law: This bill provides that property owned by a CLT qualifies for the welfare exemption if (1) the property is being or will be developed or rehabilitated as an owner-occupied single family

¹¹ RTC [section 214.15](#) – Added in 1999, by AB 1559, this law extends the welfare exemption to the following property owned by nonprofit organizations that sell homes to low income persons at cost with zero percent financing: (1) vacant land held for future construction and (2) homes under construction. No other property being developed as homes for sale to low income persons qualifies for a property tax exemption under the welfare exemption. Moderate income rental housing qualifies for the welfare exemption only if the housing is for seniors and the disabled and includes supportive services based on their special needs.

¹² RTC section 402.1(a)(10) – Added in 2015. HSC section [50052.5](#) defines "affordable housing cost."

¹³ RTC section 402.1(a)(8)(A) – Added in 1993, but the law since 1984 via Civil Code [section 815.10](#).

¹⁴ RTC section 402.1(a)(8)(B) – Added in 2015.

¹⁵ RTC section 402.1(a)(11)(A) – Added in 2016.

¹⁶ RTC section 110(b).

¹⁷ RTC [section 61\(c\)](#).

dwelling, owner-occupied unit in a multifamily dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development; (2) improvements are or will be available for use and ownership by qualified persons; and (3) a deed restriction or other instrument serving as an enforceable restriction on the value is recorded. This bill requires a copy of the deed restriction or other instrument be provided to the county assessor. *RTC section 214.18(a)*

Enforceable Restriction. This bill provides that a deed restriction or other instrument, requiring a contract or contracts serving as an enforceable restriction on the value of the owner-occupied units or on the affordability of rental units, is recorded on or before the lien date following the acquisition of the property by the CLT. This bill defines "a contract or contracts serving as an enforceable restriction on the value of the owner-occupied units or on the affordability of rental units" as a contract described in section 402.1(a)(11). *RTC section 214.18(a)(3)*

Vacant Land. For property not previously designated as open space, this bill provides that the welfare exemption cannot be denied to a property on the basis that the property does not contain a single-family dwelling, a unit in a multifamily dwelling, or a unit in a limited equity housing cooperative that is in the course of construction. *RTC section 214.18(b)*

Community Land Trust. This bill defines "CLT" as having the same meaning as provided in RTC section 402.1(a)(11)(B)(ii). *RTC section 214.18(c)(1)*

Rental Housing Development. This bill defines "rental housing development" as a rental housing development in which all of the residential units in the development, other than units provided to property managers, are required to be rented to, and occupied by, persons and families of low or moderate income, at rents that do not exceed an affordable rent as described in HSC section [50053](#). *RTC section 214.18(c)(5)*

Qualified Person. This bill provides that "qualified persons" means persons and families of low or moderate income, including persons and families of low or moderate income that own a dwelling or unit collectively as member occupants or resident shareholders of a limited equity housing cooperative. "Persons and families of low or moderate income" has the same meaning as that term is defined in HSC section [50093](#). *RTC section 214.18(c)(4)*

Five-Year Period to Rehabilitate or Develop Property. This bill provides that if property is not rehabilitated, developed, or in the process of being rehabilitated or developed within five years of the acquisition of the property by the CLT, the CLT will be liable for property taxes for the period of exemption. *RTC section 214.18(d)*

In General: Other types of privately imposed restrictions. The courts have held that the assessor may not consider any other privately imposed restriction that negatively impacts property value when determining fair market value for property tax purposes.¹⁸ Thus, the assessor may not consider other use restrictions imposed by a nonprofit corporation, other than the four statutory exceptions enumerated above, or any private party that negatively impact property value.

The BOE's Assessors' Handbook [Section 501](#), *Basic Appraisal*, on page 50 reads:

¹⁸ *Carlson v. Assessment Appeals Board I* (1985) 167 Cal.App.3d 1004. See Letter To Assessors No. [85/111](#).

Enforceable Contractual Land Use Restrictions.

