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REVISED DRAFT – July 20, 2018
Edits Reflect Discussion at 7/12/2018 Interested Parties Meeting

TO COUNTY ASSESSORS:

ASSESSMENT OF COMMUNITY LAND TRUST HOUSING

Letter to Assessors 2017/008, dated February 8, 2017, included a discussion of new legislation concerning land use restrictions under community land trusts (CLTs). Specifically, we noted that, effective September 27, 2016, Assembly Bill 2818¹ added paragraph (11) to section 402.1(a) of the Revenue and Taxation Code,² requiring county assessors to recognize qualifying restrictions on owner-occupied homes controlled by CLTs. This letter is intended to provide guidance in light of the amendments made by AB 2818.

Community Land Trusts

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

- Has as its primary purposes 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.

¹ Stats. 2016, ch. 701.

² All statutory references are to the Revenue and Taxation Code unless otherwise specified.

³ Section 402.1(a)(11)(B)(ii).

1
2 CLTs operate to sell homes at affordable prices to low and moderate income buyers while
3 simultaneously leasing the underlying land parcels to those buyers. Since the CLT, as lessor,
4 retains legal title to the underlying land, this model allows the CLT to maintain a permanent
5 community of affordable housing even as owner-occupants come and go.

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

12 ***Enforceable Restrictions Under Section 402.1***

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

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

26
27 As amended by AB 2818, the list of enforceable restrictions under section 402.1 explicitly
28 includes restrictions under CLTs, provided the following conditions are met:

- 29
- 30 • The contract must be recorded and provided to the assessor.⁶
 - 31 • The contract is a renewable 99-year ground lease between a community land trust and a
32 qualified owner of an owner-occupied single-family dwelling or an owner-occupied unit
33 in a multi-family dwelling.⁷
 - 34 • *Qualified owner* means persons and families of low or moderate income, including
35 persons and families of low or moderate income that own a dwelling or unit collectively
36 as member occupants⁸ or resident shareholders of a limited equity housing cooperative as
37 defined in Civil Code section 817.⁹

⁴ Section 402.1(b).

⁵ Section 402.1(d).

⁶ Section 402.1(a)(11)(A)(iv).

⁷ Section 402.1(a)(11)(A)(i).

⁸ Section 402.1(a)(11)(B)(v).

⁹ Section 402.1(a)(11)(B)(iii).

- 1 • The initial sale and future resales of homes must be to persons and families of low or
2 moderate income,¹⁰ as defined.¹¹
- 3 • The sale or resale price of the home must be determined by a formula that ensures the
4 home has a purchase price that is affordable to qualified owners.¹²
- 5 • The community land trust has the right to repurchase the home to preserve the home as
6 affordable to qualified owners.¹³

7
8 ***Assessment Treatment***

9 **ASSESSMENT OF IMPROVEMENTS**

10 Section 110, subdivision (b), provides that the term *full value* means the "purchase price paid in
11 the transaction unless it is established by a preponderance of the evidence that the real property
12 would not have transferred for that price in an open market transaction." The *purchase price*
13 means "the total consideration provided by the purchaser or on the purchaser's behalf, valued in
14 money, whether paid in money or otherwise."
15

16 The purpose of AB 2818 was to require county assessors to recognize the effect of specified
17 affordability restrictions on a property's use. Accordingly, upon a sale of a home subject to a
18 CLT ground lease to a qualifying purchaser, the assessor should recognize such restrictions, if
19 possible by reference to the purchase price presumption under section 110(b).
20

21 For purposes of the purchase price presumption, the "total consideration provided by the
22 purchaser" of a home subject to a CLT ground lease will generally be the agreed-upon purchase
23 price. Therefore, the valuation of the improvements sold subject to CLT restrictions should be
24 based upon the individual improvements purchase price unless it can be shown through sales of
25 similarly restricted properties that the purchase price is not full value.
26

27 **ASSESSMENT OF UNDERLYING LAND PARCELS**

28 Since CLTs retain ownership of the land indefinitely and the land is always leased to the owner
29 of the improvements, any transfer of the land to a new lessee constitutes a change in ownership
30 under section 61(c)(1).
31

32 CLT land leases may be structured in a variety of ways. In some cases, the total lease payment
33 may be described as the sum of several components, such as a replacement reserve fee or an
34 administrative charge. In all cases, however, the valuation of the land upon a change in
35 ownership depends on the lease terms.
36

¹⁰ Section 402.1(a)(11)(B)(i)(I).

