

[Assembly Bill 2818](#) (Chiu)

Program: Property Tax

Sponsor: California Community Land Trust Network

Revenue and Taxation Code Section 402.1

Effective: Upon enactment.

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Summary: Allows assessors to consider [Community Land Trust](#) (CLTs) imposed enforceable restrictions when setting the assessed values of homes sold to low and moderate income families with a 99-year ground lease and limited equity due to resale price restrictions.

Purpose: To allow the home's property tax assessment to reflect the negative value impact of resale price restrictions, as well as promote statewide assessment uniformity and property tax certainty associated with a CLT-home purchase.

Fiscal Impact Summary: Annual \$24,500 loss for the next two years.

Existing Law: Community Land Trusts (CLTs). Federal law, the Cranston-Gonzales National Affordable Housing Act (Act), allows CLTs to obtain organizational support, technical assistance, education, training, and community support from the government in fulfilling their housing mission.¹ The Act defines "CLT" to mean a community housing development organization not sponsored by a for-profit organization, with a specified board membership, that is established to carry out the following activities:

1. Acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
2. Transfer ownership of any structural improvements located on the leased parcels to the lessees; and
3. Retain a preemptive option to purchase any structural improvement at a price determined by formula designed to ensure that the improvement remains affordable to low and moderate income families in perpetuity.

Nonprofit-imposed restrictions. When determining a property's fair market value, California property tax law requires the assessor to consider the effect of property use restrictions, such as zoning or development limitations, that are legally enforceable and imposed by government.² Similarly, when determining land value, the law requires the assessor to consider the effect of *government-imposed* restrictions on land use.³

In the case of a *nonprofit organization-imposed* use restriction, such as a CLT-imposed resale price restriction, generally the law prohibits the assessor from considering its negative value impact.⁴ However, the law allows three exceptions:

- Homes on land with a 30-year use restriction as owner-occupied housing available at affordable cost that are sold at cost to low income families by qualifying nonprofit

¹ 42 U.S.C. 12773

² Revenue and Taxation Code (RTC) [Section 110\(a\)](#) and *Carlson v. Assessment Appeals Board No. 1* (1985) 167 Cal.App.3d 1004: "Enforceable restrictions," defined in RTC Section 402.1, include only governmentally imposed land restrictions.

³ RTC Section [402.1\(a\)](#)

⁴ *Carlson v. Assessment Appeals Board No. 1* (1985) 167 Cal.App.3d 1004: In determining the fair market value of property, an assessor is only required to consider governmentally imposed land restrictions. The legislative purpose of this section is to allow an assessor to consider restrictions necessary to implement the public policy of encouraging and maintaining effective land use planning. Thus, the assessor properly refused to consider deed restrictions placed on a parcel of land when determining the value of the property where such restrictions were for the benefit of the seller, involved no public policy regarding land use planning, and in no way benefited the public.

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organizations⁵ with no-interest financing when part of the mortgage is forgivable (i.e., "silent seconds").⁶

- Land easements granted to nonprofit organizations to preserve and protect land in its natural state.⁷
- Greenway easements granted to nonprofit organizations to create paths along urban waterways.⁸

No law directly addresses the assessment of a home sold by CLTs with a 99-year ground lease and a formula-based resale price restriction to maintain affordability to the original buyer or any future income-qualified buyer of the home.

Purchase price presumption. Existing law requires the assessor to reassess property from its prior Proposition 13-protected "base year value" to its fair market value when sold (i.e., a "change in ownership"). The law provides a rebuttable presumption that the purchase price paid in the transaction is the property's "fair market value" if the sale was an open market transaction, as specified.⁹

Long term leases. Existing law provides that the creation of a lease for a term of 35 years or longer triggers a change in ownership of the property subject to the lease.¹⁰ This requires the assessor to reset the property's base year value.