Deed restrictions that restrict the uses of a property are not the same thing as governmentally-imposed restrictions discussed above. Deed restrictions are rights reserved by private persons as opposed to limitations imposed by government. In most cases, the property tax appraiser should not recognize deed restrictions when analyzing highest and best use. The rights to be assessed are the fee simple rights without encumbrances, subject only to the limitations imposed by government. A division of the fee simple rights would require a separate assessment on each portion, and the assessment of only one portion of the rights would result in the illegal exemption of the balance.¹⁹

Assessors' Handbook [Section 502](#), *Advanced Appraisal*, expands on this issue related to the identification of the property rights. Page 6 states:

All appraisals involve the valuation of a set of defined property rights. With few exceptions, an appraisal for California property tax purposes involves the valuation of the entire fee simple estate unencumbered by any private interests (e.g., leases, liens, easements, etc.).²⁰ As a general rule, private parties cannot reduce the taxable value of their property by imposing private encumbrances upon it; only enforceable government restrictions under section 402.1 are recognized as limiting the full fee simple interest. Thus, Rule 2(a) provides, in part:

When applied to real property, the words "full value," "full cash value," "cash value," "actual value," and "fair market value" mean the prices at which the unencumbered or unrestricted fee simple interest in the real property (subject to any legally enforceable governmental restrictions) would transfer for cash or its equivalent....

In some cases, the appraisal to be made is a partial, or fractional interest in the full fee simple, and the property rights appraised are, therefore, less than the full bundle of rights.²¹ Taxable possessory interests; oil, gas, or mineral rights; air rights; transferable development rights; and—under certain conditions—water rights all represent cases where the property rights appraised are less than the full fee simple interest. Further, as discussed above, the rights associated with an easement may be valued and assessed separately under certain circumstances. This does not mean that a portion of the full taxable fee simple interest escapes taxation; the remaining rights are assessed to another owner.

Background: The National CLT network hosts a [research page](#) dedicated to CLT-model related tax issues. It states: "Creating an equitable taxation policy in conjunction with local government is a key task for CLTs and permanently affordable housing programs. What is a fair taxation rate given that CLT

¹⁹ The BOE's Property Tax Law Guide [Annotation](#) of this court case reads: "In determining the fair market value of property, an assessor is only required to consider governmentally imposed land restrictions. The legislative purpose of this section is to allow an assessor to consider restrictions necessary to implement the public policy of encouraging and maintaining effective land use planning. Thus, the assessor properly refused to consider deed restrictions placed on a parcel of land when determining the value of the property where such restrictions were for the benefit of the seller, involved no public policy regarding land use planning, and in no way benefited the public."

²⁰ Encumbrance: "Any right to, or interest in, land that may subsist [i.e., exist] in another to diminution of its value, but consistent with the passing of the fee. A claim, lien, charge, or liability attached to and binding real property; e.g., a mortgage; judgement lien; mechanic's lien; lease; security interest; easement or right of way; accrued and unpaid taxes." (Black's Law Dictionary, 5th edition, s.v. "encumbrance.")

²¹ The full taxable fee simple interest in the property is still assessed.

homeowners will never benefit from the full appraised value of their property? Below, we've included information on the theory behind equitable taxation as well as examples of how taxation policies have been implemented on the ground in a number of jurisdictions."

- [Property Taxes and Community Land Trusts: A Middle Ground](#) Alese Bagdol. (2013). *Texas Law Review*.
- [Shared Equity Homeownership State Policy Review](#) Ryan Sherriff. (Spring/Summer, 2010) *Journal of Affordable Housing & Community Development Law, Volume 19(3&4)*.
- [Taxation of Shared-Equity Homes](#) John Emmeus Davis. (Summer, 2007). *Shelterforce, Issue 150*. National Housing Institute.
- [Valuation and Taxation of Resale-restricted, Owner-occupied Housing](#) Carla J. Robinson. (2008). *Lincoln Institute of Land Policy Working paper WPO8CR1*. Lincoln Institute of Land Policy.
- [Valuation of Community Land Trust Homes in New York State](#) David West. (2011) *Journal of Property Tax Assessment & Administration, Volume 8(4)*.

Additionally, the National CLT Network publishes [The CLT Technical Manual](#) (2011) in which Chapter 17, "Property Tax Assessments," reviews the varied approaches used in the USA to assess resale-restricted homes.