¹¹ 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](#).

¹² Section 402.1(a)(11)(B)(i)(II).

¹³ Section 402.1(a)(11)(B)(i)(III).

1 Absent the sale of similarly restricted properties for use in the comparable sales approach, the
2 value of the land upon a change in ownership should be determined by converting the lease
3 payments to their present value using income capitalization.¹⁴
4

5 Where the lease explicitly restricts the amount of the payment attributable to a land use fee or a
6 charge for the value of the land, the assessor should recognize those restrictions pursuant to
7 section 402.1(a)(11). Where such payments or charges are de minimis, the stated purchase price
8 for the improvements may be considered to be inclusive of the value of the land.¹⁵
9

10 11 *Capitalization Rate*

12 ~~If there is a~~ The lack of meaningful data on sales of similarly restricted properties brought about
13 by the affordability restrictions on homeowner resales ~~means that~~, of the two authorized methods
14 for computing a capitalization rate, only one—the band of investment technique—is of practical
15 import for purposes of capitalizing the lease payments for lands leased from CLTs. Accordingly,
16 as provided in Property Tax Rule 8(g)(2), assessors should look to the California money markets
17 to derive weighted averages of capitalization rates for debt and for equity capital, and, under the
18 legal doctrine that the absence of an "actual market" for property does not mean that it has no
19 value,¹⁶ should weight those rates in a such a way as to reflect the rates that might be employed
20 by hypothetical prospective purchasers.
21

22 ~~PROPERTIES IN CLTs PRIOR TO AB 2818 — PROPOSITION 8~~

23 DECLINES IN VALUE AND CORRECTIONS

24 The amendments made by AB 2818 are prospective from their effective date of September 27,
25 2016. ~~Thus,~~

26
27 CLT affordable housing units purchased prior to that date, where an assessor did not recognize
28 the restrictions for purposes of establishing the base year value, may now need to be reviewed
29 for possible declines in value. Provided all aspects of section 402.1(a)(11) are met, such
30 assessments should now be reviewed by the assessor to ensure that, as provided under
31 Proposition 8, ~~on any lien date~~ the lower of factored base year value or market value
32 (recognizing the restrictions on use) is enrolled on each prospective lien date. Assessors may
33 correct a prior year's assessment within a limited time frame to ensure these considerations were
34 made.¹⁷
35

36 CLT affordable housing units purchased on or after the effective date of AB 2818 should have a
37 base year value enrolled reflecting full cash value under section 110 et seq. (recognizing
38 restrictions on use pursuant to section 402.1(a)(11), as applicable.). If after certifying the
39 assessment roll, the assessor discovers that a property has been assessed over (or under) its

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

¹⁵ In this regard, since there is no threshold specified in statute for what might constitute a de minimis amount, assessors must use their judgment.

¹⁶ *Kaiser Co. v. Reid* (1947) 30 Cal.2d. 610.

¹⁷ Section 4831 (c).

1 | current fair market value, he or she is authorized to make appropriate adjustments as permitted
2 | by statute within a specified time.¹⁸
3

4 | If you have any questions about the guidance in this letter, please contact the County-Assessed
5 | Properties Division at 1-916-274-3350.
6

7 | Sincerely,
8

9
10
11 | David Yeung, Chief
12 | County-Assessed Properties Division
13 | Property Tax Department
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16 | DY:mn
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18 | Section 51.5 (b) and 4831(c).