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Sent: Wednesday, June 2, 2021 5:25:09 PM
To: Yeung, David <David.Yeung@boe.ca.gov>
Cc: Christina Oatfield [REDACTED]; Susan [REDACTED]
Subject: [External] Comments on draft LTA regarding CLT housing

Deputy Director Yeung,

Thank you for sending the April 30, 2021 draft LTA regarding the tax treatment of Community Land Trust (CLT) housing.

The draft LTA provides assessors with useful guidance with respect to AB 2818, SB 196, and SB 2473. Nevertheless, we have identified two aspects of the LTA that could be clarified further in order to achieve our shared goal of applying clear and uniform assessment practices to community land trust properties in California.

Lines 29-31 of page 2 of the draft LTA state that “The rebuttable presumption may be overcome if the Assessor has evidence to establish that all or a portion of the market value of the leased land is not reflected in the sale or resale price of the home.” This language allows for a broad range of assessor interpretations since CLT properties are resale restricted and sell for below market prices in order to remain affordable to low income families. We believe that the language in the statute provides more clear cut guidance and should be used in the LTA. Revenue and Taxation Code Section 402.1(a)(11)(B) provides that the presumption may be overcome “if the assessor establishes by a preponderance of the evidence that all or a portion of the value of the leased land is not reflected in the sale or resale price of the dwelling or unit” (emphasis added). Because the restrictions on resale and permanent affordability of a home on CLT land must be considered per AB 2818 in valuation of the home and effectively removes the home from the market, it is important that mere evidence of comparable “fair market value” is insufficient; a preponderance of evidence is required by statute and this should be reflected in the LTA.

We would welcome more specific guidance from the BOE regarding what might qualify as evidence sufficient to overcome a rebuttable presumption regarding the value of the leased land and the improvements in this context. We would suggest the LTA give examples, such as evidence of collusion in an attempt to lower the valuation of the home.

We suggest that the language on page 3 lines 19 through 26 be clarified. We found the use of the phrase “CLT LLC” in lines 22, 25, and 26 to be confusing. We understand that phrase as used in this context refers to a LLC which is a subsidiary of a CLT, however, upon an initial reading some members of our property tax working group thought this part of the letter could be interpreted as referring to a CLT organized as a LLC, which would be in contravention to the definition of a CLT found in Revenue and Tax Code section 402.1(a)(11)(C)(ii), where a CLT is expressly defined as a nonprofit corporation. In lieu of the phrase “CLT LLC” we’d suggest “CLT subsidiary LLC” or something similar, so as to avoid any possible confusion.

Thank you for considering our comments and we would be happy to answer any questions about the above suggestions. Additionally, we wish to express our gratitude to staff at BOE who have worked with stakeholders over several years on refining and implementing these important pieces of legislation.

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