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No. 2021/052

December 1, 2021

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

**ASSESSMENT AND EXEMPTION OF COMMUNITY LAND TRUST HOUSING**

In order to promote assessment uniformity and equal treatment of taxpayers across the 58 California counties, the State Board of Equalization (BOE) engaged interested parties to discuss the assessment and exemption of community land trust (CLT) housing. This Letter To Assessors (LTA) provides information on the treatment of CLT 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 SB 1473 (Chapter 371, Cal. Stat. 2020). This LTA is the result of discussions among interested parties, who ultimately reached consensus on the language. Interested parties involved in this project included BOE staff, County Assessors and their staff, representatives of CLT groups, and members of the general public.

On November 16, 2021, the Board approved and adopted this LTA. 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 questions regarding this project or LTA, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung  
Deputy Director  
Property Tax Department

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## 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.<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 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), 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>

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

- The contract between the CLT and the homeowner must be recorded and provided to the assessor.<sup>4</sup>
- The contract between the CLT and the homeowner provides that the CLT leases the land that the home is situated on to the buyer for a renewable 99-year term.<sup>5</sup>
- The initial sale and future resales must be to persons and families of low or moderate income.<sup>6</sup> Persons and families of low or moderate income may either own the home directly or own a share of a limited equity housing cooperative, as defined in Civil Code section 817.<sup>7</sup>
- The home must serve as the buyer's primary residence.<sup>8</sup>
- The sale or resale price of the home must be determined by a formula that ensures the home has a purchase price that is affordable to qualified owners.<sup>9</sup>
- A CLT must have the right to repurchase the home to preserve its affordability for qualified owners.<sup>10</sup>

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

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

The enactment of SB 196 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.<sup>12</sup> The law also provides that any declines in value or corrections of base year values resulting from the application of this rebuttable presumption shall apply to all lien dates occurring after September 27, 2016.<sup>13</sup>

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

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<sup>4</sup> Section 402.1, subd. (a)(11)(A)(iv).

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

<sup>6</sup> 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.

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

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

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

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

<sup>11</sup> 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.

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

<sup>13</sup> Section 402.1, subd. (a)(11)(B)(ii).

## Welfare Exemption

Effective as of lien date January 1, 2020, SB 196 added section 214.18, which provides that a CLT is eligible to claim the welfare exemption if all of the following conditions are met: <sup>14</sup>

- 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 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).

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

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>17</sup>

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.

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

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

<sup>16</sup> 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.

<sup>17</sup> Section 214.18, subd. (b)(2).

## *CLT Welfare Exemption Eligibility—Definitions*

- "Community land trust" has the same meaning as provided in section 402.1(a)(11)(C)(ii).
- 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>
- "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.

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<sup>18</sup> Section 214.18, subds. (c)(4), (5), and (6).

<sup>19</sup> Section 214.18, subd. (c)(7).

<sup>20</sup> Section 214.18, subd. (c)(2).

<sup>21</sup> Section 214.2, subd. (a).

<sup>22</sup> Section 214.2, subd. (b).

<sup>23</sup> Section 214.18, subd. (c)(6).

### *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.<sup>24</sup>
- 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.<sup>25</sup>

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.<sup>26</sup>

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

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<sup>24</sup> Section 214.18, subd. (e)(1).

<sup>25</sup> Section 214.18, subd. (e)(2)(A).

<sup>26</sup> Section 214.18, subd. (e)(2)(B).

- 2021-22 fiscal year
- 2022-23 fiscal year
- 2023-24 fiscal year
- 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.<sup>27</sup>
- 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.<sup>28</sup>

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.<sup>29</sup>

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<sup>27</sup> Section 214.18, subd. (e)(1).

<sup>28</sup> Section 214.18, subds. (e)(2)(A) and (B).

<sup>29</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.