

Issue Paper Number **21-003**

- Board Meeting
 For Information Only
 Other



California State
Board of Equalization

Guidance on the Assessment of Community Land Trust Properties

I. Issue

Since 2016, the Legislature has enacted three separate bills that affect the assessment of properties owned or controlled by community land trusts (CLTs). The bills include:

- [Assembly Bill \(AB\) 2818](#), Chapter 701 (Cal. Stat. 2016) effective September 27, 2016, requiring Assessors to recognize qualifying restrictions on the use of owner-occupied homes placed by CLTs;
- [Senate Bill \(SB\) 196](#), Chapter 669 (Cal. Stat. 2019) effective January 1, 2020, allowing CLTs to claim the welfare exemption for rental properties under certain conditions and establishing a rebuttable presumption that the sale or resale price of the home includes both the home and the land leased from a CLT on which the home is situated.
- [SB 1473](#), Chapter 371 (Cal. Stat. 2020) effective January 1, 2021, clarifying the requirements for CLTs to claim the welfare exemption and making community land trust property eligible for the welfare exemption prior to commencement of construction under certain conditions.

Given these amendments, should the Board issue a Letter To Assessors (LTA) to provide updated guidance on the treatment of CLT properties?

II. Background

- A. CLTs are non-profit organizations that make home ownership available at affordable prices to persons of low and moderate incomes. Buyers acquire full ownership of their physical homes and lease the underlying land parcels from the CLTs under renewable, heritable 99-year ground leases. This model allows CLTs to maintain permanent communities of affordable home ownership even as individual homes change ownership over time.
- B. The welfare exemption is available to low or moderate income rental housing owned and operated by a qualifying nonprofit organization or a qualified claimant, provided various conditions and requirements are met.
- C. Revenue and Taxation Code section 402.1 generally requires Assessors, in the valuation of land, to recognize the effect of government-imposed restrictions on use. Privately imposed use restrictions, by contrast, are disregarded by Assessors unless the law specifies

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otherwise. Effective September 27, 2016, AB 2818 amended section 402.1 so that Assessors are required to recognize qualifying private use restrictions imposed by CLTs on owner-occupied homes.

- D. After the enactment of AB 2818, Board staff began working with interested parties to develop guidance for assessing CLT properties considering the bill's amendments. Ultimately, no agreement could be reached, and in the Board meeting of October 23, 2018, two competing proposals for guidance via LTA were presented to the Board for consideration. The Board opted for neither of the proposals, instead referring the matter back to the Interested Parties Process.
- E. After the October 2018 Board meeting, staff continued to work with interested parties, but with a focus on providing technical assistance for the next two bills: SB 196 and SB 1473. As each of those bills became law, the work on developing guidance continued. The result is the attached proposed LTA, "Assessment and Exemption of Community Land Trust Housing" (Attachment A).
- F. Government Code section 15606, subdivision (e), provides that the Board shall issue instructions to Assessors designed to promote assessment uniformity throughout the state. One medium for issuing such instructions is the LTA series, which presents Board staff's interpretation of rules, laws, and court decisions on property tax assessment matters.

III. Summary of Amendments

AB 2818 amended Revenue and Taxation Code section 402.1 by adding subdivision (a)(11) so that an Assessor, in estimating land value, must recognize affordability restrictions included in recorded contracts with CLTs. Revenue and Taxation Code section 402.1, subdivision (a)(11), was further clarified by SB 196, which created a rebuttable presumption that the sale or resale price of a CLT home includes the value of both the home and the land leased from a CLT on which the home is situated. This presumption allows Assessors valuing properties sold by a CLT to a qualified owner to disregard the sales prices of otherwise comparable homes that do not include similar enforceable restrictions. Under the amendments, an Assessor's valuation recognizes the effect upon value of a resale price restriction when the contract contains the following restrictions:

- a) The home is subject to a 99-year renewable ground lease with a qualified CLT that limits the homebuyer's equity.
- b) Resales must be limited to persons and families of low or moderate income (qualified owner(s)).
- c) Resale prices must be limited by formula to ensure continued affordability.
- d) The CLT has the right to repurchase the home to preserve its affordability.

