STATE OF CALIFORNIA

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November 29, 2023

No. 2023/048

TO COUNTY ASSESSORS:

POSSESSORY INTERESTS:
PUBLICLY OWNED HOUSING PROJECT

A "possessory interest" is defined in Revenue and Taxation Code (RTC) section 107(a) as a possession of, claim to, or right to the possession of land or improvements that is independent, durable, and exclusive of rights held by others in the property, except when coupled with ownership of the land or improvements in the same person.

Effective October 11, 2023, Senate Bill 734 (Stats. 2023, ch. 785) adds section 107.10 to the RTC, regarding the taxation of possessory interests in certain publicly owned housing projects. RTC section 107.10 reads as follows:

> For purposes of paragraph (1) of subdivision (a) of Section 107, there is no independent possession or use of land or improvements if that possession or use is a tenancy in a residential unit of a publicly owned housing project by a low-income household, as defined by Section 50079.5 of the Health and Safety Code, rented at affordable rents as described in Section 50053 of the Health and Safety Code.

Section 107(a)(1) defines "independent" as "the ability to exercise authority and exert control over the management or operation of the property or improvements, separate and apart from the policies, statutes, ordinances, rules, and regulations of the public owner of the property or improvements. A possession or use is independent if the possession or operation of the property is sufficiently autonomous to constitute more than a mere agency."

RTC section 107.6(a) requires the state or any local public entity of government, when entering into a written contract with a private party whereby a possessory interest subject to property taxation may be created, to include, or cause to be included, in that contract, a statement that the property interest may be subject to property taxation if created, and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest.

In effect, RTC section 107.10 exempts low-income households living in publicly owned housing projects from receiving a possessory interest assessment. Because section 107.10 provides that low-income households living in publicly owned housing projects does not constitute "independent possession" under section 107(a)(1), such possession or use is also not a "possessory interest" under section 107(a). Therefore, such households are exempt from receiving possessory interest assessments, and contracts conveying such interests do not fall within the scope of section 107.6.

A copy of Health and Safety Code sections 50079.5 and 50053 are enclosed. If you have any questions regarding these amended provisions, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:mc
Enclosure

HEALTH AND SAFETY CODE SECTIONS

50079.5. (a) "Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.

(b) "Lower income households" includes very low income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.

(c) As used in this section, "area median income" means the median family income of a geographic area of the state.

50053. (a) For any rental housing development that receives assistance prior to January 1, 1991, and a condition of that assistance is compliance with this section, “affordable rent” with respect to lower income households shall not exceed the percentage of the gross income of the occupant person or household established by regulation of the department that shall not be less than 15 percent of gross income nor exceed 25 percent of gross income.

(b) For any rental housing development that receives assistance on or after January 1, 1991, and a condition of that assistance is compliance with this section, “affordable rent,” including a reasonable utility allowance, shall not exceed:

(1) (A) For acutely low income households, as defined in Section 50063.5, the product of 30 percent times 15 percent of the area median income adjusted for family size appropriate for the unit.

(B) This paragraph shall apply to a lease entered into on or after January 1, 2022.

(2) For extremely low income households, the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit.

(3) For very low income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(4) For lower income households whose gross incomes exceed the maximum income for very low income households, the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those lower income households with gross incomes that exceed 60 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(5) For moderate-income households, the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

(c) The department's regulation shall permit alternative percentages of income for agency-assisted rental and cooperative housing developments pursuant to regulations adopted under subdivision (f) of Section 50462. The department shall, by regulation, adopt criteria defining and providing for determination of gross income, adjustments for family size appropriate to the unit, and rent for purposes of this section. These regulations may provide alternative criteria, where necessary, to be consistent with pertinent federal statutes and regulations governing federally assisted rental and cooperative housing. The agency may, by regulation, adopt alternative criteria, and pursuant to subdivision (f) of Section 50462, alternative percentages of income may be adopted for agency-assisted housing developments.

(d) For purposes of this section, "area median income," "adjustments for family size appropriate to the unit," and "moderate-income household" shall have the same meaning as provided in Section 50052.5.