



STATE BOARD OF EQUALIZATION  
PROPERTY TAX DEPARTMENT  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064  
1-916-274-3350 • FAX 1-916-285-0134  
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)  
First District, Lancaster

FIONA MA, CPA  
Second District, San Francisco

JEROME E. HORTON  
Third District, Los Angeles County

DIANE L. HARKEY  
Fourth District, Orange County

BETTY T. YEE  
State Controller

DEAN R. KINNEE  
Executive Director

1  
2  
3  
4  
5  
6  
7  
8  
9

TO COUNTY ASSESSORS:

**ASSESSMENT OF COMMUNITY LAND TRUST HOUSING**

10 Letter to Assessors 2017/008, dated February 8, 2017, included a discussion of new legislation  
11 concerning land use restrictions under community land trusts (CLTs). Specifically, we noted  
12 that, effective September 27, 2016, Assembly Bill 2818<sup>1</sup> added paragraph (11) to  
13 section 402.1(a) of the Revenue and Taxation Code,<sup>2</sup> requiring county assessors to recognize  
14 qualifying restrictions on owner-occupied homes controlled by CLTs. This letter is intended to  
15 provide guidance in light of the amendments made by AB 2818.

16  
17 ***Community Land Trusts***

18 Under the amendments to section 402.1 made by AB 2818, a "community land trust" is a  
19 nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that  
20 satisfies all of the following:<sup>3</sup>

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

30  
31 CLTs operate to sell homes at affordable prices to low and moderate income buyers while  
32 simultaneously leasing the underlying land parcels to those buyers. Since the CLT, as lessor,

<sup>1</sup> Stats. 2016, ch. 701.

<sup>2</sup> All statutory references are to the Revenue and Taxation Code unless otherwise specified.

<sup>3</sup> Section 402.1(a)(11)(B)(ii).

1 retains legal title to the underlying land, this model allows the CLT to maintain a permanent  
2 community of affordable housing even as owner-occupants come and go.

3  
4 To make the housing affordable, buyers' lease payments are typically nominal in amount,  
5 effectively shielding buyers from the cost of the underlying land parcels. CLT land costs are  
6 often offset by capital from public programs, including the federal HOME Investment  
7 Partnerships Program and Community Block Grant Program, as well as a variety of state and  
8 local affordable housing funding sources.

### 9 10 ***Enforceable Restrictions Under Section 402.1***

11 Section 402.1 enumerates a non-exhaustive list of enforceable restrictions on land that must be  
12 recognized by the assessor, and provides that there is a rebuttable presumption that those  
13 restrictions "will not be removed or substantially modified in the predictable future and that they  
14 will substantially equate the value of the land to the value attributable to the legally permissible  
15 use or uses."<sup>4</sup>

16  
17 In recognizing restrictions on use under section 402.1 the assessor "shall not consider sales of  
18 otherwise comparable land not similarly restricted as to use as indicative of value of land under  
19 restriction, unless the restrictions have a demonstrably minimal effect upon value."<sup>5</sup> With CLT  
20 properties, the key restriction for valuation purposes is that, upon resale, the gain that might be  
21 realized by either the owner-occupant or the CLT (upon exercising its purchase option) is  
22 constrained by affordability restrictions.

23  
24 As amended by AB 2818, the list of enforceable restrictions under section 402.1 explicitly  
25 includes restrictions under CLTs, provided the following conditions are met:

- 26  
27
- The contract must be recorded and provided to the assessor.<sup>6</sup>
  - The contract is a renewable 99-year ground lease between a community land trust and a  
28 qualified owner of an owner-occupied single-family dwelling or an owner-occupied unit  
29 in a multi-family dwelling.<sup>7</sup>
  - *Qualified owner* means persons and families of low or moderate income, including  
30 persons and families of low or moderate income that own a dwelling or unit collectively  
31 as member occupants<sup>8</sup> or resident shareholders of a limited equity housing cooperative as  
32 defined in Civil Code section 817.<sup>9</sup>
  - The initial sale and future resales of homes must be to persons and families of low or  
33 moderate income,<sup>10</sup> as defined.<sup>11</sup>
- 34  
35  
36

---

<sup>4</sup> Section 402.1(b).

<sup>5</sup> Section 402.1(d).

<sup>6</sup> Section 402.1(a)(11)(A)(iv).

<sup>7</sup> Section 402.1(a)(11)(A)(i).

<sup>8</sup> Section 402.1(a)(11)(B)(v).

<sup>9</sup> Section 402.1(a)(11)(B)(iii).

<sup>10</sup> Section 402.1(a)(11)(B)(i)(I).

<sup>11</sup> See Health and Safety Code [section 50093 as required by section 402.1\(a\)\(11\)\(B\)\(iv\)](#). The Board issues an annual letter to assessors listing these income limits for purposes of applying the Welfare Exemption. Most recently, see [Letter To Assessors 2017/054](#).

