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No. 2002/041

TO COUNTY ASSESSORS
AND INTERESTED PARTIES:

FINAL DISPOSITION OF COURT CASES INVOLVING THE ASSESSMENT OF
“SECTION 515” LOW-INCOME HOUSING PROJECTS

This letter is to announce the final disposition of two recently decided court cases involving the assessment of “Section 515” low-income housing projects. Additionally, this letter will clarify staff’s position on an issue incidental to the valuation of these projects.

Disposition of Court Cases

In each of the court decisions, the appellate court upheld Board staff’s recommended method, as outlined in LTA 98/51, of deriving a capitalization rate through the band-of-investment technique.

In *Maples v. Kern County Assessment Appeals Board* (2002) 96 Cal.App.4th 1007, the Fifth District Court of Appeal held that the instruction in Property Tax Rule 8 to use a debt component rate “appropriate to the California money markets” does not tie the rate to any particular market. Rather, the court held, “the assessor has the ability to adjust for the specific market at issue. Here, that market is the highly regulated section 515 property market.”

Similarly, in *Bontrager v. Siskiyou County Assessment Appeals Bd.* (2002) 97 Cal.App.4th 325, the Third District Court of Appeal held that:

A willing buyer considering an investment in a Section 515 property must take into account the actual interest rate to be paid on the debt portion of the loan in calculating a purchase price. To use the interest rate specified on the face of the notes, instead of the actual rate paid by the owner, ignores the realities of the market place and does not produce the fair market value. This interpretation is consistent with the language of California Code of Regulations, title 18, section 8(g)(2).

Both courts thus rejected the taxpayer’s argument that rule 8 precluded the use of the subsidized rate for financing projects developed under the Section 515 program, agreeing with the conclusion reached in LTA 98/51.

Issue in Need of Clarification

Independent of the courts' decisions, staff has concluded that clarification is necessary for one of the issues discussed in LTA 98/51. Specifically, that advisory letter is not explicit about the possibility that, in some cases, the rents generated by a Section 515 project may not cover all operating expenses, debt service, and the allowed return on the investor's initial equity. So that readers do not infer from this omission that the staff's position fails to account for the variable economic influences on Section 515 projects, it is important to note that the contractually allowed income is not guaranteed. In cases where a shortfall exists, a simple capitalization of the contractually allowed income may result in the overvaluation of a project.

If you have further questions, please contact our Real Property Technical Services unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
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