



STATE BOARD OF EQUALIZATION
PROPERTY TAX DEPARTMENT
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First District, Lancaster

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DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

DEAN R. KINNEE
Executive Director

**STATE BOARD OF EQUALIZATION
INTERESTED PARTIES MEETING
Assessment of Community Land Trust Housing
450 N Street, Room 122, Sacramento
April 10, 2018 9:30 a.m. – 11:30 a.m.
NOTICE AND AGENDA**

Tuesday, April 10, 2018

Staff of the State Board of Equalization (BOE) will hold an interested parties meeting to discuss proposed guidance related to Assembly Bill 2818,¹ a 2016 bill that amended section 402.1 to require the assessor to consider certain land use restrictions imposed by community land trusts.

Background

Late last year staff met informally with affordable housing advocates to discuss a draft Letter to Assessors (LTA) on the proper administration of AB 2818. We also asked assessors to submit comments on that draft LTA.

The attached revised draft LTA takes into account comments both from affordable housing advocates and county assessors. This meeting will bring all interested parties together to discuss the revised draft. Interested parties may submit comments on the draft LTA in advance of the meeting by emailing comments to Ms. Angie Berry at angie.berry@boe.ca.gov. This notice and related information are available on the BOE website at <http://www.boe.ca.gov/proptaxes/assessment-of-community-land-trust-housing.htm>.

Contact Person

If you expect to attend the meeting, please contact Ms. Berry at 1-916-274-3376 or email her. If you would like to participate by teleconference, dial **1-888-822-7517**. The participant pass code is 8467007.

The meeting location is accessible to people with disabilities. Please contact Ms. Berry if you require special assistance.

Sincerely,

/s/ David Yeung

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

DY:mn
Enclosure

¹ Stats. 2016, ch 701.

**Assessment of Community Land Trust Housing
Interested Parties Meeting Agenda
Tuesday, April 10, 2018, 9:30 a.m. – 11:30 a.m.
450 N Street, Room 122, Sacramento**

1. Introduction

2. Overview and Background

3. Discussion of Draft Letter To Assessors
 - a) Assessor Comments

 - b) Industry Comments

 - c) Other Interested Parties Comments

4. Next Steps

5. Conclusion



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TO COUNTY ASSESSORS:

ASSESSMENT OF COMMUNITY LAND TRUST HOUSING

Letter to Assessors 2017/008, dated February 8, 2017, included a discussion of new legislation concerning land use restrictions under community land trusts (CLTs). Specifically, we noted that, effective September 27, 2016, Assembly Bill 2818¹ added paragraph (11) to section 402.1(a) of the Revenue and Taxation Code² requiring county assessors to recognize qualifying restrictions on owner-occupied homes controlled by CLTs. This letter is intended to provide guidance in light of the amendments made by AB 2818.

Community Land Trusts

Under the amendments to section 402.1 made by AB 2818, a "community land trust" is a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that satisfies all of the following:³

- Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.
- 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.
- 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.

CLTs operate to sell homes at affordable prices to low- and moderate-income buyers while simultaneously leasing the underlying land parcels to those buyers. Since the CLT, as lessor, retains legal title to the underlying land, this model allows the CLT to maintain a permanent community of affordable housing even as owner-occupants come and go.

To make the housing affordable, buyers' lease payments are typically nominal in amount, effectively shielding buyers from the cost of the underlying land parcels. CLT land costs are

¹ Stats. 2016, ch. 701.
² All statutory references are to the Revenue and Taxation Code unless otherwise specified.
³ Section 402.1(a)(11)(B)(ii)

1 often offset by capital from public programs, including the federal HOME Investment
2 Partnerships Program and Community Block Grant Program, as well as a variety of state and
3 local affordable housing funding sources.

4 ***Enforceable Restrictions Under Section 402.1***

6 Section 402.1 enumerates a non-exhaustive list of enforceable restrictions on land that must be
7 recognized by the assessor, and provides that there is a rebuttable presumption that those
8 restrictions "will not be removed or substantially modified in the predictable future and that they
9 will substantially equate the value of the land to the value attributable to the legally permissible
10 use or uses."⁴

12 In recognizing restrictions on use under section 402.1 the assessor "shall not consider sales of
13 otherwise comparable land not similarly restricted as to use as indicative of value of land under
14 restriction, unless the restrictions have a demonstrably minimal effect upon value."⁵ With CLT
15 properties, the key restriction for valuation purposes is that, upon resale, the gain that might be
16 realized by either the owner-occupant or the CLT (upon exercising its purchase option) is
17 constrained by affordability restrictions.