Proposed Law: This bill would require the assessor to consider CLT-imposed restrictions that negatively impact property value when determining the assessed value of homes that have a ground lease and limited equity due to resale price restrictions that are sold to low and moderate income buyers. To qualify, the following conditions are necessary:

- **CLT with permanent affordable housing mission.** The CLT must be an Internal Revenue Code (IRC) 501(c)(3) nonprofit corporation that has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences. This includes both rentals and for-sale homes.¹¹
- **Low and moderate income occupancy.**
 - **For-sale homes.** The initial sale and future resales must be to persons and families of low or moderate income. Additionally, the home must serve as the buyer's primary residence.¹²
 - **CLT-owned rentals.** The units must be rented to persons and families of low or moderate income.¹³
- **Income Household Definition.** The term "lower and moderate income households" is defined by cross-reference to HSC Section 50093.¹⁴ This law requires California's Housing and

⁵ RTC [Section 214.15](#) – Added in 1999, by AB 1559, this law extends the welfare exemption to the following property owned by nonprofit organizations that sell homes to low income persons at cost with zero percent financing: (1) vacant land held for future construction and (2) homes under construction. No other property being developed as homes for sale to low income persons qualifies for a property tax exemption under the welfare exemption. The welfare exemption applies only to low income rental housing. Moderate income rental housing qualifies for the welfare exemption only if the housing is for seniors and the disabled and includes supportive services based on their special needs.

⁶ RTC Section 402.1(a)(10) – Added in 2015. Health and Safety Code (HSC) Section [50052.5](#) defines "affordable housing cost."

⁷ RTC Section 402.1(a)(8)(A) – Added in 1993, but the law since 1984 via Civil Code [Section 815.10](#).

⁸ RTC Section 402.1(a)(8)(B) – Added in 2015.

⁹ RTC Section 110(b).

¹⁰ RTC [Section 61\(c\)](#).

¹¹ RTC Section 402.1(a)(11)(B)(ii).

¹² RTC Sections 402.1(a)(11)(A)(ii) & (iii) and 402.1(a)(11)(B)(ii)(II).

¹³ RTC Section 402.1(a)(11)(B)(ii)(II).

¹⁴ The BOE issues an [annual letter to assessors](#) (LTA) listing these income limits.

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Community Development (HCD) to annually publish these income limits based on federal Housing and Urban Development (HUD) data.

- **Lower Income.** Section 50093 generally provides that lower income households are those households with incomes at 80% of the Area Median Income (AMI) adjusted for family size and geographic areas of the state.
- **Moderate Income.** Moderate income households are households with incomes at 120% of AMI under this law.
- **Ground lease.** In the case of home sales, the CLT leases the land on which the home is situated to the buyer for a 99-year term that is renewable.¹⁵
- **Resale formula.** The sale or resale price of the dwelling or unit is determined by a formula that ensures the dwelling or unit has a purchase price that is affordable to qualified owners.¹⁶
- **CLT purchase option.** The CLT has the right to repurchase the dwelling or unit to preserve the dwelling or unit as affordable to qualified owners.¹⁷
- **Limited equity housing cooperative.** The dwelling can also be owned in this form of a “Co-op” as defined in Civil Code [Section 817](#).¹⁸
- **Recorded contract.** The contract must be recorded and provided to the assessor.¹⁹
- **Finding of public interest.** A specified public official must issue a finding that the contract’s affordability restrictions serve the public interest to create and preserve affordable housing for low and moderate income persons and families. This person must be (1) the local housing authority director, (2) the county or city housing department director, or (3) the county counsel or city attorney.²⁰

In General:

Fair Market Value of Enforceably Restricted Property. Existing law requires the assessor to reassess property to its fair market value when sold (i.e., “change in ownership”). The law provides that the property’s “purchase price” is rebuttably presumed to be its “fair market value.”²¹ It also provides that “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.