Additionally, the qualified owner(s) must use the home as their primary residence.

SB 196 also added subdivision (a)(11)(B)(ii), which provides, notwithstanding any other law, any corrections of base year values or declines in value resulting from the application of the rebuttable presumption apply to all lien dates occurring after September 27, 2016.

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SB 196 also added Revenue and Taxation Code section 214.18 so that property owned by a CLT qualifies for the welfare exemption for a five-year period prior to the commencement of construction. Section 214.18 was subsequently clarified by SB 1473. Under section 214.18, a property owned by a CLT that otherwise qualifies for the welfare exemption is exempt under the following conditions:

- a) The property is being or will be developed or rehabilitated as an owner-occupied single-family dwelling, an owner-occupied unit in a multi-family dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development.
- b) Once a rental housing development is in the course of construction, the property qualifies for the welfare exemption
- c) A CLT is liable for property tax for the years for which the property was exempt under section 214.18 if the property was not developed or rehabilitated, or at least in the process of being developed or rehabilitated, by a prescribed deadline.
- d) A CLT must notify the Assessor if exempt property is not in the course of construction by the prescribed deadline. If the property becomes subject to property tax, supplemental and escape assessments are to be made within five years of the lien date following the date on which the property became subject to taxation.
- e) Additionally, SB 196 provides an uncodified note in section 6, requiring the BOE to annually collect data from Assessors regarding the exemption under section 214.18.

IV. Conclusion

Clear guidance from the Board on the assessment of CLT properties is needed to promote uniform treatment. The attached proposed LTA (Attachment A) is the result of lengthy discussions among interested parties, who ultimately reached consensus on the proposed language. Thus, staff recommends that the Board authorize publication of the attached proposed LTA (Attachment A).

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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 Assembly Bill (AB) 2818, Chapter 701 (Cal. Stat. 2016), Senate Bill (SB) 196, Chapter 669 (Cal. Stat. 2019), and, most recently, (SB) 1473, Chapter 371 (Cal. Stat. 2020).

The combined effects of these three enactments are 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 property eligible for the welfare exemption prior to commencement of construction under certain conditions.

Introduction

Community land trusts (CLT) are non-profit organizations that facilitate the development of permanently affordable for-sale and rental housing on land owned by the CLT. With respect to for-sale housing, CLTs make home ownership available at affordable prices to persons of low and moderate income. Buyers acquire full ownership of the improvements, but lease the underlying land parcels from the CLTs under renewable 99-year ground leases restricting resale to low- and moderate-income purchasers at affordable prices. 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 Restrictions on Use Under Section 402.1

Effective September 27, 2016, AB 2818 added paragraph (11) to Revenue and Taxation 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), 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

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, subd. (a)(11)(C)(ii).

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

14 15 **After CLT Property Sale to Qualified Owner, Sale Price for the Home Includes the Leased** 16 **Land—Rebuttable Presumption**

17 Once a CLT sells a home and transfers the leasehold interest in the land to a qualified owner,¹¹
18 both the land and the improvements are reassessed to fair market value, because both the sale of
19 the home and the 99-year lease are reassessable changes in ownership. If the conditions of section
20 402.1(a)(11) are met, the Assessor must consider the effect on value of any enforceable deed
21 restrictions.

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

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

⁴ Section 402.1, subd. (a)(11)(A)(iv).

⁵ Section 402.1, subd. (a)(11)(A)(i).

⁶ The term "persons and families of low or moderate income" 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, subd. (a)(11)(C)(iii).

⁸ Section 402.1, subd. (a)(11)(C)(ii)(II).

⁹ Section 402.1, subd. (a)(11)(C)(i)(II).

¹⁰ Section 402.1, subd. (a)(11)(C)(i)(III).

¹¹ The term qualified owner refers to a CLT home purchaser that is a "person [or] family of low or moderate income," as defined in section 402.1(a)(11)(C)(iv) by cross-reference to Health and Safety Code section 50093.

