

[Senate Bill 196](#) (Beall)

Date: September 3, 2019 (Amended)

Program: Property Taxes

Sponsor: California Community Land Trust Network

Revenue and Taxation Code Sections 75.11, 214.18, 402.1, and 532

Effective: Upon enactment

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Summary: This bill makes the following changes regarding real property owned by a community land trust (CLT):

- SB 196 provides that property owned by a CLT qualifies for the welfare exemption for a five-year period, if specified conditions are met.
 - This bill provides the exemption cannot be denied if the vacant land does not have a residential structure in the course of construction. Once a rental housing development is in the course of construction, this bill provides that the property qualifies for the welfare exemption.
 - This bill requires the community land trust to be liable for property tax for the years for which the property was exempt under these provisions if the property was not developed or rehabilitated, or at least in the process of being developed or rehabilitated:
 - By January 1, 2025, if the property was acquired by the CLT before January 1, 2020.
 - Within five years of the lien date following the date of acquisition by the community land trust, if the property was acquired by the CLT on and after January 1, 2020 and before January 1, 2025.
 - Requires CLT to notify county assessor if exempt property is not in the course of construction by the applicable date, as specified above.
 - If the property becomes subject to property tax, this bill provides that supplemental and escape assessments are to be made within five years of the lien date following the date on which the property becomes subject to taxation.
 - This bill requires the State Board of Equalization (BOE) to annually collect data from county assessors regarding the exemption.
- SB 196 creates a rebuttable presumption that the sale or resale price of the dwelling or unit includes both the dwelling or unit and the land leased from a CLT on which the dwelling or unit is situated. This bill provides that any corrections of base year values or declines in value resulting from the application of this rebuttable presumption apply to all lien dates occurring after September 27, 2016.

Summary of Amendments: Since our previous analysis, SB 196 was amended to require a CLT to notify the county assessor if property that was granted an exemption is not in the course of construction by January 1, 2025 or five years after the lien date following the acquisition date, whichever is applicable.

Fiscal Impact Summary: Indeterminable.

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.

Background: 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.¹ 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:

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

CLTs are nonprofit organizations governed by a board of CLT residents, community residents and public representatives that provide lasting community assets and shared equity homeownership opportunities for families and communities. CLTs develop rural and urban agriculture projects, commercial spaces to serve local communities, affordable rental and cooperative housing projects, and conserve land or urban green spaces. However, the heart of their work is the creation of homes that remain permanently affordable, providing successful homeownership opportunities for generations of lower income families.²

CLTs provide an affordable housing model to help low- and moderate-income households that may not otherwise be able to purchase homes. The CLT acquires and develops properties for sale to income-qualified households, but then retains ownership of the underlying land and leases the land to the homeowner for a nominal fee through a long-term ground lease (usually a 99-year term). The home is, therefore, more affordable because the homeowner is only buying the building and leasing the land underneath. If the homeowner decides to sell the property, the home must be resold to another income-qualified household, and the original owner will only be eligible for a smaller share of its appreciated value. Since the CLT is the owner of the land, it will be a party to all future sales and enforce resale restrictions.

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.

Welfare Exemption

Revenue and Taxation Code sections 75.11, 214.18, and 532

Existing Law: Welfare Exemption. Existing law provides that low-income rental housing owned and operated by a qualifying nonprofit organization or a qualified claimant³ may be exempt from property tax under the welfare exemption, provided various conditions and requirements are met. The law allows an

¹ [42 U.S.C. 12773](#)

² <https://groundedsolutions.org/strengthening-neighborhoods/community-land-trusts>.

³ In addition to qualifying organization as defined in Property Tax Rule 136, a qualified claimant may also be a limited partnership in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company.

unlimited exemption for rental housing owned by a nonprofit organization if it receives government financing or low-income housing tax credits.⁴

Lower Income Household Definition. Property tax law defines lower income households by cross reference to the Health and Safety Code (HSC).⁵ 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 law⁶ 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 as authorized under article XIII, [section 4\(b\)](#) did not apply to vacant, unused property held for a 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 RTC section 214.1, "facilities in the course of construction" include 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.⁷ 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.

