



1-1-2017

Chapter 701: Protecting Low-Income Families Burdened by Property Taxes

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Jessica Wellington, *Chapter 701: Protecting Low-Income Families Burdened by Property Taxes*, 48 U. PAC. L. REV. 761 (2017).
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Chapter 701: Protecting Low-Income Families Burdened by Property Taxes

*Jessica Wellington**

Code Section Affected

Revenue and Taxation Code § 402.1 (amended).
AB 2818 (Chiu); 2016 STAT. Ch. 701.

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I. INTRODUCTION

“I’m an old lady who’s all alone. Where will I go? Under a bridge somewhere?”¹ Marianne Blend, a 78-year-old resident of Highland Park, California, wondered as she looked out her window and watched two strange men put an auction sign in her front yard.² This is how Marianne first learned her house was going to be auctioned off because of delinquent property taxes.³ For many families and individuals in the United States who live on a low or fixed income, Marianne’s story is a reality.⁴

California is currently facing a major affordable housing crisis.⁵ The median home price in July, 2016, peaked at \$466,900, a 5.9 percent increase from July, 2015.⁶ However, since 2007, California’s median household income has dropped by 9.52 percent.⁷ To afford a median priced home, a family needs to have an income of more than \$92,000.⁸ Yet, according to the U.S. Census Bureau, California’s median household income is only \$61,489, which means a great deal of families need to make at least \$30,000 more than what they currently do.⁹ As a result of this situation, California has the third lowest homeownership rate in the nation at only 54 percent, and when housing costs are taken into account, California’s poverty level, 23.4 percent, is also the highest in the nation.¹⁰

1. Bob Pool, *Woman, 78, Could Lose Home in Probate Confusion*, LA TIMES (Apr. 26, 2013), available at <http://articles.latimes.com/2013/apr/26/local/la-me-adv-elderly-evict-20130427> (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. See, e.g., Associated Press, *101-Year-Old Detroit Woman Foreclosed On, Evicted*, CBS NEWS (Sept. 14, 2011, 7:51 AM), <http://www.cbsnews.com/news/101-year-old-detroit-woman-foreclosed-on-evicted/>; Michael Sallah, Debra Cenziper & Steven Rich, *Left With Nothing*, WASH. POST (Sept. 8, 2013), available at <http://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing/> (on file with *The University of the Pacific Law Review*) (telling the story of elderly homeowners, who were evicted from their homes for delinquent property taxes).

5. Mac Taylor, *California’s High Housing Costs: Causes and Consequences*, LEGIS. ANALYST’S OFF. REP. (Mar. 17, 2015), available at <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs> (on file with *The University of the Pacific Law Review*).

6. *California Home Prices & Values*, ZILLOW, <http://www.zillow.com/ca/home-values/> (last visited Sept. 5, 2016).

7. *California Household Income*, DEP’T OF NUMBERS, <http://www.deptofnumbers.com/income/california/> (last visited Aug. 1, 2016) (on file with *The University of the Pacific Law Review*).

8. See *How Much Income You’d Need to Buy a Home in Most California Cities*, SAC BEE, <http://www.sacbee.com/site-services/databases/article13255952.html> (last visited July 26, 2016) (on file with *The University of the Pacific Law Review*) (using the median home price in Upland, California, of \$463,650 with a 20 percent down payment).

9. *Quick Facts: California*, U.S. CENSUS BUREAU, available at <http://www.census.gov/quickfacts/table/INC110214/06> (last visited Aug. 1, 2016) (on file with *The University of the Pacific Law Review*).

10. Taylor, *supra* note 5, at 28 (stating that Nevada and New York are lower than California).

Despite this, since 2012, the state of California and the federal government have cut funding for affordable housing by 79 percent.¹¹

To overcome the affordable housing crisis, communities created community land trusts (CLT).¹² A CLT is a nonprofit organization that acquires land to create affordable housing for low-to-moderate income (LMI) families.¹³ CLTs create affordable homes by separating the land from the structural improvements on the land.¹⁴ The CLT sells the home, but retains ownership of the underlying land, leasing it to the homeowner for a nominal, monthly fee.¹⁵ The ground lease allows the home to remain affordable in perpetuity because it imposes certain restrictions, including a restricted-resale price, which limits the amount of equity a homeowner can earn.¹⁶