¹² Section 402.1, subd. (a)(11)(B)(i).

¹³ Section 402.1, subd. (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 is eligible to claim the welfare exemption if all of the following conditions are met: ¹⁴

- 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 or for rent by qualified
10 persons; and
- 11
- 12 • For owner-occupied homes, a deed restriction or other instrument serving as an
13 enforceable restriction on the sale or resale value of owner-occupied units is recorded.
- 14
- 15 • For rental housing, an enforceable and verifiable agreement with a public agency, a
16 recorded deed restriction, or other legal document exists, as described in section
17 214(g)(2)(A).
- 18

19 We note a nonprofit organization claiming the welfare exemption for its property may be a
20 community chest, fund, foundation, or corporation.¹⁵ A Limited Liability Company (LLC), wholly
21 owned by a qualifying CLT organization(s), that meets organizational and operating requirements
22 is also a qualifying organization eligible for the section 214 or section 214.18 welfare exemption,
23 consistent with Property Tax Rule 136. Additionally, as with any other welfare exemption claim,
24 an Organizational Clearance Certificate (OCC) must first be issued to the CLT (or the LLC wholly
25 owned by the CLT) by the State Board of Equalization (BOE) in order to be eligible for the welfare
26 exemption.¹⁶

27

28 Additionally, for rental housing developments, once the property is in the course of construction,
29 the property shall be deemed to qualify for the exemption provided under section 214 and, on
30 subsequent lien dates, the property shall qualify for exemption pursuant to section 214.¹⁷

31

32 The welfare exemption eligibility also depends on the use or intended use of the property. So, for
33 example, if an eligible CLT owns several parcels of land, and one of those parcels—Parcel A—
34 contains a commercial unit, then the eligible CLT may not qualify with respect to Parcel A but
35 could still qualify with respect to the remaining parcels owned by the eligible CLT.

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¹⁴ Section 214.18, subs. (a)(1) through (3).

¹⁵ Section 4(b) of article XIII of the California Constitution; section 214(a) of the Revenue and Taxation Code.

¹⁶ The BOE and the 58 County Assessors jointly administer the welfare exemption. The BOE determines whether an organization is organized and operated for a qualifying purpose under the provisions of section 214 to obtain an OCC, while the County Assessor determines whether the organization's use of the property is eligible for the welfare exemption. Once a claimant is issued an OCC, the claimant would then submit their OCC, along with their claim form for the welfare exemption, to the County Assessor where the property seeking exemption is located.

¹⁷ Section 214.18, subd. (b)(2).

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CLT Welfare Exemption Eligibility—Definitions

- 3 • "Community land trust" has the same meaning as provided in section 402.1
4 (a)(11)(C)(ii).
- 6 • For property developed for owner-occupied housing, "qualified persons" means persons
7 and families of low or moderate income, including persons and families that own a
8 dwelling or unit collectively as member occupants or resident shareholders of a limited
9 equity housing cooperative. "Persons and families of low or moderate income" has the
10 same meaning as provided in Health and Safety Code section 50093. For property
11 developed for rental housing, "qualified persons" means persons and families of low
12 income. "Persons and families of low income" has the same meaning as provided in
13 Health and Safety Code section 50079.5.¹⁸
- 15 • "Rental housing development" means a rental housing development in which all of the
16 residential units in the development, other than units provided to property managers, are
17 required to be rented to and occupied by persons and families of low or moderate income,
18 at rents that do not exceed an affordable rent, as described in Health and Safety Code
19 section 50053.¹⁹
- 21 • "Course of construction" has the same meaning as the term "facilities in the course of
22 construction," as used and defined in sections 214.1 and 214.2.²⁰ Section 214.1 defines
23 property used exclusively for religious, hospital, or charitable purposes to include
24 facilities in the course of construction, together with the land on which the facilities are
25 located as may be required for their convenient use and occupation. Section 214.2 states
26 that, as used in section 214.1, "facilities in the course of construction" include the
27 demolition or razing of a building with the intent to replace the building with a facility
28 to be used exclusively for religious, hospital, or charitable purposes.²¹ Additionally,
29 "facilities in the course of construction" must have activity connected with the
30 construction or rehabilitation of a new or existing building or improvement that results
31 in physical changes visible to any person inspecting the site where the building or
32 improvement is located.²²
- 34 • For property developed for owner-occupied housing, "qualified persons" means persons
35 and families of low or moderate income, including persons and families of low or
36 moderate income that own a dwelling or unit collectively as member occupants or
37 resident shareholders of a limited equity housing cooperative.²³ "Persons and families of
38 low or moderate income" has the same meaning as defined in Health and Safety Code
39 section 50093.

