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No. 2020/008

February 14, 2020

TO COUNTY ASSESSORS:

ASSESSMENT AND EXEMPTION OF COMMUNITY LAND TRUST HOUSING

The attached draft Letter To Assessors (LTA) provides information on the treatment of community land trust (CLT) housing in light of the enactment of both Assembly Bill 2818 (Chapter 701, Statutes of 2016) and Senate Bill 196 (Chapter 669, Statutes of 2019).

Over the past several years, the State Board of Equalization (BOE) staff and interested parties have been engaged in discussions regarding the assessment of CLT low-income housing projects. Based on those discussions and in light of the enactment of both Assembly Bill 2818 (Chapter 701, Statutes of 2016) and Senate Bill 196 (Chapter 669, Statutes of 2019), BOE staff have drafted a LTA to provide guidance on the implementation of the two bills.

A copy of the newly drafted LTA is attached. Please review the attached draft and submit all comments in strikeout and underline format to Ms. Angie Berry at angie.berry@boe.ca.gov by March 20, 2020.

After all comments received are reviewed, BOE staff will hold an interested parties meeting if there are any outstanding issues. If no comments are received, the attached drafted LTA will be presented to the Board for adoption. Documents and comments related to this project are available on the BOE's website at:

<https://www.boe.ca.gov/proptaxes/assessment-of-community-land-trust-housing.htm>

If you have any questions regarding this project, please contact Ms. Angie Berry at angie.berry@boe.ca.gov or 1-916-274-3376.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:ab
Attachment

PROPOSED DRAFT LTA

ASSESSMENT AND EXEMPTION OF COMMUNITY LAND TRUST HOUSING

This Letter To Assessors (LTA) provides information on the treatment of community land trust housing in light of the enactment of both Assembly Bill 2818 (Chapter 701, Statutes of 2016) and Senate Bill 196 (Chapter 669, Statutes of 2019).

The combined effect of these two enactments is to (1) require County Assessors to recognize restrictions on use imposed by community land trusts, (2) establish a rebuttable presumption that the purchase price of a community land trust home includes both the home and the leased land on which the home is situated, and (3) make community land trust housing eligible for the welfare exemption under certain conditions.

Introduction

Community land trusts (CLTs) are non-profit organizations that make home ownership available at affordable prices to persons of low and moderate income. Buyers acquire full ownership of their physical homes, but lease the underlying land parcels from the CLTs under renewable 99-year ground leases. This model allows CLTs to maintain permanent communities of affordable home ownership, even as individual homeowners replace each other over time.¹

To make these arrangements affordable, lease payments are typically nominal in amount, effectively shielding the homeowners from the true cost of the underlying land parcels. The true land costs are typically offset by funding from public programs, including the federal HOME Investment Partnerships Program and Community Block Grant Program, as well as a variety of state and local affordable housing funding sources.

Enforceable Deed Restrictions on Use Under Section 402.1

Effective September 27, 2016, AB 2818 added paragraph (11) to Revenue and Taxations code² section 402.1(a) to require County Assessors to consider use restrictions on CLT housing. These provisions require Assessors to consider recorded restrictions imposed by a CLT that impact property value. This requirement applies only when all of the following conditions are met:

- The CLT, that is a party to the contract, is a nonprofit corporation organized pursuant to Internal Revenue Code section 501(c)(3), maintains a welfare exemption, and is organized for the primary purposes of the creation and maintenance of permanently affordable single- or multi-family residences, including either rentals or for-sale homes.³
- The contract between the CLT and the homeowner must be recorded and provided to the assessor.⁴

¹ A CLT may also partner with a limited equity housing cooperative (LEHC) that shares the objective of providing affordable housing. Under this model, individuals retain the rights to their homes either through possession of a share in the LEHC or by renting from the LEHC.

² Unless otherwise specified all statutory references are to the Revenue and Taxation Code.

³ Section 402.1(a)(11)(C)(ii).

⁴ Section 402.1(a)(11)(A)(iv).

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- 1 • The contract between the CLT and the homeowner provides that the CLT leases the land
2 that the home is situated on to the buyer for a renewable 99-year term.⁵
- 3 • The initial sale and future resales must be to persons and families of low or moderate
4 income.⁶ Persons and families of low or moderate income may either own the home
5 directly or own the home in the form of a limited equity housing cooperative, as defined
6 in Civil Code section 817.⁷
- 7 • The home must serve as the buyer's primary residence.⁸
- 8 • The sale or resale price of the home must be determined by a formula that ensures the
9 home has a purchase price that is affordable to qualified owners.⁹
- 10 • A CLT must have the right to repurchase the home to preserve its affordability for
11 qualified owners.¹⁰

After CLT Property Sale to Qualified Owner, Sale Price for the Home Includes the Leased Land—Rebuttable Presumption

15 Once a CLT sells a home and transfers the leasehold interest in the land to a qualified purchaser,¹¹
16 both the land and the improvements are reassessed to current market value, because both the sale
17 of the home and the 99-year lease are reassessable changes in ownership. If the conditions of
18 section 402.1(a)(11) are met, the Assessor must consider the effect on value of any enforceable
19 deed restrictions.

