

## Goldfarb & Lipman LLP Comments

### **Welfare Exemption**

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

14

- The property is being or will be developed or rehabilitated as an owner-occupied single-family dwelling, owner-occupied unit in a multifamily dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development;
- Improvements are or will be available for use and ownership or for rent by qualified persons; and
- For owner-occupied homes, a deed restriction or other instrument serving as an enforceable restriction on the sale or resale value of owner-occupied units or the affordability of rental units is recorded.
- For rental housing, an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document exists, as described in section 214(g)(2)(A).

Section 214(a) offers the welfare exemption to property used exclusively for charitable purposes and owned and operated by limited liability companies organized and operated for charitable purposes. Therefore, a single-member limited liability company of which a CLT is the sole member and manager (CLT LLC) may also claim the Section 214.18 exemption. It should be noted, as with any other welfare exemption claim, an Organizational Clearance Certificate (OCC) must first be issued to the CLT or CLT LLC by the State Board of Equalization (BOE) in order for the CLT or CLT LLC to be eligible for the welfare exemption.<sup>15</sup>

Further, exemption claims under Section 214.18 are not subject to the general requirement that property seeking the welfare exemption be owned and operated by entities meeting the requirements of Section 214 (this Section 214 requirement would mean that both the owner and operator of the property must be exempt entities using the property for exempt purposes).<sup>1</sup>

---

<sup>1</sup> Section 214.18 places restrictions on the entity that **owns** the property and on the **future use** of the property, but places no express restrictions on the present operator of the property. Subparagraph (a) of Section 214.18 provides that "(a) [p]roperty is within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution **if the property is owned** by a community land trust, otherwise qualifying for exemption under Section 214, and all of the following conditions are met...". Juxtapose this language to that in Sections 214.11 and 214.15, which specifically state that the property will only meet the exemptions created in those sections if it is both "owned and **operated by...**"

Further, the conditions of Section 214.18 (a) that are required to be met to qualify for the exemption are summarized as follows:

- (1) property is being **or will be** developed or rehabilitated;

Additionally, for rental housing developments, once the property is in the course of construction, the property shall be deemed to qualify for the exemption provided under section 214 and, on subsequent lien dates, the property shall qualify for exemption pursuant to section 214.<sup>16</sup>

*CLT Welfare Exemption Eligibility—Definitions*

- "Community land trust" has the same meaning as provided in section 402.1(a)(11)(B)(ii)(a)(11)(C)(ii).<sup>17</sup>, which requires, in part, that (1) 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, and (2) 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.

These two requirements must be met only with respect to the particular parcel of land for which the exemption is being sought. So, for example, if a corporation owns several parcels of land, and one of those parcels—Parcel A—contains a commercial unit, then the corporation may not qualify as a CLT with respect to Parcel A but could still qualify as a CLT with respect to the remaining parcels owned by the corporation.

- For property developed for owner-occupied housing, "qualified persons" means persons and families of low or moderate income, including persons and families that own a dwelling or unit collectively as member occupants or resident shareholders of a limited equity housing cooperative. "Persons and families of low or moderate income" has the same meaning as provided in Health and Safety Code section 50093. For property developed for rental housing, "qualified persons" means persons and families of low income. "Persons and families of low income" has the same meaning as provided in Health and Safety Code section 50079.5.<sup>18</sup>
- "Rental housing development" means a rental housing development in which all of the residential units in the development, other than units provided to property managers, are required to be rented to and occupied by persons and families of low or moderate income, at rents that do not exceed an affordable rent, as described in Health and Safety Code section 50053.<sup>19</sup>

---

(Footnote continuation from page 1)

(2) improvements on the property are or will be available for use...by qualified persons; and  
(3) the requisite deed restriction is recorded.

Notably, the conditions do not require that the property be vacant or that the current operator is both an exempt entity or using the property for an exempt purpose, rather they only require that the property will be developed and the improvements will be available for use by qualified persons at a future date. Further, Section 214.18 (b)(1) provides that "subject to subdivision (d), the exemption provided by subdivision (a) shall not be denied to a property on the basis that the property does not currently contain ... a rental housing development that is in the course of construction."

- "Course of construction" has the same meaning as the term "facilities in the course of construction," as used and defined in sections 214.1 and 214.2.<sup>20</sup> Section 214.1 defines property used exclusively for religious, hospital, or charitable purposes to include facilities in the course of construction, together with the land on which the facilities are located as may be required for their convenient use and occupation. Section 214.2 states that, as used in section 214.1, "facilities in the course of construction" include the demolition or razing of a building with the intent to replace the building with a facility to be used exclusively for religious, hospital, or charitable purposes.<sup>21</sup> Additionally, "facilities in the course of construction" must have activity connected with the construction or rehabilitation of a new or existing building or improvement that results in physical changes visible to any person inspecting the site where the building or improvement is located.<sup>22</sup>
- For property developed for owner-occupied housing, "qualified persons" means persons and families of low or moderate income, including persons and families of low or moderate income that own a dwelling or unit collectively as member occupants or resident shareholders of a limited equity housing cooperative.<sup>23</sup> "Persons and families of low or moderate income" has the same meaning as defined in Health and Safety Code section 50093.