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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](mailto: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](mailto:angie.berry@boe.ca.gov) or 1-916-274-3376.

Sincerely,

/s/ David Yeung

David Yeung  
Deputy Director  
Property Tax Department

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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 property housing eligible for the welfare exemption prior to commencement of construction under certain conditions.

### **Introduction**

Community land trusts (CLTs) 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 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.<sup>1</sup>

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 Taxation code<sup>2</sup> 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.<sup>3</sup>
- The contract between the CLT and the homeowner must be recorded and provided to the assessor.<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> Unless otherwise specified all statutory references are to the Revenue and Taxation Code.

<sup>3</sup> Section 402.1(a)(11)(C)(ii).

<sup>4</sup> 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.<sup>5</sup>
- 3 • The initial sale and future resales must be to persons and families of low or moderate  
4 income.<sup>6</sup> 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 in  
6 Civil Code section 817.<sup>7</sup>
- 7 • The home must serve as the buyer's primary residence.<sup>8</sup>
- 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.<sup>9</sup>
- 10 • A CLT must have the right to repurchase the home to preserve its affordability for  
11 qualified owners.<sup>10</sup>

### 12 13 **After CLT Property Sale to Qualified Owner, Sale Price for the Home Includes the Leased** 14 **Land—Rebuttable Presumption**

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

20 The enactment of SB 196 created a rebuttable presumption that the sale or resale price of a CLT  
21 home includes the value of both the home and the land leased from a CLT on which the home is  
22 situated.<sup>12</sup> The new law also provides that any declines in value or corrections of base year values  
23 resulting from the application of this rebuttable presumption shall apply to all lien dates occurring  
24 after September 27, 2016.<sup>13</sup>

25  
26 The rebuttable presumption may be overcome if the Assessor has evidence to establish that all or  
27 a portion of the value of the leased land is not reflected in the sale or resale price of the home.

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<sup>5</sup> Section 402.1(a)(11)(A)(i).

<sup>6</sup> The term "persons and families of lower or 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.

<sup>7</sup> Section 402.1(a)(11)(C)(iii).

<sup>8</sup> Section 402.1(a)(11)(C)(ii)(II).

<sup>9</sup> Section 402.1(a)(11)(C)(i)(II).

<sup>10</sup> Section 402.1(a)(11)(C)(i)(III).

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

<sup>12</sup> Section 402.1(a)(11)(B)(i).

<sup>13</sup> 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 ~~is~~ 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 single-  
6 family dwelling, owner-occupied unit in a multifamily dwelling, a member- occupied unit  
7 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 • A deed restriction or other instrument serving as an enforceable restriction on the sale or  
13 resale value of owner-occupied units or the affordability of rental units is recorded.<sup>14</sup>
- 14

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

#### 18 *CLT Welfare Exemption Eligibility—Definitions*

- 19
- 20
- 21 • "Community land trust" has the same meaning as provided in section 402.1(a)(11)(B)(ii).<sup>16</sup>
- 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 developed  
28 for rental housing, "qualified persons" means persons and families of low income.  
29 "Persons and families of low income" has the same meaning as defined in Health and Safety  
30 Code section 50079.5.<sup>17</sup>
- 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, at  
35 rents that do not exceed an affordable rent, as described in Health and Safety Code section  
36 50053.<sup>18</sup>
- 37

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<sup>14</sup> Section 214.18(a)(1) through (3).

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> Section 214.18(c)(4), (5), and (6).

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

### *Welfare Exemption Eligibility for CLT Property Prior to Commencement Housing Under the Course of Construction—Five-Year Window*

22 Property meeting the requirements of Section 214.18 is ~~under the course~~  
23 ~~of construction can be~~ eligible for the welfare exemption for the following periods  
24 ~~prior to the commencement of the development or rehabilitation of~~  
25 ~~housing on the property:~~  
26

- 27       • Lien dates 2020 through 2024, inclusive, for property acquired by the CLT prior  
28 to January 1, 2020.<sup>23</sup>  
29
- 30       • The first five lien dates following the acquisition of property by the CLT, if the acquisition  
31 occurred from January 1, 2020, through December 31, 2024.<sup>24</sup>  
32

33 Property acquired between January 1, 2020 and December 31, 2024, can be exempt for the entire five-  
34 year period, even though this period will extend beyond the sunset date of section 214.18.<sup>25</sup>  
35

36 If the property was not developed or rehabilitated or in the process of being developed or rehabilitated  
37 by the end of the five-year exemption period, the CLT will be liable for property tax for the years for  
38 which the property was exempt. Specifically, the property must be at least in the process of being  
39 developed or rehabilitated:  
40

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

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<sup>19</sup> Section 214.18(c)(2).

<sup>20</sup> Section 214.2(a).

<sup>21</sup> Section 214.24(b).

<sup>22</sup> Section 214.18(b)(6).

<sup>23</sup> Section 214.18(e)(1).

<sup>24</sup> Section 214.18(e)(2)(A).

<sup>25</sup> Section 214.18(e)(2)(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.<sup>26</sup> [**Note:** Section 214.18(e)(1) states “lien dates on and after  
3       January 1, 2020, and before January 1, 2025. Is January 1, 2024 the last lien date before  
4       January 1, 2025?”]  
5  
6       • The first five lien dates following the date of acquisition by the CLT for property  
7       acquired on and after January 1, 2020, and before January 1, 2025, regardless of the  
8       repeal of section 214.18.<sup>27</sup>  
9

10 Section 214.18 will sunset on January 1, 2025, by its own provisions.  
11

### *CLT Welfare Exemption Data Collection*

12  
13

14 The BOE must annually collect data from County Assessors to quantify the amount of assessed  
15 value exempted and the number of owner-occupied dwelling units or rental units, or both, created  
16 by CLTs granted this exemption. CLTs must provide information to County Assessors about the  
17 additional housing created.<sup>28</sup>  
18  
19  
20

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<sup>26</sup> Section 214.18(e)(1).

<sup>27</sup> Section 214.18(e)(2)(A) and (B).

<sup>28</sup> 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.