21 The enactment of SB 196 created a rebuttable presumption that the sale or resale price of a CLT
22 home includes the value of both the home and the land leased from a CLT on which the home is
23 situated.¹² The new law also provides that any declines in value or corrections of base year values
24 resulting from the application of this rebuttable presumption shall apply to all lien dates occurring
25 after September 27, 2016.¹³

27 The rebuttable presumption may be overcome if the Assessor has evidence to establish that all or
28 a portion of the value of the leased land is not reflected in the sale or resale price of the home.

⁵ Section 402.1(a)(11)(A)(i).

⁶ The term "lower and moderate income households" is defined in section 402.1(a)(11)(C) (iv) by cross-reference to Health and Safety Code section 50093. Additionally, the BOE issues an annual Letter To Assessors to report the applicable household income limits.

⁷ Section 402.1(a)(11)(C)(iii).

⁸ Section 402.1(a)(11)(C)(ii)(II).

⁹ Section 402.1(a)(11)(C)(i)(II).

¹⁰ Section 402.1(a)(11)(C)(i)(III).

¹¹ The term qualified purchaser refers to a CLT purchaser from a "lower and moderate income household," as defined in section 402.1(a)(11)(C) (iv) by cross-reference to Health and Safety Code section 50093.

¹² Section 402.1(a)(11)(B)(i).

¹³ Section 402.1(a)(11)(B)(ii).

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1 **Welfare Exemption**

2 Effective as of lien date January 1, 2020, SB 196 added section 214.18, which provides that a CLT
3 may be eligible to claim the welfare exemption if all of the following conditions are met:

- 4
- 5 • The property is being or will be developed or rehabilitated as an owner-occupied
6 single-family dwelling, owner-occupied unit in a multifamily dwelling, a member-
7 occupied unit in a limited equity housing cooperative, or a rental housing development;
- 8
- 9 • Improvements are or will be available for use and ownership by qualified persons; and
- 10
- 11 • A deed restriction or other instrument serving as an enforceable restriction on the sale or
12 resale value of owner-occupied units or the affordability of rental units is recorded.¹⁴
- 13

14 It should be noted, as with any other welfare exemption claim, an Organizational Clearance
15 Certificate (OCC) must first be issued by the State Board of Equalization (BOE) in order for the
16 CLT to be eligible.¹⁵

17 *CLT Welfare Exemption Eligibility—Definitions*

- 18
- 19
- 20 • "Community land trust" has the same meaning as provided in section
21 402.1(a)(11)(B)(ii).¹⁶
- 22
- 23 • For property developed for owner-occupied housing, "qualified persons" means persons
24 and families of low or moderate income, including persons and families that own a
25 dwelling or unit collectively as member occupants or resident shareholders of a limited
26 equity housing cooperative. "Persons and families of low or moderate income" has the
27 same meaning as defined in Health and Safety Code section 50093. For property
28 developed for rental housing, "qualified persons" means persons and families of low
29 income. "Persons and families of low income" has the same meaning as defined in Health
30 and Safety Code section 50079.5.¹⁷
- 31
- 32 • "Rental housing development" means a rental housing development in which all of the
33 residential units in the development, other than units provided to property managers, are
34 required to be rented to and occupied by persons and families of low or moderate income,
35 at rents that do not exceed an affordable rent, as described in Health and Safety Code
36 section 50053.¹⁸
- 37

¹⁴ Section 214.18(a)(1) through (3).

¹⁵ The BOE and the 58 county assessors jointly administer the welfare exemption. The BOE determines whether the organization is eligible to receive the welfare exemption; and if eligible, issues an OCC for the claimant to provide with claim forms filed within the 58 counties. The county assessor then determines whether the use of the organization's property is eligible for the welfare exemption.

¹⁶ This reference, found in section 214.18, subdivision (c)(1), is erroneous. The correct reference would be to section 402.1(a)(11)(C)(ii). Staff has proposed legislation that would correct the error.

¹⁷ Section 214.18(c)(4), (5), and (6).

¹⁸ Section 214.18(c)(7).

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- 1 • "Course of construction" has the same meaning as the term "facilities in the course of
2 construction," as used and defined in sections 214.1 and 214.2.¹⁹ Section 214.1 defines
3 property used exclusively for religious, hospital, or charitable purposes to include
4 facilities in the course of construction, together with the land on which the facilities are
5 located as may be required for their convenient use and occupation. Section 214.2 states
6 that, as used in section 214.1, "facilities in the course of construction" include the
7 demolition or razing of a building with the intent to replace the building with a facility
8 to be used exclusively for religious, hospital, or charitable purposes.²⁰ Additionally,
9 "facilities in the course of construction" must have activity connected with the
10 construction or rehabilitation of a new or existing building or improvement that results
11 in physical changes visible to any person inspecting the site where the building or
12 improvement is located.²¹
- 13
- 14 • For property developed for owner-occupied housing, "qualified persons" means persons
15 and families of low or moderate income, including persons and families of low or
16 moderate income that own a dwelling or unit collectively as member occupants or
17 resident shareholders of a limited equity housing cooperative.²² "Persons and families of
18 low or moderate income" has the same meaning as defined in Health and Safety Code
19 section 50093.