19 As amended by AB 2818, the list of enforceable restrictions under section 402.1 explicitly
20 includes restrictions under CLTs, provided the following conditions are met:

- 22 • The contract must be recorded and provided to the assessor.⁶
- 23 • The contract is a renewable 99-year ground lease between a community land trust and a
24 qualified owner of an owner-occupied single-family dwelling or an owner-occupied unit
25 in a multi-family dwelling.⁷
- 26 • *Qualified owner* means persons and families of low or moderate income, including
27 persons and families of low or moderate income that own a dwelling or unit collectively
28 as member occupants⁸ or resident shareholders of a limited equity housing cooperative as
29 defined in Civil Code section 817.⁹
- 30 • The initial sale and future resales of homes must be to persons and families of low or
31 moderate income,¹⁰ as defined.¹¹
- 32 • The sale or resale price of the home must be determined by a formula that ensures the
33 home has a purchase price that is affordable to qualified owners.¹²

⁴ Section 402.1(b)

⁵ Section 402.1(d)

⁶ Section 402.1(a)(11)(A)(iv)

⁷ Section 402.1(a)(11)(B)(ii) (III)

⁸ Section 402.1(a)(11)(B)(v)

⁹ Section 402.1(a)(11)(B)(iii)

¹⁰ Section 402.1(a)(11)(B)(i)(I)

¹¹ See Health and Safety Code [section 50093 as required by section 402.1\(a\)\(11\)\(B\)\(iv\)](#). The Board issues an annual letter to assessors listing these income limits for purposes of applying the Welfare Exemption. Most recently, see [Letter To Assessors 2017/054](#).

¹² Section 402.1(a)(11)(B)(i)(II)

- The community land trust has the right to repurchase the home to preserve the home as affordable to qualified owners.¹³

Assessment Treatment

ASSESSMENT OF IMPROVEMENTS

Section 110, subdivision (b), provides that the term *full value* means the "purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that price in an open market transaction." The *purchase price* means "the total consideration provided by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise."

The purpose of AB 2818 was to require county assessors to recognize the effect of specified affordability restrictions on a property's use. Accordingly, upon a sale of a home subject to a CLT ground lease to a qualifying purchaser, the assessor should recognize such restrictions, if possible by reference to the purchase price presumption under section 110(b).

For purposes of the purchase price presumption, the "total consideration provided by the purchaser" of a home subject to a CLT ground lease will generally be the agreed-upon purchase price. Therefore, the valuation of the improvements sold subject to CLT restrictions should be based upon the individual improvements purchase price unless it can be shown through sales of similarly restricted properties that the purchase price is not full value.

ASSESSMENT OF UNDERLYING LAND PARCELS

Since CLTs retain ownership of the land indefinitely and the land is always leased to the owner of the improvements, any transfer of the land to a new lessee constitutes a change in ownership under section 61(c)(3), which generally provides that it is conclusively presumed that homes eligible for the homeowners' exemption that are on leased land have a renewal option of at least 35 years on the land regardless of whether any renewal option actually exists.¹⁴

Absent the sale of similarly restricted properties for use in the comparable sales approach, the base year value may be determined by reference to the present value of the lease payments to the CLT. Thus, upon any transfer of the land to a new lessee a new base year value should be established for the underlying land parcel. That base year value should be determined by reference to the present value of the lease payments to the CLT.

The lack of meaningful data on sales of similarly restricted properties brought about by the affordability restrictions on homeowner resales means that, of the two authorized methods for computing a capitalization rate, only one—the band of investment technique—is of practical import for purposes of capitalizing the lease payments for lands leased from CLTs. Accordingly, as provided in Rule 8(g)(2), assessors should look to the California money markets to derive weighted averages of capitalization rates for debt and for equity capital, and, under the legal

¹³ Section 402.1(a)(11)(B)(i)(III)

¹⁴ The conclusive presumption does not apply to manufactured homes on rented or leased land and subject to the Manufactured Home Property Tax Law (i.e., section 5800 et seq.) or to floating homes subject to taxation under section 229.

1 doctrine that the absence of an "actual market" for property does not mean that it has no value,¹⁵
2 should weight those rates in a such a way as to reflect the rates that might be employed by
3 hypothetical prospective purchasers.
4

5 **PROPERTIES IN CLTs PRIOR TO AB 2818—PROPOSITION 8**

6 The amendments made by AB 2818 are prospective from their effective date of September 27,
7 2016. Thus, CLT affordable housing units purchased prior to that date where an assessor did not
8 recognize the restrictions for purposes of establishing the base year value may now need to be
9 reviewed for possible declines in value. Provided all aspects of section 402.1(c)(11) are met,
10 such assessments should now be reviewed by the assessor to ensure that, as provided under
11 Proposition 8, on any lien date the lower of factored base year value or market value
12 (recognizing the restrictions on use) is enrolled.
13

14 If you have any questions about the guidance in this letter, please contact the County-Assessed
15 Properties Division at 1-916-274-3350.
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17 Sincerely,
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21 David Yeung, Chief
22 County-Assessed Properties Division
23 Property Tax Department
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26 DY:mn
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¹⁵ *Kaiser Co. v. Reid*, 30 Cal.2d. 610