Commentary:

1. **Author's Comment.** Senate Bill 1056 creates more permanent affordable housing for low and moderate-income families by providing CLTs with a property tax exemption from the point of acquisition of property to the point of sale of affordable homes.
2. **Summary of Amendments.** The April 25 amendments (1) add a rental housing development to the list of properties that would qualify for exemption, (2) clarify that a deed restriction or other instrument requires an enforceable restriction on the value of owner-occupied units or on the affordability of rental units, and (3) requires a copy of the deed restriction or other instrument be provided to the assessor.
3. **Community Land Trust.** RTC section 402.1(a)(11) provides that an enforceable restriction includes a contract that is a renewable 99-year ground lease between a CLT and the qualified owner of an owner-occupied single family dwelling or an owner-occupied unit in a multifamily dwelling.
4. **Deed or Other Instrument Restriction.** This bill provides that one of the conditions that must be met is a deed restriction or other instrument, requiring a contract or contracts serving as an enforceable restriction on the *value* of the owner-occupied units or on the affordability of rental units is recorded on or before the lien date following the acquisition of the property by the CLT. This is unclear. Does this refer to a restriction on value for property tax purposes or a restriction on the value for resale purposes? Enforceable restrictions (by deed or other instrument) that restrict the *use* of the land must be taken into account by the assessor when valuing the property pursuant to RTC section 402.1. The author may want to clarify what type of restriction would qualify the property for the welfare exemption, rather than tying the restriction to the valuation of the property, such as:

(3) (A) A deed restriction or other instrument, requiring a contract or contracts serving as an enforceable restriction on the ~~value~~ *use* of owner-occupied units or on

the affordability of rental units, is recorded on or before the lien date following the acquisition of the property by the community land trust.

(B) For purposes of ~~the~~ *this* section, "a contract or contracts serving as an enforceable restriction on the ~~value~~ *use* of owner-occupied units or on the affordability of rental units" means a contract described in paragraph (11) of subdivision (a) of Section 402.1.

5. **Five-Year Period to Develop or Rehabilitate Property.** As amended, this bill provides that if property is not developed or rehabilitated, or in the course of construction, within five years of acquisition, the CLT will be liable for property taxes for the exemption period. The meaning of this is vague due to the placement of the comma. Does the author intend to require that either the development or rehabilitation be completed before the end of the five-year period? If so, how will completion be measured? Alternatively, does the author intend that the development or rehabilitation of property merely begin its "course of construction" by the end of the five year period? If so, what is sufficient "course of construction" and would reasonable cause (i.e., natural disaster or lack of funding) prevent the CLT from being liable for the property taxes of the entire exemption period? As discussed below, the author may want to clarify the definition of "course of construction."
6. **Course of Construction.** This bill does not define "course of construction." For purposes of the welfare exemption under RTC section 214, section [214.2](#) specifies that "facilities in the course of construction" require activity connected with the construction or rehabilitation of a new or existing building or improvement that results in definite onsite physical activity that results in changes visible to any person inspecting the site where the building or improvement is located. As long as construction has commenced, the property will be considered "under construction" unless the construction is abandoned. However, if there is a delay in construction due to reasonable causes and circumstances beyond the property owner's control and that occurs notwithstanding the exercise of ordinary care and the absence of willful neglect, then the construction will not be considered abandoned. The author may want to consider adding a definition of "course of construction" or incorporation the definition of "facilities in the course of construction."
7. **Change in Ownership.** Under current law once a CLT sells a dwelling and transfers the leasehold interest to a qualified purchaser, the exemption ceases and the property is reassessed. The creation, transfer, or termination of a leasehold interest with a term of 35 years or more is a reassessable change in ownership.²² Additionally, if the conditions of RTC section 402.1(a)(11) are met, the assessor must consider the effect on value of any enforceable deed restrictions when assessing the underlying land.
8. **Related Legislation.** [Senate Bill 1115](#) (Hill) proposes to also add section 214.18 to the RTC, in regards to the welfare exemption and the proposed removal of the \$10,000,000 exemption cap.

Costs: The BOE's costs to update its documents, website materials, and provide guidance to assessors are absorbable.

²² RTC section [61\(c\)](#).

Revenue Impact: We know that over the long term, CLTs hope to develop and sell between 1,600 to 2,500 homes in California. Revenue impact depends on (1) the number of properties owned by CLTs now and in the future; and (2) the differential, if any, between the restricted price and the assessor-determined fair market value after considering the use and resale restrictions and the limited applicability of comparable market sales. At this time, based on these unknown factors, the revenue impact is indeterminable.