Welfare Exemption Eligibility for CLT Housing Under the Course of Construction—Five-Year Window

23

24 Property under the course of construction can be eligible for the welfare exemption for the
25 following periods:

- 26
- 27 • Lien dates 2020 through 2024, inclusive, for property acquired by the CLT prior to
28 January 1, 2020.²³
- 29
- 30 • The first five lien dates following the acquisition of property by the CLT, if the
31 acquisition occurred from January 1, 2020, through December 31, 2024.²⁴

32

33 Property acquired between January 1, 2020 and December 31, 2024, can be exempt for the entire
34 five-year period, even though this period will extend beyond the sunset date of section 214.18.²⁵

35

36 If the property was not developed or rehabilitated or in the process of being developed or
37 rehabilitated by the end of the five-year exemption period, the CLT will be liable for property tax
38 for the years for which the property was exempt. Specifically, the property must be at least in the
39 process of being developed or rehabilitated:

- 40
- 41 • By January 1, 2025, if the property was acquired by the CLT before January 1, 2020.

¹⁹ Section 214.18(c)(2).

²⁰ Section 214.2(a).

²¹ Section 214.1(b).

²² Section 214.18(b)(6).

²³ Section 214.18(e)(1).

²⁴ Section 214.18(e)(A).

²⁵ Section 214.18(e)(B).

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- 1
2 • Within five years of the lien date following the date of acquisition by the CLT, if the
3 property was acquired by the CLT from January 1, 2020, through December 31, 2024.
4

5 The exemption cannot be denied on the basis that the vacant land does not currently have a
6 residential structure in the course of construction.
7

8 Section 214.18(d)(2) requires the CLT to notify the County Assessor if exempt property is not in
9 the course of construction by the applicable date, as specified above. In these circumstances,
10 supplemental and escape assessments are to be issued. Sections 75.11(d)(4) and 532(b)(4) were
11 added to require any supplemental and escape assessments be made within five years of the lien
12 date following the date on which the property becomes subject to taxation.
13

14 **Example**

15 A CLT purchases real property and a deed is recorded on November 15, 2020. To be
16 exempt, the CLT must begin or complete construction by January 1, 2026. If construction
17 has not at least begun by January 1, 2026, the CLT will be liable for property taxes on the
18 January 1, 2026, lien date as follows:
19

- 20 • 2020-21 fiscal year - partial year December 1, 2020 through June 30, 2021
21 • 2021-22 fiscal year
22 • 2022-23 fiscal year
23 • 2023-24 fiscal year
24 • 2024-25 fiscal year
25 • 2025-26 fiscal year
26

27 An Assessor would have five years from the January 1, 2027, lien date (i.e., the lien date
28 following the January 1, 2026, lien date on which the property became subject to
29 assessment) to issue a supplemental assessment for the portion of the 2020-21 fiscal year
30 following the date of purchase. In other words, the Assessor would have to enroll the
31 supplemental assessment by January 1, 2032.
32

33 Additionally, an Assessor would have five years from the January 1, 2027, lien date to
34 issue escape assessments (must be enrolled by January 1, 2032) for the period during which
35 the property was previously exempt. Escape assessments apply to the lien date and can be
36 issued for fiscal years 2021-22, 2022-23, 2023-24, 2024-25, and 2025-26.
37

38 *CLT Welfare Exemption Effective Dates*

39
40 As previously stated, SB 196 became effective on January 1, 2020. The exemption under that
41 section applies to:
42

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- 1 • Lien dates January 1, 2020, through January 1, 2024, for property acquired by the CLT
2 before January 1, 2020.²⁶
3
4 • The first five lien dates following the date of acquisition by the CLT for property
5 acquired on and after January 1, 2020, and before January 1, 2025, regardless of the
6 repeal of section 214.18.²⁷
7

8 Section 214.18 will sunset on January 1, 2025, by its own provisions.
9

10 *CLT Welfare Exemption Data Collection*

11
12 The BOE must annually collect data from County Assessors to quantify the amount of assessed
13 value exempted and the number of owner-occupied dwelling units or rental units, or both, created
14 by CLTs granted this exemption. CLTs must provide information to County Assessors about the
15 additional housing created.²⁸
16
17
18

²⁶ Section 214.18(e)(1).

²⁷ Section 214.18(e)(2)(A) and (B).

²⁸ See Section 6 of SB 196, which provides an uncodified statement of legislative intent to apply the requirements of section 41 to the statutory provisions enacted in SB 196.