- **Government-Imposed Restrictions.** After determining the purchase price paid, the law requires the assessor to consider the effect of any *government*-imposed restrictions. Specifically, the assessor exercises his or her judgment under RTC Section 402.1 to determine whether the property’s value is equal to, or more or less than, the purchase price as a result of enforceable restrictions.
- **Non-profit Imposed Restrictions.** In the case of non-profit-organization imposed restrictions, the law limits the assessor’s ability to factor in the value impact of the restrictions. The law only allows the assessor to consider:
 1. Certain easements granted to nonprofit organizations to preserve and protect land or create urban greenways.²²
 2. Certain use restrictions placed on for-sale low income housing when sold with a forgivable silent second mortgage.²³

¹⁵ RTC Section 402.1(a)(11)(i).

¹⁶ RTC Section 402.1(a)(11)(B)(i)(II).

¹⁷ RTC Section 402.1(a)(11)(B)(i)(III).

¹⁸ RTC Section 402.1(a)(11)(B)(iii).

¹⁹ RTC Section 402.1(a)(11)(A)(iv).

²⁰ RTC Section 402.1(a)(11)(A)(iii).

²¹ RTC Section 110(b).

²² RTC 402.1(a)(8).

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- **Other types of privately imposed restrictions.** The courts have held that the assessor may not consider any other privately imposed restriction that negatively impacts property value when determining fair market value for property tax purposes.²⁴ Thus, the assessor may not consider other use restrictions imposed by a nonprofit-corporation or any private party that negatively impact property value.

The BOE's Assessors' Handbook [Section 501](#), Basic Appraisal, on page 50 reads:

Enforceable Contractual Land Use Restrictions.

Deed restrictions that restrict the uses of a property are not the same thing as governmentally-imposed restrictions discussed above. Deed restrictions are rights reserved by private persons as opposed to limitations imposed by government. In most cases, the property tax appraiser should not recognize deed restrictions when analyzing highest and best use. The rights to be assessed are the fee simple rights without encumbrances, subject only to the limitations imposed by government. A division of the fee simple rights would require a separate assessment on each portion, and the assessment of only one portion of the rights would result in the illegal exemption of the balance.²⁵

Assessors' Handbook [Section 502](#), Advanced Appraisal, expands on this issue related to the identification of the property rights. Page 6 states:

All appraisals involve the valuation of a set of defined property rights. With few exceptions, an appraisal for California property tax purposes involves the valuation of the entire fee simple estate unencumbered by any private interests (e.g., leases, liens, easements, etc.).²⁶ As a general rule, private parties cannot reduce the taxable value of their property by imposing private encumbrances upon it; only enforceable government restrictions under section 402.1 are recognized as limiting the full fee simple interest. Thus, Rule 2(a) provides, in part:

When applied to real property, the words "full value," "full cash value," "cash value," "actual value," and "fair market value" mean the prices at which the unencumbered or unrestricted fee simple interest in the real property (subject to any legally enforceable governmental restrictions) would transfer for cash or its equivalent....

In some cases, the appraisal to be made is a partial, or fractional interest in the full fee simple, and the property rights appraised are, therefore, less than the full bundle of rights.²⁷ Taxable possessory interests; oil, gas, or mineral rights; air rights; transferable development rights; and—under certain conditions—water rights all represent cases where the property rights appraised are less than the full fee simple interest. Further, as discussed above, the rights associated with an easement may be valued and assessed

²³ RTC 402.1(a)(10).

²⁴ [Carlson v. Assessment Appeals Board](#) / (1985) 167 Cal.App. 3d 1004. See [Letter to Assessors 85/111](#).

²⁵ [Carlson v. Assessment Appeals Board](#) / (1985) 167 Cal.App. 3d 1004. See [Letter to Assessors 85/111](#). The BOE's Property Tax Law Guide [Annotation](#) of this court case reads: "In determining the fair market value of property, an assessor is only required to consider governmentally imposed land restrictions. The legislative purpose of this section is to allow an assessor to consider restrictions necessary to implement the public policy of encouraging and maintaining effective land use planning. Thus, the assessor properly refused to consider deed restrictions placed on a parcel of land when determining the value of the property where such restrictions were for the benefit of the seller, involved no public policy regarding land use planning, and in no way benefited the public."