Supplemental Assessment. A supplemental assessment is the difference between a new base year value established for a change in ownership or completion of new construction and the taxable value on the assessment roll. Depending on the time of year in which the event occurs, either one or two supplemental assessments may be generated for that event: one for the current roll (prorated for the portion of the year remaining after the event date), and one for the roll being prepared (for events that occur between January 1 and May 31). Generally, a supplemental assessment must be made within four years of July 1 of the calendar year in which the event occurred.⁸ Existing law provides two exceptions to this four-year statute of limitations:

⁴ Revenue and Taxation Code (RTC) section [214\(g\)\(1\)\(A\)](#) and section [214\(g\)\(1\)\(B\)](#).

⁵ RTC section [214\(g\)\(3\)\(A\)](#) and HSC section [50079.5](#). Additionally, the BOE annually reports the household income limits to assessors.

⁶ RTC section [214\(g\)\(2\)\(A\)\(iii\)](#). See Letter To Assessors No. [2017/055](#).

⁷ Assessors' Handbook Section [267](#), *Welfare, Church, and Religious Exemptions*, Part I, pages 27-28.

⁸ RTC section [75.11\(d\)](#).

- Eight years in cases of concealment of personal property.⁹
- Eight years for an unrecorded change in ownership and a *Change in Ownership Statement* or a *Preliminary Change in Ownership Report* was not timely filed.¹⁰

Escape Assessments. An escape assessment is a retroactive assessment intended to rectify an omission or error that caused taxable property to be underassessed (or not assessed at all). In most cases, once such an omission or error occurs, the property escapes assessment each year thereafter until the underassessment is discovered and corrected. If property escapes assessment, the assessor is required to value the property upon discovery for the appropriate valuation date,¹¹ enroll the appropriate value on the roll being prepared, process any necessary corrections to the current roll, and process appropriate escape assessments for prior years within the statute of limitations. Under existing law,¹² the statute of limitations is generally four years, with the following exceptions:

- Eight years in cases of concealment of personal property.
- Eight years for an unrecorded change in ownership and a *Change in Ownership Statement* or a *Preliminary Change in Ownership Report* was not timely filed.
- No limitations period in cases of fraud.¹³
- No limitations period in cases of a change in ownership or change in control resulting from a transfer of an interest in a legal entity that owns real property if a *Statement of Change in Control or Ownership of Legal Entities* was not timely filed with the State Board of Equalization as required by RTC sections [480.1](#) and [480.2](#).¹⁴

Proposed Law: This bill provides that property owned by a CLT qualifies for the welfare exemption if all of the following conditions are met:

- The property is being or will be developed or rehabilitated as an owner-occupied single-family dwelling, owner-occupied unit in a multifamily dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development;
- Improvements are or will be available for use and ownership by qualified persons; and
- A deed restriction or other instrument serving as an enforceable restriction on the sale or resale value of owner-occupied units or the affordability of rental units is recorded. *RTC section 214.18(a)(1) through (3)*

⁹ RTC sections [502](#) and [504](#).

¹⁰ RTC section [480](#) requires a *Change in Ownership Statement* must be filed with the county assessor within 90 days of the event date or, for a date of death, on or before inventory and appraisal is filed with the court clerk if property is subject to probate, or for all other cases arising from a date of death, within 150 days of date of death. RTC section [480.3](#) requires a *Preliminary Change of Ownership Report* must be filed with the county recorder concurrent with the recordation of any document evidencing a change in ownership.

¹¹ RTC section [531](#).

¹² RTC section [532](#).

¹³ RTC section [503](#).

¹⁴ For a transfer of interest in a legal entity, sections 480.1 and 480.2 require a BOE-100-B, *Statement of Change in Control or Ownership of Legal Entities*, to be filed with the State Board of Equalization within 90 days of the event that triggered a change in control or change in ownership. See Letter To Assessors No. [2011/016](#) for more information on change in ownership of legal entities.

