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No. 2021/016

April 30, 2021

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

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 AB 2818, SB 196, and SB 1473, BOE staff have drafted an LTA to provide guidance on the implementation of these three bills.

The most recent draft was sent to interested parties on January 8, 2021 (LTA No. 2021/001). That draft reflected the enactment of SB 1473. Interested parties were asked to submit comments on that draft by February 12, 2021. Revisions based on those comments are shown in ~~strikeout~~ and underline format in the attached amended draft LTA. Also attached is a revised matrix showing each comment received.

Please review the attached amended draft and submit all comments in ~~strikeout~~ and underline format to Ms. Angie Berry at angie.berry@boe.ca.gov by June 4, 2021.

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 draft LTA will be presented to the Board for adoption. All 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 or 1-916-274-3376.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:ab
Attachments

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, Statutes of 2016), Senate Bill (SB) 196 (Chapter 669, Statutes of 2019), and, most recently, (SB) 1473 (Chapter 371, Statutes of 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 Deed 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).

PROPOSED DRAFT LTA

- 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 evidence to establish that all or
30 a portion of the market value of the leased land is not reflected in the sale or resale price of the
31 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).

PROPOSED DRAFT LTA

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, limited liability company (LLC), or corporation.¹⁵ Thus, an
21 LLC, wholly owned by a qualifying CLT organization(s), that meets organizational and operating
22 requirements (i.e., a CLT LLC) is also a qualifying organization eligible for the section 214 or
23 section 214.18 welfare exemption, consistent with Property Tax Rule 136. Additionally, ~~it should~~
24 be noted, as with any other welfare exemption claim, an Organizational Clearance Certificate
25 (OCC) must first be issued to the CLT or CLT LLC by the State Board of Equalization (BOE) in
26 order for the CLT or CLT LLC to be eligible for the welfare 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.

36 *CLT Welfare Exemption Eligibility—Definitions*

37
38

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).

PROPOSED DRAFT LTA

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

39 *Welfare Exemption Eligibility for CLT Property Prior to Commencement of Construction—Five-*
40 *Year Window*
41

¹⁸ Section 214.18, subs. (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).

PROPOSED DRAFT LTA

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

- 4
- 5 • Lien dates 2020 through 2024, inclusive, for property acquired by the CLT prior to
6 January 1, 2020.²⁴
- 7
- 8 • The first five lien dates following the acquisition of property by the CLT, if the
9 acquisition occurred from January 1, 2020, through December 31, 2024.²⁵

10
11 Property acquired between January 1, 2020 and December 31, 2024, can be exempt for the entire
12 five-year period, even though this period will extend beyond the sunset date of section 214.18.²⁶

13
14 If the property was not developed or rehabilitated or in the process of being developed or
15 rehabilitated by the end of the five-year exemption period, the CLT will be liable for property tax
16 for the years for which the property was exempt. Specifically, the property must be at least in the
17 process of being developed or rehabilitated:

- 18
- 19 • By January 1, 2025, if the property was acquired by the CLT before January 1, 2020.
- 20
- 21 • Within five years of the lien date following the date of acquisition by the CLT, if the
22 property was acquired by the CLT from January 1, 2020, through December 31, 2024.
- 23

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

26
27 Section 214.18(d)(2) requires the CLT to notify the County Assessor if exempt property is not in
28 the course of construction by the applicable date, as specified above. In these circumstances,
29 supplemental and escape assessments are to be issued. Sections 75.11(d)(4) and 532(b)(4) were
30 added to require any supplemental and escape assessments be made within five years of the lien
31 date following the date on which the property becomes subject to taxation.

32 **Example**

33
34 A CLT purchases real property and a deed is recorded on November 15, 2020. To be
35 exempt, the CLT must begin or complete construction by January 1, 2026. If construction
36 has not at least begun by January 1, 2026, the CLT will be liable for property taxes on the
37 January 1, 2026, lien date as follows:

- 38
- 39 • 2020-21 fiscal year - partial year December 1, 2020 through June 30, 2021
- 40 • 2021-22 fiscal year
- 41 • 2022-23 fiscal year
- 42 • 2023-24 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).