²⁶ Encumbrance: "Any right to, or interest in, land that may subsist [i.e., exist] in another to diminution of its value, but consistent with the passing of the fee. A claim, lien, charge, or liability attached to and binding real property; e.g., a mortgage; judgement lien; mechanic's lien; lease; security interest; easement or right of way; accrued and unpaid taxes." (Black's Law Dictionary, 5th edition, s.v. "encumbrance.")

²⁷ The full taxable fee simple interest in the property is still assessed.

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separately under certain circumstances. This does not mean that a portion of the full taxable fee simple interest escapes taxation; the remaining rights are assessed to another owner.

Background: The National CLT network hosts a [research page](#) dedicated to CLT-model related tax issues. It states: "Creating an equitable taxation policy in conjunction with local government is a key task for CLTs and permanently affordable housing programs. What is a fair taxation rate given that CLT homeowners will never benefit from the full appraised value of their property? Below, we've included information on the theory behind equitable taxation as well as examples of how taxation policies have been implemented on the ground in a number of jurisdictions."

- [Property Taxes and Community Land Trusts: A Middle Ground](#) Alese Bagdol. (2013). *Texas Law Review*.
- [Shared Equity Homeownership State Policy Review](#) Ryan Sherriff. (Spring/Summer, 2010) *Journal of Affordable Housing & Community Development Law, Volume 19(3&4)*.
- [Taxation of Shared-equity Homes](#) John Emmeus Davis. (Summer, 2007). *Shelterforce, Issue 150*. National Housing Institute.
- [Valuation and Taxation of Resale-restricted, Owner-occupied Housing](#) Carla J. Robinson. (2008). *Lincoln Institute of Land Policy Working paper WPO8CR1*. Lincoln Institute of Land Policy.
- [Valuation of Community Land Trust Homes in New York State](#) David West. (2011) *Journal of Property Tax Assessment & Administration, Volume 8(4)*.

Additionally, the National CLT Network publishes [The CLT Technical Manual](#) (2011) Edited by Kirby White in which Chapter 17 "Property Tax Assessments" reviews the varied approaches used in the USA to assess resale-restricted homes.

Related Legislation:

"For-Sale" low income housing with silent second mortgages held by nonprofits. In 2015, [AB 668](#) (Ch. 698, Stats. 2015, Gomez) amended RTC Section 402.1 to allow the assessor to consider the value impact of certain contracts income-qualified homebuyers enter into with specified nonprofit corporations that develop "for-sale" affordable housing. Similar to this bill, these contracts between the homebuyer and home seller were added to the list of enforceable restrictions that the assessor must consider when valuing land for assessment purposes.²⁸ The contracts include a "silent second" mortgage which the homebuyer agrees to include in the home sale purchase.

Habitat for Humanity sponsored AB 668 to address the issue that some assessors were setting the assessed value of homes it sold to low income buyers by adding the face value of the silent second mortgage to the nominal sales price paid to determine the total consideration paid for the property.

AB 668 allowed assessors to determine the purchase price paid for these homes by adding (1) the down payment, (2) the first mortgage amount, and (3) the present economic value of the silent second mortgage, which when discounted, was a negligible sum since payments on the silent second mortgage were typically deferred by 30 or more years and in some cases, were forgiven. Prior to AB 668, two bills to require the assessor to disregard the silent second mortgage as part of the total consideration paid for the home had failed. In 2013, Habitat for Humanity had sponsored [SB 499](#) (Wyland) and prior to that, in 2007, [AB 793](#) (Strickland).