Enforceable Restriction. This bill provides that a deed restriction or other instrument requiring a contract or contracts serving as an enforceable restriction on the sale or resale 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 sale or resale value of the owner-occupied units or on the affordability of rental units" as a contract described in RTC section 402.1(a)(11). In addition, this bill requires a copy of the deed restriction or other instrument be provided to the county assessor. *RTC section 214.18(a)(3)*

Course of Construction. 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, a unit in a limited equity housing cooperative, or a rental housing development that is in the course of construction. *RTC section 214.18(b)(1)*

This bill provides that a rental housing development that is in the course of construction qualifies for the welfare exemption. *RTC section 214.18(b)(2)*

This bill provides that "course of construction" has the same meaning as the term "facilities in the course of construction" is used and defined in RTC sections 214.1 and 214.2. *RTC section 214.18(c)(2)*

Community Land Trust. This bill provides that "community land trust" has the same meaning as provided in RTC section 402.1(a)(11)(B)(ii). *RTC section 214.18(c)(1)*

Qualified Person. For property developed for owner-occupied housing, 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 defined in HSC section [50093](#). For property developed for rental housing, this bill provides that "qualified persons" means persons and families of low income. "Persons and families of low income" has the same meaning as defined in HSC section [50079.5](#). *RTC sections 214.18(c)(4), (5), and (6)*

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)(7)*

Five-Year Period to Rehabilitate or Develop Property. This bill specifies that the community land trust will be liable for property tax for the years for which the property was exempt if the property was not developed or rehabilitated, or at least in the process of being developed or rehabilitated:

- By January 1, 2025, if the property was acquired by the CLT before January 1, 2020.
- Within five years of the lien date following the date of acquisition by the community land trust, if the property was acquired by the CLT on and after January 1, 2020 and before January 1, 2025.

This bill requires the CLT to notify the county assessor if exempt property is not in the course of construction by the applicable date, as specified above. In these circumstances, this bill provides that supplemental and escape assessments are to be made within five years of the lien date following the date on which the property becomes subject to taxation. *RTC sections 75.11(d)(4), 214.18(d) and 532(b)(4)*

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 interest, and the property rights appraised are, therefore, less than the full bundle of rights.²⁸ 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.

Legislative History: Effective September 27, 2016, [Assembly Bill 2818](#) (Stats. 2016, ch. 701) amended RTC section 402.1(a) to require assessors to consider recorded restrictions imposed by a CLT that negatively impact property value when determining the assessed value of homes that have a 99-year ground lease and limited equity due to resale price restrictions and that are sold to low- and moderate-income buyers.²⁹

Commentary:

1. **Summary of Amendments.** The **September 3, 2019** amendment requires a CLT to notify the county assessor if property that was granted an exemption is not in the course of construction by January 1, 2025 or five years after the lien date following the acquisition date, whichever is applicable. The **July 3, 2019** amendment changed the retroactive date to September 27, 2016, the effective date of AB 2818. The **June 19, 2019** amendment adds a rebuttable presumption that, for purposes of land owned by a community land trust, the sale or resale price of the dwelling or unit includes both the dwelling or unit and the leased land on which the dwelling or unit is situated. The **May 7, 2019** amendment (1) adds an exception to the four-year statute of limitations for supplemental assessments for CLT property that was not developed or rehabilitated, or at least in the process of being developed or rehabilitated, within five years of the lien date following the date of acquisition by the CLT, and (2) clarifies that the required enforceable restriction on the value is the sale or resale value.
2. **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.
3. **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

²⁸ The full taxable fee simple interest in the property is still assessed.

²⁹ Letter To Assessors [2017/008](#).

5. **Vacant Land.** Generally vacant land does not qualify for the welfare exemption until construction has commenced. This bill sets a precedent in that it exempts vacant land owned by a CLT if the intended use would qualify.
6. **Deed or Other Instrument Restriction.** This bill provides that one of the conditions that must be met is a deed restriction or other instrument that enforceably restricts the sale or resale value of the owner-occupied units or the affordability of rental units is recorded on or before the lien date following the acquisition of the property by the CLT.
7. **Supplemental and Escape Assessment.** Property owned by a CLT will become assessable if that property has not been rehabilitated or developed, or is not in the process of being rehabilitated or developed:
 - By January 1, 2025 for property currently owned by a CLT, or
 - Within five years of the lien date following the acquisition of property purchased by a CLT between January 1, 2020 and December 31, 2024.

This bill provides that supplemental and escape assessments are to be made within five years of the lien date following the date on which the property becomes subject to taxation (the lien date following the date of acquisition). From the date of acquisition, a CLT would have five years to at least commence construction to rehabilitate or develop that property. If construction has not begun on the fifth anniversary of that acquisition date, then the property becomes assessable on that date. From the lien date following that anniversary date, the assessor would have five years to value and enroll the escape assessments for the years previously exempt.