However, usually the homeowner is still responsible for all property taxes on the land and the structure.¹⁷ When home prices dramatically increase, property

11. Press Release, Assemb. David Chiu, *Assembly Democrats Unveil Plan to Address Housing Affordability Crisis, Alleviate Poverty* (Apr. 25, 2016), available at <http://asmdc.org/members/a17/newsroom/press-releases/assembly-democrats-unveil-plan-to-address-housing-affordability-crisis-alleviate-poverty> (on file with *The University of the Pacific Law Review*) (explaining that the “elimination of redevelopment agencies in 2012 and the exhaustion of state housing bonds” have led to the decrease in spending).

12. Christopher A. Seeger, *The Fixed-Price Preemptive Right in the Community Land Trust Lease: A Valid Response to the Housing Crisis or an Invalid Restraint on Alienation?*, 11 CARDOZO L. REV. 471, 471–76 (1989). Currently, there are 270 CLTs nationwide and 24 in California. Program Directory, CMTY. LAND TRUST NETWORK, <http://cltnetwork.org/directory/> (last visited July 27, 2016).

13. John Emmeus Davis & Rick Jacobus, *The City-CLT Partnership: Municipal Support for Community Land Trusts*, LINCOLN INST. OF LAND POL’Y 4 (2008), http://www.lincolninst.edu/pubs/1395_The-City-CLT-Partnership (on file with *The University of the Pacific Law Review*).

14. *Land Trusts Offer Houses That People with Lower Incomes Can Afford—And a Stepping Stone to Lasting Wealth*, YES! MAG., <http://www.yesmagazine.org/commonomics/land-trusts-offer-houses-low-income-people-can-afford-and-a-stepping-stone-to-lasting-wealth-20150917> (last visited Aug. 1, 2016). Separating the land from the structure allows the mortgage to be dramatically less, typically only 25–30 percent of a conventional home’s mortgage. Benito Arruñada & Amnon Lehavi, *Prime Property Institutions for a Subprime Era: Toward Innovative Models of Homeownership*, 8 BERKELEY BUS. L. J. 1, 11 (2011). In Marin County, California, the CLT can sell a home for \$300,000, while the market value of the structure and land in the conventional market would be \$1 million. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 2–3 (May 25, 2016).

15. Davis & Jacobus, *supra* note 13, at 6, 22. For example, the Oakland CLT only charges homeowners \$50 monthly to lease the land. SENATE COMMITTEE ON GOVERNANCE AND FINANCE, COMMITTEE ANALYSIS OF AB 2818, at 4 (June 29, 2016).

16. *Frequently Asked Questions: What is a Community Land Trust*, IRVINE CMTY. LAND TRUST, <http://www.irvineclt.com/about/faq> (last visited July 27, 2016). The restricted-resale price formula “uses either some objective growth index or a percentage of the home’s market value appreciation to calculate a fair return for the departing homeowner.” James J. Kelly, Jr., *Maryland’s Affordable Housing Land Trust Act*, 19 J. AFFORDABLE HOUS. & CMTY. DEV. L. 345, 349 (2010).

17. NAT’L CMTY. LAND TRUST NETWORK, THE CLT TECH. MANUAL, *Property Tax Assessments* Ch. 17, 1 (Kirby White ed., 2011), available at <http://cltnetwork.org/2011-clt-technical-manual/> [hereinafter THE CLT TECH. MANUAL] (on file with *The University of the Pacific Law Review*). Even though most CLTs are nonprofit organizations incorporated under 501(c)(3), which are usually exempt from property taxes, 90 percent of CLTs report paying property taxes on the land. Yesim Sungu-Eryilmaz & Rosalind Greenstein, *A National Study of Community Land Trusts* 33 (Lincoln Inst. of Land Pol’y, Working Paper No. WP07YSI, 2007), http://www.lincolninst.edu/pubs/1274_A-National-Study-of-Community-Land-Trusts (on file with *The University of the Pacific Law Review*). Of the 90 percent, only 20 percent of CLTs solely pay property taxes on