Greenway easements granted to nonprofits. In 2015, [AB 1251](#) (Ch. 639, Stats. 2015, Gomez, double jointed with AB 668 above) amended RTC Section 402.1 to require the assessor to consider the value impact on land subject to a recorded "greenway" easement, which the bill created by

²⁸For purposes of this analysis, "nonprofit corporation" and "nonprofit organization" have the same meaning. This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

adding the Greenway Development and Sustainment Act to the Civil Code. That bill allows the assessor to reduce the assessment if the easement reduced property value.

Conservation easements granted to nonprofits. In 1993, AB 99 (Ch. 1002, Stats. 1993, Andal) amended RTC Section 402.1 to require the assessor to consider the value impact on land of a recorded conservation, trail, or scenic easement, as described in Civil Code Section 815.1. These easements must be granted to a public agency, or to a nonprofit corporation organized pursuant to IRC Section 501(c)(3). These nonprofit corporations must have as their primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open space condition or use. The California Parks and Recreation Society, Inc. sponsored this provision to encourage private property owners to grant easements to public parks agencies trying to create continuous scenic trail systems accessible to the public. In 1993, Civil Code Section 815.10 already required that any conservation easements granted under Chapter 4 (commencing with Civil Code Section 815) be considered enforceable restrictions under RTC Section 402.1. Thus, while AB 99 was declaratory of existing law, it provided a useful cross reference to the Civil Code property tax provisions previously lacking.

Commentary:

1. **Recognizing "for sale" affordable housing restrictions.** This bill adds CLT-imposed restrictions included in recorded contracts to the list of items an assessor must consider when determining the value of land. This allows the assessor to disregard the sales prices of other homes sold in the area that are not similarly restricted when setting assessed values. With this bill, the assessor can consider the effect upon value of the resale price restriction when homes are sold by qualified CLTs with 99-year ground leases that limit the homebuyer's equity.
2. **Privately-imposed restrictions.** When determining value for property tax purposes, the assessor may not consider any *privately* imposed use restrictions that negatively impact value. But the assessor must consider the effect upon value of any government-imposed restriction or any recorded contract involving a government agency. As discussed previously, for nonprofit organization-imposed restrictions, the law provides three exceptions, one of which relates to housing for sale to low-income persons. The other two relate to easements entered into between a private land owner and a nonprofit organization for an open space, scenic, or trail easement.
3. **Inconsistent practices.** The California Community Land Trust Network (CA-CLT) reports that the method used to set assessed values varies by county. In some counties, assessed values were based on comparable sales of non-equity restricted homes. In others, the nominal sales price was used. And in still other counties, the assessed value was set between this value range.
4. **CLT's California Portfolio.** In California, the CLT 99-year ground lease with limited equity is a relatively new but growing concept. Currently, about 20 CLTs operate in California in at least 14 counties.²⁹ Residential units include 43 single family homes, 187 rental units, 102 Co-ops, and 18 condominium units. Non-residential properties include 3 urban gardens and 6 commercial properties. However, as to the future, the CA-CLT Network states over 1,600 CLT-provided homes either are under construction or in the planning stage.
5. **Greater Property Tax Certainty.** Property tax certainty allows prospective homebuyers to more accurately budget the property tax obligations they will incur when determining the costs of owning a home.
6. **Existing law provides a purchase price presumption.** Whenever property changes ownership, which includes entering into a lease for a term of 35 years or longer, the law requires the

²⁹ Counties with CLTs include: Alameda, El Dorado, Humboldt, Marin, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Barbara, Santa Cruz, and Sonoma.

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property to be reassessed at its current market value as of the date of the sale. The law provides a rebuttable presumption that the purchase price paid in the transaction is the property's "fair market value." Related to establishing the base year value for these homes, this bill allows the assessor to consider the impact of the non-profit imposed resale price restrictions when evaluating whether the purchase price paid for the home with a 99-year ground lease and limited equity indicates the home's market value. If so, the purchase price paid can be the basis of the home's base year value or whether some sort of adjustment to the nominal purchase price paid is appropriate.