The methodology for counting the periods open under the statute of limitations for escape assessments is different than that for counting the limitations period open for supplemental assessments. Supplemental assessment limitations periods are counted forward from July 1 of the calendar year¹⁵ in which the event occurred; the escape assessment limitations period is counted back from the date of enrollment.

For example, a CLT purchases real property, and a deed is recorded on November 15, 2020. To be exempt, the CLT must begin or complete construction by January 1, 2026. If construction has not at least begun by January 1, 2026, the CLT will be liable for property taxes on the January 1, 2026 lien date as follows:

- 2020-21 fiscal year – partial year December 1, 2020 through June 30, 2021
- 2021-22 fiscal year
- 2022-23 fiscal year
- 2023-24 fiscal year
- 2024-25 fiscal year
- 2025-26 fiscal year

¹⁵ RTC section 75.11 uses the term "assessment year," which is defined in RTC section [118](#) as the period between lien dates. Since the lien date is January 1, the assessment year is the same as the calendar year.

Under this bill, an assessor would have five years from the January 1, 2027 lien date (i.e., the lien date following the January 1, 2026 lien date on which the property became subject to assessment) to issue a supplemental assessment for the portion of the 2020-21 fiscal year following the date of purchase. In other words, the assessor would have to enroll the supplemental assessment by January 1, 2032.

Additionally, an assessor would have five years from the January 1, 2027 lien date to issue escape assessments (must be enrolled by January 1, 2032) for the period during which the property was previously exempt. Escape assessments apply to the lien date and can be issued for years 2021-22, 2022-23, 2023-24, 2024-25, and 2025-26.

8. **Data Collection.** This bill requires the BOE to annually collect data from county assessors to quantify the amount of assessed value exempted and the number of owner-occupied dwelling units or rental units created by CLTs granted this exemption. This bill requires CLTs claiming this exemption to report to county assessors about the additional housing created. While the purpose of this data collection is to assist the Legislature in determining whether the exemption fulfills the goals, purposes, and objectives of this bill, there is no requirement for the BOE to report to the Legislature.
9. **Related Legislation.** [Assembly Bill 1453](#) (Chiu) also proposes to add section 214.18 to the Revenue and Taxation Code, in regard to the welfare exemption, to authorize a partial exemption for property owned and operated by a limited partnership in which the managing general partner is an S corporation that qualifies as a nonprofit corporation.

Costs: The BOE would incur absorbable costs to update its documents, website materials, and provide guidance to assessors. The collection of data would be absorbable with existing resources; however, any potential analysis of this data may require additional resources.

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.

Valuation of Land – Use Restrictions

Revenue and Taxation Code Section 402.1

Existing Law: 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."¹⁶ 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, existing law requires the assessor to consider the effect of legally enforceable property use restrictions, such as zoning or

¹⁶ RTC section [110](#)(b).

development limitations. Similarly, when determining land value, the law requires the assessor to consider the effect of enforceable restrictions on land use.¹⁷

In the case of a *nonprofit organization-imposed* use restriction, such as a CLT-imposed resale price restriction, the law generally prohibits the assessor from considering its negative value impact unless a specific statutory mandate exists.¹⁸

Currently, the law recognizes four non-governmental restrictions on value:

- 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 organizations¹⁹ with no-interest financing (i.e., "silent second mortgage").²⁰
- Land easements granted to nonprofit organizations to preserve and protect land in its natural state.²¹
- Greenway easements granted to nonprofit organizations to create paths along urban waterways.²²
- 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.²³

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 purpose 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

¹⁷ RTC section [402.1](#).

¹⁸ *Carlson v. Assessment Appeals Board No. 1* (1985) 167 Cal.App.3d 1004.

¹⁹ 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.

²⁰ RTC section 402.1(a)(10) – Added in 2015. HSC section [50052.5](#) defines "affordable housing cost."

²¹ RTC section 402.1(a)(8)(A) – Added in 1993, but the law since 1984 via Civil Code [section 815.10](#).

²² RTC section 402.1(a)(8)(B) – Added in 2015.

²³ RTC section 402.1(a)(11)(A) – Added in 2016.

