

# Community Land Trusts—New Property Tax Exemption

California law has established a property tax exemption for property that is owned by a community land trust and that is being—or will be—developed or rehabilitated as rental housing, limited equity cooperative housing, or owner-occupied housing (SB 196, as amended by SB 1473, effective January 1, 2021). This exemption is set forth in Section 214.18 of the Revenue and Taxation Code.

The exemption is available to property that is owned by a "community land trust" ("CLT"), defined in part as a nonprofit corporation that has as its primary purposes the creation and maintenance of permanently affordable single-family or multi-family residences. For a corporation to qualify as a CLT, all dwellings and units on property owned by the corporation must be sold or rented to "qualified" households. "Qualified" household income in ownership housing must not exceed "low and moderate income" and for rental housing must not exceed "low income." For ownership housing, the property on which the dwelling or unit is situated must be leased by the corporation to the household for a renewable term of 99 years.

To qualify for the exemption, the property must be developed or rehabilitated—either presently or in the future—as an owner-occupied single-family dwelling, an owner-occupied unit in a multi-family dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development. To ensure this future development or rehabilitation, Section 214.18 requires the CLT to record (by the lien date after acquisition) a "deed restriction or other instrument" on the property. Further, the "deed restriction or other instrument" must require a "contract... serving as an enforceable restriction on the sale or resale value of owner-occupied units or on the affordability of rental units."

This contract requirement (distinct from the "deed restriction or other instrument") is met in different ways depending on whether the property is developed for owner-occupied housing or rental housing. For owner-occupied housing, the contract requirement is met through a renewable 99-year ground lease between the CLT and the owner. The lease must subject the dwelling to certain affordability restrictions (e.g., restricting the dwelling's resale price and requiring a purchase option in favor of the CLT) and be found by a public agency or official to serve the public interest of creating and preserving affordable housing. This finding can be made only by county counsel, the city attorney, the director of the county or city housing department, or the director of the local housing authority or equivalent agency. For rental housing, the contract requirement is met through an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document described in Section 214(g)(2)(A) of the Revenue and Taxation Code.

Property can receive the exemption for up to five years. But the property must be in the course of construction by the fifth lien date after acquisition by the CLT (and the CLT is required to notify the assessor if such is not the case) or else the CLT becomes liable for the property taxes it was exempt from in claiming the exemption. Once rental housing is under construction it can qualify for a long-term property tax exemption under Section 214. Section 214.18 will sunset on January 1, 2025 by its own provisions.

As the legislation is new, its implementation and details about the applicable requirements will likely evolve. For further information regarding the community land trust property tax exemption, please contact Aileen Nguyen, Erica Williams Orcharton, Heather Gould, Lynn Hutchins, M David Kroot or any other attorney at Goldfarb & Lipman LLP.