

I am reaching out to submit a comment to the BOE's draft Letter to Assessors, titled "Property Owned by a Community Land Trust" and dated February 21, 2020 (the "LTA"). The LTA addresses SB 196 and the new Revenue and Tax Code section that it creates, Section 214.18. We understand comments were due March 20 but wanted to flag an internal statutory inconsistency that we were hoping the LTA could address. Specifically, Section 214.18 (a)(1)(D) makes it clear that the property exemption applies to rental housing, however Section 214.18(a)(3)(B) contains a drafting error (explained below) that could cause confusion for assessors when reviewing applications for property tax exemption for rental housing. We ask that the LTA address this ambiguity and clarify that Section 214.18 does apply to rental housing.

The inconsistency stems from the definition of "a contract... serving as an enforceable restriction on the sale or resale value of owner-occupied units or on the affordability of rental units." (Section 214.18(a)(3)(A).) Section 214.18(a)(3)(A) requires a recorded instrument requiring such a contract, and subparagraph (B) provides that such a contract "means a contract described in [Section 402.1(a)(11)]".

The problem is that Section 402.1(a)(11) only describes contracts that would apply to *owner-occupied* housing. For example, one requirement set forth in Section 402.1(a)(11) is that the contract be a ground lease with "the qualified owner of an *owner-occupied* single-family dwelling or an *owner-occupied* unit in a multifamily dwelling." (Section 402.1(a)(11)(A)(i) (emphasis added).)

The result is that although Section 214.18 expands the property tax exemption to land that will be used for rental housing, it simultaneously requires a recorded instrument that is defined, by cross-reference to another section, as restricting the land to owner-occupied housing.

We plan to reach out to Senator Beall's office to see if a legislative fix can be made, but in the interim, it would be helpful if the LTA could acknowledge this inconsistency and perhaps provide guidance that, for rental housing, "a contract... serving as an enforceable restriction ... on the affordability of rental units" would be satisfied by one of the instruments described in BOE Rule 140(a)(5) or BOE Rule 140(a)(6), specifically:

- i. A deed recorded as an encumbrance against title to the property in the official records of the county in which the property is located, which specifies that all or a portion of the property's usage is restricted to rental to lower income households and identifies the number of units restricted to use as low-income housing;
- ii. An enforceable and verifiable agreement with a government agency that has provided low-income housing tax credits or government financing for the acquisition, rehabilitation, construction, development or operation of a low-income housing property that restricts all or a portion of units restricted for use as low-income housing, species the maximum rent allowed for those units, and is recorded in the county in which the property is located.

Thank you for your consideration of our request. If you have any questions, please feel free to reach out. Goldfarb & Lipman LLP