

535.0000 LAND USE RESTRICTIONS

See Rental Housing Exemption

535.0001 Assessment. Revenue and Taxation Code section 402.1 is applicable when valuing the privately owned fee interest of a landowner in property dedicated to use as low income housing by a recorded agreement between it and a governmental housing authority. C 1/13/84.

535.0002 Assessment. Revenue and Taxation Code section 402.1 is applicable when valuing a development wherein certain units are restricted to low-income rentals by a recorded agreement between the developer and the State Tax Credit Allocation Committee. C 11/2/94.

535.0003 Bankruptcy Code—Redemption. The one-year right to redeem property sold pursuant to the Bankruptcy Code does not constitute a land use restriction under Revenue and Taxation Code section 402.1. C 9/4/92.

535.0004 Caltrans—Surplus Residential Housing. Surplus single-family residential properties sold for less than market value by Caltrans to qualified buyers pursuant to its *Right to Purchase Agreement* imposing terms, conditions, and restrictions to assure that such housing would remain available to persons of low or moderate incomes were subject to land use restrictions within the meaning of Revenue and Taxation Code section 402.1. LTA 7/7/81 (No. 81/74).

535.0005 City Ordinance or Contract—Affordable Housing. In assessing townhomes purchased at a discount by low to moderate income individuals, as defined in a city affordability schedule, and on which the city imposed resale controls designed to maintain the availability of affordable housing, the assessor should recognize these limitations as enforceable restrictions under Revenue and Taxation Code section 402.1 similar to those discussed in LTA 81/74. LTA 7/7/81 (No. 81/74); C 12/13/93.

535.0006 City Regulatory Agreement—Affordable Housing. A city redevelopment agency, with assistance from the City, increases the supply of affordable housing within its redevelopment area by requiring developers seeking approval to build housing projects and sell a portion of the dwelling units (affordable units) to low or moderate income purchasers (purchasers).

In order to acquire the property, the purchaser must obtain a first mortgage from a private lender, the amount of which is tied to the median-area income, the purchaser's income, and current interest rates (first mortgage). Additionally, prior to closing, each purchaser of an affordable unit must enter into a recorded regulatory agreement with the City that requires that the purchaser execute a promissory note and second trust deed, referred to as a silent second mortgage, under which the City may require payment after a period of years.

The recorded regulatory Agreement entered into by the City and the purchaser constitutes an enforceable government restriction under section 402.1. Thus, in the absence of evidence of comparable sales of similarly restricted property, the value of the affordable units for property tax purposes, under section 110(b), is their purchase price, which in each case may be estimated by adding the sum of the down payment and the face amount of the first mortgage to the assessor's estimate of the present economic value of the silent second. C 2/8/2007; C 4/10/2007.

535.0010 Conservation Easements. Conservation easements placed upon properties by government through zoning, contract, or agreement are land use restrictions within the meaning of Revenue and Taxation Code section 402.1. C 6/7/84.

535.0011 Conservation Easements. The conveyance of an "Agricultural Conservation Easement" to a California nonprofit, public benefit corporation for the purpose of allowing the corporation to hold the property in trust perpetually as agricultural land does not constitute a restriction to be taken into account when valuing the property to which the easement applies for property tax purposes. However, the granting of such an easement to a governmental agency would constitute a restriction of the type referred to by Revenue and Taxation Code section 402.1. C 8/15/89.

Note: Stats. 1993, Ch. 1002, in effect January 1, 1994, added subdivision (a)(8) to section 402.1 which provides that an enforceable restriction to which the use of land may be subjected and which an assessor must consider when assessing the land includes a recorded conservation easement, as described in section 815.1 of the Civil Code, granted in favor of a nonprofit corporation organized pursuant to section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

535.0015 Dairy Land and Improvements. Restrictions placed upon land and improvements which make up a milk production facility by government through contracts for the buy-out of the facility and dairy cows are land use restrictions within the meaning of Revenue and Taxation Code section 402.1. LTA 7/7/87 (No. 87/49).

535.0016 Electrical Generating Qualifying Facilities. A contract executed between the owner/operator of a "Qualifying Facility" and an electric utility whereby the former sells electrical energy to the latter pursuant to a "standard offer contract" does not result in land use restriction contemplated by Revenue and Taxation Code section 402.1. Any zoning restriction on the use of the "Qualifying Facility" property, however, may be taken into account under section 402.1 when valuing "Qualifying Facility" property. C 3/28/90.

535.0018 Federal Housing Projects. Rental limitations and other limitations and restrictions imposed upon owners of HUD 236 projects constitute land use restrictions within the meaning of Revenue and Taxation Code section 402.1. Such properties should be valued as provided in Property Tax Rule 4 if reliable market data, i.e., sales of similarly restricted properties, is available, otherwise as provided in Property Tax Rule 8. In either situation, non-cash consideration accruing to the seller's benefit must be converted to its equivalent cash value pursuant to the methodologies provided in the respective rules. C 2/14/92; C 7/17/98.