PROPOSED DRAFT LTA

- 2024-25 fiscal year
- 2025-26 fiscal year

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

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

CLT Welfare Exemption Effective Dates

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

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

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

CLT Welfare Exemption Data Collection

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

²⁷ Section 214.18, subd. (e)(1).

²⁸ Section 214.18, subds. (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.

**MATRIX
ASSESSMENT AND EXEMPTION OF COMMUNITY LAND TRUST HOUSING
ALTERNATIVE LANGUAGE/COMMENTS**

NO.	PAGE/LINES REFERENCE		SOURCE	PROPOSED LANGUAGE/COMMENTS	BOE STAFF POSITION
1	1	21	BOE Staff	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- <u>income</u> purchasers at affordable prices.	Correcting an error in which the word "income" was not included in the sentence.
2	1	31	Susan Scott	Enforceable Deed Restrictions on Use Under Section 402.1 The only change I would suggest would be to eliminate the word "Deed" in the heading "Enforceable Deed Restrictions on Use Under Section 402.1." The 99 Year Ground Lease used by CLTs isn't technically a "deed restriction" as I understand it.	Accepted.
3	3	20-22	Goldfarb & Lipman LLP	<u>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.</u> It should be noted, as with any other welfare exemption claim, an Organizational Clearance Certificate (OCC) must first be issued to the <u>CLT or CLT LLC</u> by the State Board of Equalization (BOE) in order for the CLT <u>or CLT LLC</u> to be eligible <u>for the welfare exemption.</u>	Not accepted. See BOE rewrite: We note a nonprofit organization claiming the welfare exemption for its property may be a community chest, fund, foundation, limited liability company (LLC), or corporation. Section 4(b) of article XIII of the California Constitution; section 214(a) of the Revenue and Taxation Code. Thus, an LLC, wholly owned by a qualifying

NO.	PAGE/LINES REFERENCE	SOURCE	PROPOSED LANGUAGE/COMMENTS	BOE STAFF POSITION
	23		<p><u>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). (Footnote added)</u></p> <p><u>Footnote: 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,</u></p>	<p>CLT organization(s), that meets organizational and operating requirements (i.e., a CLT LLC) is also a qualifying organization eligible for the section 214 or section 214.18 welfare exemption, consistent with Property Tax Rule 136.</p> <p>"Additionally" will replace "It should be noted".</p> <p>Not accepted. RTC 214 et seq. implement and interpret the welfare exemption as authorized in the California Constitution. Here, such an interpretation would be inconsistent with the Constitution's plain language. See Cal. Const. art. XIII, sect. 4, subd. (b); see also Cal. Const. art. XIII, section 5. Section</p>

NO.	PAGE/LINES REFERENCE		SOURCE	PROPOSED LANGUAGE/COMMENTS	BOE STAFF POSITION
				<p><u>which specifically state that the property will only meet the exemptions created in those sections if it is both “owned and operated by...”</u></p> <p><u>Further, the conditions of Section 214.18 (a) that are required to be met to qualify for the exemption are summarized as follows:</u></p> <p><u>(1) property is being or will be developed or rehabilitated;</u></p> <p><u>(2) improvements on the property are or will be available for use...by qualified persons; and</u></p> <p><u>(3) the requisite deed restriction is recorded.</u></p> <p><u>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."</u></p>	<p>214.18 must be interpreted in this context. Additionally, the requirements of section 214.18 are already described on pg. 3 of the LTA.</p>
4	3	31	Goldfarb & Lipman LLP	<p><u>"Community land trust" has the same meaning as provided in section 402.1(a)(11)(B)(ii) (a)(11)(C)(ii).¹⁷, 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.</u></p>	<p>Not accepted. The information is covered on pages 1 and 2 of the LTA. It abbreviates the requirements of the section and includes details not explicitly covered in section 402.1.</p>

NO.	PAGE/LINES REFERENCE	SOURCE	PROPOSED LANGUAGE/COMMENTS	BOE STAFF POSITION
			<p><u>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.</u></p>	<p>Accepted with edits and relocation to page 3 of the LTA. BOE rewrite: The welfare exemption eligibility also depends on the use or intended use of the property. So, for example, if an eligible CLT owns several parcels of land, and one of those parcels—Parcel A—contains a commercial unit, then the eligible CLT may not qualify with respect to Parcel A but could still qualify with respect to the remaining parcels owned by the eligible CLT.</p>