taxes increase, which can make CLT homes no longer affordable for LMI families.¹⁸ Currently, county assessors are not required to consider the restricted-resale price in a CLT ground lease,¹⁹ resulting in inconsistent property tax assessments.²⁰ Some county assessors appraise CLT property at fair market value, while others reduce the appraisal value because of the restricted-resale price.²¹ Assemblymembers Chiu and Thurmond introduced Chapter 701 to create consistent property tax assessments of CLT properties.²² However, for CLT homes to remain affordable, property tax appraisals need to be consistent with the restricted-resale price.²³ This article will discuss the background of California property tax assessment, the current housing crisis, and how Chapter 701 will help create consistent property tax assessments of CLT property.²⁴

II. LEGAL BACKGROUND

County assessors are required to appraise property at current market value only when property is sold or newly constructed.²⁵ Under existing law, county assessors are required to consider only certain enforceable restrictions that may lower the value of the property below the unrestricted market value.²⁶ Because county assessors are not required to consider the restricted-resale price in a CLT ground lease, they use differing methods to appraise CLT properties.²⁷ Several jurisdictions have attempted to conquer the problem of how to value CLT properties, but they use differing approaches.²⁸

the land, without any homeowner contribution. *Id.* The homeowner either pays the property taxes on the land directly to the county or the lease fee includes the cost of the property taxes. THE CLT TECH. MANUAL, *supra* note 17, at Ch. 17, 1.

18. Alese Bagdol, *Property Taxes and Community Land Trusts: A Middle Ground*, 91 TEX. L. REV. 939, 940 (2013).

19. *See infra* Part II.B (explaining that county assessors are only required to consider enforceable government restrictions).

20. *See infra* Part II.C (discussing the inconsistencies in property tax assessments on CLT property).

21. *Id.*

22. *See infra* Part III (discussing the changes that Chapter 701 makes).

23. *See infra* Part IV (analyzing whether Chapter 701 will create consistent assessments).

24. *See infra* Part II–IV (discussing that Chapter 701 mandates assessors to consider the effect of the restricted-resale price on a CLT property).

25. *See infra* Part II.A (explaining the general rules of property tax assessments in California).

26. *See infra* Part II.B (discussing which enforceable restrictions county assessors may take into account when valuing property for property tax purposes).

27. *See infra* II.C (examining how property taxes on CLTs are currently assessed).

28. *See infra* II.D (discussing the common approaches that jurisdictions take to tax CLT property).

A. *General Rules of Property Tax Assessment*

California law requires the state to annually tax all real property.²⁹ Municipalities use revenue from property taxes to support public schools, police and fire departments, libraries, and to maintain infrastructure.³⁰ In response to rising property taxes in 1978, voters approved Proposition 13, which restricts the ad valorem tax to “one percent of the full cash value” of the property.³¹ It also provides that county assessors are to reassess property to market value only when it is sold or newly constructed.³²

When someone purchases a property, there is a rebuttable presumption that market value is the purchase price.³³ The county assessor’s valuation “must be based on the most productive, or highest and best use of the property” that is legally permitted.³⁴ This means if the restricted-resale price in the CLT ground lease is not legally recognized, the county assessor is free to appraise the CLT home at the unrestricted market value.³⁵ However, ignoring the restricted-resale price is problematic since the CLT home cannot be sold for the unrestricted market value.³⁶

B. *Enforceable Restrictions that County Assessors Must Consider*

Most property is encumbered by land-use restrictions in some way.³⁷ In *Carlson v. Assessment Appeals Board I*, the court distinguished between government restrictions and private-party restrictions, for property tax

29. CAL. CONST. art. XIII, § 1 (except property that is specifically exempted by the California Constitution or federal law); Cal. Bd. of Equalization, *An Overview*, CAL. PROP. TAX 1, 10 (2015), available at <http://www.boe.ca.gov/proptaxes/pdf/pub29.pdf> [hereinafter *An Overview*] (on file with *The University of the Pacific Law Review*).

30. Glen Craig, *What Do Your Property Taxes Pay For?*, FREE FROM BROKE, available at <http://freefrombroke.com/what-do-your-property-taxes-pay-for/> (last visited Aug. 2, 2016) (on file with *The University of the Pacific Law Review*).