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.²⁴

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.²⁵ This requires the assessor to reset the property's base year value.

Proposed Law: Purchase Price Presumption. This bill creates a rebuttable presumption that the sale or resale price of the dwelling or unit includes both the dwelling or unit and the land leased from a CLT on which the dwelling or unit is situated. *RTC section 402.1(a)(11)(B)(i)*

Effective Date. While this bill takes immediate effect, any corrections of base year values or declines in value resulting from the application of this rebuttable presumption apply to all lien dates occurring after September 27, 2016. *RTC section 402.1(a)(11)(B)(ii)*

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.²⁶ 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:

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.

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.).²⁷ As a general rule, private parties cannot reduce the taxable value of their property by imposing private

²⁴ RTC section 110(b).

²⁵ RTC [section 61\(c\)](#).

²⁶ *Carlson v. Assessment Appeals Board I* (1985) 167 Cal.App.3d 1004. See Letter To Assessors No. [85/111](#).

²⁷ 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.")

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 interest, and the property rights appraised are, therefore, less than the full bundle of rights.²⁸ 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.

Legislative History: Effective September 27, 2016, [Assembly Bill 2818](#) (Stats. 2016, ch. 701) amended RTC section 402.1(a) to require assessors to consider recorded restrictions imposed by a CLT that negatively impact property value when determining the assessed value of homes that have a 99-year ground lease and limited equity due to resale price restrictions and that are sold to low- and moderate-income buyers.²⁹

Commentary:

1. **Summary of Amendments.** The **September 3, 2019** amendment requires a CLT to notify the county assessor if property that was granted an exemption is not in the course of construction by January 1, 2025 or five years after the lien date following the acquisition date, whichever is applicable. The **July 3, 2019** amendment changed the retroactive date to September 27, 2016, the effective date of AB 2818. The **June 19, 2019** amendment adds a rebuttable presumption that, for purposes of land owned by a community land trust, the sale or resale price of the dwelling or unit includes both the dwelling or unit and the leased land on which the dwelling or unit is situated. The **May 7, 2019** amendment (1) adds an exception to the four-year statute of limitations for supplemental assessments for CLT property that was not developed or rehabilitated, or at least in the process of being developed or rehabilitated, within five years of the lien date following the date of acquisition by the CLT, and (2) clarifies that the required enforceable restriction on the value is the sale or resale value.
2. **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.
3. **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

²⁸ The full taxable fee simple interest in the property is still assessed.

²⁹ Letter To Assessors [2017/008](#).

reassessable change in ownership.³⁰ 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.

4. **Compromise Language.** After the enactment of AB 2818 in 2016, BOE staff commenced the interested parties process to discuss proposed guidance on the assessment of CLT housing.³¹ BOE staff met on multiple occasions with county assessors, CLT representatives, and other interested parties in a joint effort to develop uniform guidance on the application of the bill's amendments. Staff's position was that, consistent the assessor's constitutional and statutory duty to assess all taxable property, the value of land and improvements of a CLT property must be determined separately.³² CLT representatives consistently maintained that, despite the specific language in the purchase agreements, the purchase prices are intended to cover both the improvements and the land, while the lease payments are for administrative services that bear no relationship to the market value of the land. Continued discussion between BOE staff, county assessors, and CLT representatives resulted in the proposed clarifying amendments to section 402.1 that were amended into SB 196 on June 19, 2019.
5. **Rebuttable Presumption.** This bill creates a rebuttable presumption that the sale or resale price of the dwelling or unit includes both (1) the dwelling or unit, and (2) the land leased from a CLT on which the dwelling or unit is located.
6. **Effective Date.** The proposed changes to RTC section 402.1 take effect immediately. However, this bill provides that the rebuttable presumption applies retroactively to all lien dates after September 27, 2016, the effective date of AB 2818.

Costs: The BOE would incur absorbable costs to update its documents, website materials, and provide guidance to assessors.

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.

³⁰ RTC section [61\(c\)](#).

³¹ All documents and comments related to this project are posted on the BOE's website at www.boe.ca.gov/proptaxes/assessment-of-community-land-trust-housing.htm.

³² Language in AB 2818 that would have expressly provided that the purchase price of the improvements was presumed to be the value of the land *and* improvements was amended out of the bill in the May 31, 2016 version.