- 1 • The sale or resale price of the home must be determined by a formula that ensures the  
2 home has a purchase price that is affordable to qualified owners.<sup>12</sup>
- 3 • The community land trust has the right to repurchase the home to preserve the home as  
4 affordable to qualified owners.<sup>13</sup>

## 5 ***Assessment Treatment***

### 7 **ASSESSMENT OF IMPROVEMENTS**

8 Section 110, subdivision (b), provides that the term *full value* means the "purchase price paid in  
9 the transaction unless it is established by a preponderance of the evidence that the real property  
10 would not have transferred for that price in an open market transaction." The *purchase price*  
11 means "the total consideration provided by the purchaser or on the purchaser's behalf, valued in  
12 money, whether paid in money or otherwise."

13  
14 The purpose of AB 2818 was to require county assessors to recognize the effect of specified  
15 affordability restrictions on a property's use. Accordingly, upon a sale of a home subject to a  
16 CLT ground lease to a qualifying purchaser, the assessor should recognize such restrictions, if  
17 possible by reference to the purchase price presumption under section 110(b).

18  
19 For purposes of the purchase price presumption, the "total consideration provided by the  
20 purchaser" of a home subject to a CLT ground lease will generally be the agreed-upon purchase  
21 price. Therefore, the valuation of the improvements sold subject to CLT restrictions should be  
22 based upon the individual improvements purchase price unless it can be shown through sales of  
23 similarly restricted properties that the purchase price is not full value.

### 25 **ASSESSMENT OF UNDERLYING LAND PARCELS**

26 Since CLTs retain ownership of the land indefinitely and the land is always leased to the owner  
27 of the improvements, any transfer of the land to a new lessee constitutes a change in ownership  
28 under section 61(c)(1).

29  
30 CLT land leases may be structured in a variety of ways. In some cases, the total lease payment  
31 may be described as the sum of several components, such as a replacement reserve fee or an  
32 administrative charge. In all cases, however, the valuation of the land upon a change in  
33 ownership depends on the lease terms.

34  
35 Absent the sale of similarly restricted properties for use in the comparable sales approach, the  
36 value of the land upon a change in ownership should be determined by converting the lease  
37 payments to their present value using income capitalization.<sup>14</sup>

38  
39 Where the lease explicitly restricts the amount of the payment attributable to a land use fee or a  
40 charge for the value of the land, the assessor should recognize those restrictions pursuant to

<sup>12</sup> Section 402.1(a)(11)(B)(i)(II).

<sup>13</sup> Section 402.1(a)(11)(B)(i)(III).

<sup>14</sup> For a detailed discussion of the techniques used in income capitalization, see [Assessors' Handbook Section 502, Advanced Appraisal](#).

1 section 402.1(a)(11). Where such payments or charges are de minimis, the stated purchase price  
2 for the improvements may be considered to be inclusive of the value of the land.  
3  
4

5 *Capitalization Rate*

6 The lack of meaningful data on sales of similarly restricted properties brought about by the  
7 affordability restrictions on homeowner resales means that, of the two authorized methods for  
8 computing a capitalization rate, only one—the band of investment technique—is of practical  
9 import for purposes of capitalizing the lease payments for lands leased from CLTs. Accordingly,  
10 as provided in Property Tax Rule 8(g)(2), assessors should look to the California money markets  
11 to derive weighted averages of capitalization rates for debt and for equity capital, and, under the  
12 legal doctrine that the absence of an "actual market" for property does not mean that it has no  
13 value,<sup>15</sup> should weight those rates in a such a way as to reflect the rates that might be employed  
14 by hypothetical prospective purchasers.  
15

16 **PROPERTIES IN CLTs PRIOR TO AB 2818—PROPOSITION 8**

17 The amendments made by AB 2818 are prospective from their effective date of  
18 September 27, 2016. Thus, CLT affordable housing units purchased prior to that date where an  
19 assessor did not recognize the restrictions for purposes of establishing the base year value may  
20 now need to be reviewed for possible declines in value. Provided all aspects of section  
21 402.1(a)(11) are met, such assessments should now be reviewed by the assessor to ensure that, as  
22 provided under Proposition 8, on any lien date the lower of factored base year value or market  
23 value (recognizing the restrictions on use) is enrolled.  
24

25 If you have any questions about the guidance in this letter, please contact the County-Assessed  
26 Properties Division at 1-916-274-3350.  
27

28 Sincerely,  
29  
30

31  
32 David Yeung, Chief  
33 County-Assessed Properties Division  
34 Property Tax Department  
35  
36

37 DY:mn  
38  
39  
40  
41

---

<sup>15</sup> *Kaiser Co. v. Reid* (1947) 30 Cal.2d. 610.