31. CAL. CONST. art. XIII A, § 1(a) (an ad valorem tax is a tax based on the value of the property); *An Overview*, *supra* note 29, at 1 (There can be property taxes higher than one percent at “the rate necessary to fund local voter-approved bonded indebtedness, and limited future property tax increases.”).

32. CAL. CONST. art. XIII A, § 2(a); *An Overview*, *supra* note 29, at 1 (explaining that before Proposition 13, property was assessed regularly in five-year intervals to current market value); *id.* (Proposition 13 also limits the annual increase in property taxes to two percent, when there is no change of ownership).

33. REV. & TAX. CODE § 401 (West 2016); REV. & TAX. CODE § 110(a)–(b) (West 2016) (defining market value as the price the property would get if placed for sale on the market with the buyer and seller both knowing of the property’s legally permissible uses and enforceable restrictions).

34. Cal. Bd. of Equalization, *Basic Appraisal*, ASSESSOR’S HANDBOOK SEC. 501 5 (Jan. 2002 reprinted Jan. 2015), available at <https://www.boe.ca.gov/proptaxes/pdf/ah501.pdf> (on file with *The University of the Pacific Law Review*).

35. Davis & Jacobus, *supra* note 13, at 23–24.

36. *Id.*

37. See generally John G. Cameron, Jr., *Restrictive Covenants, Reciprocal Negative Easements, And Building and Use Restrictions*, 26 PRAC. REAL EST. LAW 47 (2010) (discussing the different public and private restrictions).

purposes.³⁸ Carlson, a county assessor, did not consider the effects of a deed restriction between two private parties, and he valued the land using sales of comparable properties that did not have similar restrictions.³⁹ Walton, the owner of the property, argued the deed restriction lowered the value of his property.⁴⁰ The court held that county assessors should only consider the effect of enforceable government restrictions when valuing property; they need not consider private-party restrictions.⁴¹ The restricted-resale price in a CLT ground lease is considered a private-party restriction.⁴² Therefore, county assessors are not required to consider how a CLT ground lease affects the market value of the home.⁴³

Section 402.1 of the Revenue and Taxation Code lists the enforceable restrictions that a county assessor must consider.⁴⁴ In 2015, Chapter 698 added the first private-party restriction to Section 402.1.⁴⁵ Chapter 698 mandates county assessors to consider the affordability restrictions in a Habitat for Humanity contract when appraising Habitat for Humanity homes.⁴⁶ Similar to CLTs, Habitat for Humanity enters into a contract with the homebuyer, which places affordability restrictions on the home.⁴⁷ In order for the assessor to consider the effect of these restrictions two requirements must be met: (1) the contract must be recorded and provided to the county assessor; and, (2) the local housing authority must make a determination that the restrictions provide a public benefit.⁴⁸

38. *Carlson v. Assessment Appeals Bd. I*, 167 Cal. App. 3d 1004 (1985); *id.* at 1010 (a government restriction is imposed through statutory law); Cameron, *supra* note 37, at 47 (a private-party restriction is enacted by the titleholder of a parcel of land, examples are deed or lease restrictions).

39. *Carlson*, 167 Cal. App. 3d at 1008.

40. *Id.*

41. *Id.* at 1011–13; Cal. Bd. of Equalization, *Advanced Appraisal*, ASSESSOR'S HANDBOOK SEC. 502.6 (Dec. 1998 reprinted Jan. 2015), available at <https://www.boe.ca.gov/proptaxes/pdf/ah502.pdf> (on file with *The University of the Pacific Law Review*).

42. See *Carlson*, 167 Cal. App. 3d at 1004 (explaining that a private-party restriction is not imposed by the government).

43. See *id.* (holding that county assessors do not need to consider private-party restrictions).

44. REV. & TAX. CODE § 402.1(a)(1)–(9) (West 2016) (stating that county assessors are required to consider zoning restrictions, recorded contracts with government entities, and environmental restrictions).

45. *Id.* at (a)(10).

46. *Id.* (recognizing a restriction on a contract with a 501(c)(3)).