535.0019 Federally Forced Sales. In order to enforce the 160-acre limitation on the size of land holdings in the arid regions of the San Joaquin and Imperial Valleys, the Federal Bureau of Reclamation has required persons owning in excess of 160 acres to enter into contracts whereby they agree to dispose of their excess acres within ten years. This contract limitation is not a use restriction but, rather, a limitation on ownership. Therefore, Revenue and Taxation Code section 402.1 is not applicable. C 5/13/76.

535.0020 Freeway Housing Replenishment Program. Sales of new residential properties as part of a freeway construction program to qualified buyers at prices below current market values are subject to land use restrictions within the meaning of Revenue and Taxation Code section 402.1 where the buyers agree to encumber their respective properties by giving the selling state agency 30 year continuing preemptive rights to purchase the properties. C 3/28/83.

535.0025 Historical Property. A property that qualifies as an historical property as defined in Government Code section 50280.1 and that is subject to an historical property contract pursuant to other specified sections of that code is "enforceably restricted" and must be

valued using the capitalization of income method specified in Revenue and Taxation Code sections 439.2 or 439.3. The historical property contract must be signed, accepted and recorded on or before the lien date of the fiscal year for which the valuation would apply. C 9/19/88.

535.0026 Income and Estate Tax Elections. The federal family business tax election under Internal Revenue Code section 2032 provides that a real property is appraised at its lesser "value in use" rather than its fair market value for estate tax purposes. In exchange for the lesser-appraised value, the use of the property is restricted to farming or other agricultural uses. However, a section 2032A election does not place a legal restriction on the use of real property, but rather merely places conditions on the heir's use of the property that do not run with the land. Thus, such elections are not enforceable government restrictions within the meaning of Revenue and Taxation Code section 402.1. C 10/24/2003.

535.0028 Land Conservation Act Contract. When a property that would usually be considered an appraisal unit includes acreage, some of which is subject to a Land Conservation Act (LCA) contract and some of which is not, it should be appraised as though it were two separate appraisal units. The restricted portion of the property should be valued by the capitalization of income method, as provided in Revenue and Taxation Code section 423, and that value enrolled when that value is less than its factored base year value or current market value. The remainder should be valued and enrolled at its factored base year value or current market value, whichever is less. C 9/20/93.

535.0030 Land Located within Coastal Zone.

1. In the assessment of land located within the coastal zone, assessors must consider the effect upon such value of Coastal Act (Public Resources Code section 30000 et seq.) jurisdiction over development of such land.
2. Where the use of real property is restricted, Revenue and Taxation Code section 402.1 generally precludes the use of otherwise comparable sales of land not similarly use-restricted in reaching tax assessment valuation.
3. If an assessor can prove by a preponderance of evidence that a use restriction will be removed from property being assessed in the predictable future, then appropriate comparable sales data may be used to establish value. OAG 3/8/78 (No. SO 77-34, Vol. 61, p. 97).

535.0040 Low Income Housing Projects. C 7/17/98. (Deleted January 2006)

535.0050 Privately-Imposed Restrictions. Land use restrictions and/or deed restrictions created by or between private persons are not land use restrictions of the kind contemplated in Revenue and Taxation Code section 402.1. Accordingly, such restrictions should not be considered when determining the values of properties subject thereto. C 3/29/83.

535.0054 Resolution Trust Corporation (RTC) Limitations. Limitations on the manner in which property held in receivership by RTC may be sold do not constitute land use restrictions of the type recognized as government restrictions under Revenue and Taxation Code section 402.1. C 6/22/94.

535.0060 Subsidy Payments. Revenue and Taxation Code section 402.9 is applicable only to Federal section 236 housing for persons of low and moderate income, not to Federal section 221 subdivision (d)3, Federal section 231, or Farmers Home Administration section 515 housing. C 4/2/82; C 4/7/82; C 7/17/98.

535.0065 Supplemental Assessments. C 8/3/94. (Deleted 2002).

535.0070 **Surplus State Residential Property.** Sales of surplus state residential properties to qualified buyers at prices below current market values are subject to land use restrictions within the meaning of Revenue and Taxation Code section 402.1 where the buyers agree to encumber their respective properties by giving the selling state agencies or their designees 30 year continuing pre-emptive rights to purchase the properties. LTA 7/7/81 (No. 81/74).

535.0075 **Valuation Upon Removal of Restriction.** Property removed from an agricultural preserve shall be valued at its fair market value as of March 1, 1975 or as of the lien date following a subsequent change in ownership. The base year value determined shall be factored in accordance with the requirement of the Revenue and Taxation Code. C 9/7/84.

535.0080 **Williamson Act Contract.** C 12/10/81. (Deleted 1997)