7. **Assessment Approach.** Where enforceable restrictions that an assessor can legally recognize might impact the value set for property tax purposes, the BOE generally recommends the following assessment approach. First, the purchase price of the home must be determined by adding the sum of:

- the down payment,
- the face amount of the first mortgage
- any other consideration paid for the home.

The second step in the process, which is the subject of this bill, requires the assessor to consider the effect upon value, if any, of the recorded contract. Specifically, the assessor must exercise judgment under RTC Section 401.2(a)(11) to determine whether the value of the property is equal to, more than, or less than the purchase price due to the resale price restrictions imposed by the nonprofit that limit equity.

8. **Land on which privately owned homes are situated that is owned by an exempt organization or other owner generally are taxable.** For example, in the case of faculty and employee for-sale housing with ground leases, the California Supreme Court³⁰ held that the use of university owned land does not fulfill a public purpose contemplated under Article XIII Section 3 (d) for public school use. The Supreme Court held that granting a tax exemption to a faculty member's private long-term leasehold interest in these circumstances would clearly extend the exemption beyond its intended reach. (See LTA 92/38). Under the same rationale, the welfare exemption would not apply to CLT-owned land leased to a homeowner for their private use. Additionally, under California property tax law, a lease for 35 years or longer is a change in ownership of the land.

9. **Examples of similar housing situations with ground leases and affordability-related resale price restrictions.** The University of California has [for-sale housing](#) for faculty and employees on University owned land at the Berkeley, Davis, [Irvine](#)³¹, [Los Angeles](#), [Santa Barbara](#), and [Santa Cruz](#) campuses. In most cases, the land is leased to the purchaser of the unit. Additionally, some California State University system schools offer faculty employee housing for sale on a ground lease basis, including [Monterey Bay](#), Long Beach, Northridge, [Fullerton](#), and Pomona. For government owned tax exempt property, the homebuyer is assessed a possessory interest for the ground lease in addition to an assessment for the home. Some private universities, such as [Stanford](#), also have for-sale faculty housing with ground leases, which may or may not include resale price restrictions. The faculty housing at Stanford is not resale price restricted. A private university has no taxable possessory interest since the property is not government owned.

10. **Long term land lease.** This bill is a first step to allow the assessor to consider the restrictions imposed on the home that negatively impact property value. However, how to assess the land under the ground lease remains an issue. Most CLT's charge a \$50 monthly ground lease payment. Should this law be enacted, BOE staff anticipates initiating an interested parties (IP)

³⁰ *Connolly et al. v. County of Orange* (1992) 1 Cal. 4th 1105.

³¹ Homes sold on UC Irvine property have 3-purchase options with different shared equity levels: 10%, 20%, and 30%.

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process to develop assessment guidelines³² for CLT-enforceably restricted homes with ground leases. It appears that many counties value land with ground leases associated with university housing by capitalizing the monthly lease payment.

Costs: The BOE's costs to update its documents, website materials, and provide guidance to assessors are absorbable.

Revenue Impact: Currently, only one CLT is building new homes that will be ready for sale within the next two years. About 20 homes per year are planned with an equal split between low and moderate income buyers. Based on current median area home prices and income levels at that location, the property tax savings are estimated to be \$650 for a moderate income homebuyer and \$1,800 for a low income homebuyer. Thus, the revenue impact of this measure is estimated to be a property tax revenue loss of \$24,500 annually for the next two years.

$$(\$650 \times 10 \text{ homes}) + (\$1,800 \times 10 \text{ homes}) = \$24,500.$$

However, over the long term, CLTs hope to develop and sell between 1,600 to 2,500 homes in California. One CLT's for-sale development plans have been indefinitely delayed due to the loss of funds set aside for redevelopment housing.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law

³² For example, the BOE issued guidelines for the assessment of [Enforceably Restricted Historical Properties](#) and [Low-Income Housing Tax Credit-Financed Properties](#).

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