¹⁸ Section 214.18, subds. (c)(4), (5), and (6).

¹⁹ Section 214.18, subd. (c)(7).

²⁰ Section 214.18, subd. (c)(2).

²¹ Section 214.2, subd. (a).

²² Section 214.2, subd. (b).

²³ Section 214.18, subd. (c)(6).

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Welfare Exemption Eligibility for CLT Property Prior to Commencement of Construction—Five-Year Window

Property meeting the requirements of section 214.18 is eligible for the welfare exemption for the following periods prior to the commencement of the development or rehabilitation of housing on the property:

- Lien dates 2020 through 2024, inclusive, for property acquired by the CLT prior to January 1, 2020.²⁴
- The first five lien dates following the acquisition of property by the CLT, if the acquisition occurred from January 1, 2020, through December 31, 2024.²⁵

Property acquired between January 1, 2020 and December 31, 2024, can be exempt for the entire five-year period, even though this period will extend beyond the sunset date of section 214.18.²⁶

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

- By January 1, 2025, if the property was acquired by the CLT before January 1, 2020.
- Within five years of the lien date following the date of acquisition by the CLT, if the property was acquired by the CLT from January 1, 2020, through December 31, 2024.

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

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

Example

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

- 2020-21 fiscal year - partial year December 1, 2020 through June 30, 2021
- 2021-22 fiscal year

²⁴ Section 214.18, subd. (e)(1).

²⁵ Section 214.18, subd. (e)(2)(A).

²⁶ Section 214.18, subd. (e)(2)(B).

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- 1 • 2022-23 fiscal year
- 2 • 2023-24 fiscal year
- 3 • 2024-25 fiscal year
- 4 • 2025-26 fiscal year

5
6 An Assessor would have five years from the January 1, 2027, lien date (i.e., the lien date
7 following the January 1, 2026, lien date on which the property became subject to
8 assessment) to issue a supplemental assessment for the portion of the 2020-21 fiscal year
9 following the date of purchase. In other words, the Assessor would have to enroll the
10 supplemental assessment by January 1, 2032.

11
12 Additionally, an Assessor would have five years from the January 1, 2027, lien date to
13 issue escape assessments (must be enrolled by January 1, 2032) for the period during which
14 the property was previously exempt. Escape assessments apply to the lien date and can be
15 issued for fiscal years 2021-22, 2022-23, 2023-24, 2024-25, and 2025-26.

16 17 *CLT Welfare Exemption Effective Dates*

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19 As previously stated, SB 196 became effective on January 1, 2020. The exemption under that
20 section applies to:

- 21 • Lien dates January 1, 2020, through January 1, 2024, for property acquired by the CLT
22 before January 1, 2020.²⁷
- 23 • The first five lien dates following the date of acquisition by the CLT for property
24 acquired on and after January 1, 2020, and before January 1, 2025, regardless of the
25 repeal of section 214.18.²⁸

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28
29 Section 214.18 will sunset on January 1, 2025, by its own provisions.

30 31 *CLT Welfare Exemption Data Collection*

32
33 The BOE must annually collect data from County Assessors to quantify the amount of assessed
34 value exempted and the number of owner-occupied dwelling units or rental units, or both, created
35 by CLTs granted this exemption. CLTs must provide information to County Assessors about the
36 additional housing created.²⁹

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²⁷ Section 214.18, subd. (e)(1).

²⁸ Section 214.18, subs. (e)(2)(A) and (B).

²⁹ 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.