47. SENATE COMMITTEE ON TRANSPORTATION AND HOUSING, COMMITTEE ANALYSIS OF AB 668, at 3 (June 23, 2015).

48. REV. & TAX. § 402.1(a)(10)(A)–(E).

C. Inconsistencies on Property Tax Assessments on CLT Homes

Currently, local assessors in different counties appraise CLT property differently because they are not required to consider the restricted-resale price.⁴⁹ Some CLTs, like the Irvine CLT and San Francisco CLT, have worked with their county assessor so the restricted-resale price is taken into account.⁵⁰ But not all county assessors consider the restricted-resale price.⁵¹ Some county assessors appraise CLT property at fair market value, which can make CLT homes unaffordable for LMI families.⁵² One CLT homeowner in West Marin, California, is currently experiencing this—he is being taxed 50 percent more than the restricted-resale price of his home, as defined in the contract.⁵³

D. What Other Jurisdictions Are Doing

There are three main tax issues that arise with CLTs: taxing the land and taxing the structural improvements, and appreciation over time.⁵⁴ Jurisdictions that have attempted to tackle these issues, in an effort to keep CLT homes affordable, take differing approaches.⁵⁵

1. Property Taxes on the Land

Jurisdictions take three approaches to how they tax CLT land.⁵⁶ In the first approach, jurisdictions do not tax the land at all.⁵⁷ For example, in Florida, the state exempts nonprofit organizations that own real property and provide affordable housing.⁵⁸ Florida law also provides a five-year tax exemption for nonprofit organizations that are planning to build housing for LMI individuals.⁵⁹

49. See generally Maria Rizzetto & Jessica Zgobis, *Valuing Affordable Housing: A New Challenge for Assessors*, 4 J. OF PROP. TAX ASSESSMENT & ADMIN. 51, 57–63 (2007) (explaining different methods counties in California use).

50. *Frequently Asked Questions: Do CLT homeowners pay property taxes?*, IRVINE CMTY. LAND TRUST, <http://www.irvineclt.com/about/faq> (last visited July 27, 2016); *Hearing on AB 2818 Before the Assembly. Standing Comm. on Rev. & Tax.*, 2016 Leg., 2015–2016 Sess. (Cal. 2016), available at <https://digitaldemocracy.org/hearing/1121?startTime=496&vid=wwLUI72A2Iw> (on file with *The University of the Pacific Law Review*) (quoting Tracy Parent, the director of the San Francisco CLT) [hereinafter *AB 2818 Assembly Hearing*].

51. *AB 2818 Assembly Hearing*, *supra* note 50 (quoting Eric Olmicson, a West Marin CLT homeowner).

52. SENATE COMMITTEE ON TRANSPORTATION AND HOUSING, COMMITTEE ANALYSIS OF AB 668, at 3 (June 23, 2015).

53. *AB 2818 Assembly Hearing*, *supra* note 50 (quoting Eric Olmicson, a West Marin CLT homeowner).

54. Davis & Jacobus, *supra* note 13, at 24–27.

55. See *infra* II.D.1–2 (examining the different approaches to taxing land owned by CLTs and the structures on the land).

56. THE CLT TECH. MANUAL, *supra* note 17, at Ch. 17, 5.

57. FLA. STAT. ANN. § 196.1978 (West 2016).

58. *Id.* (specifying the organization must be “qualified as charitable under 501(c)(3) of the Internal Revenue Code”); THE CLT TECH. MANUAL, *supra* note 17, at Ch. 6, 4–5 (qualifying as tax exempt under

Under existing California law, there is a similar law known as the “welfare exemption,” which provides a property tax exemption for nonprofit organizations whose property is used for charitable purposes.⁶⁰ To qualify for the exemption, 90 percent of the units⁶¹ rented to households need incomes that are 30–60 percent of the area median income.⁶² However, most CLTs serve households with incomes higher than that demographic, and thus are not eligible for this exemption.⁶³ The welfare exemption also includes organizations that develop properties to be sold “at cost to low-income families.”⁶⁴

In the second approach, the land is taxed based on the revenue stream generated by the monthly lease fee charges.⁶⁵ For example, in Madison, Wisconsin, the county assessor caps the CLTs property value at \$18,000, which is approximately the value of the nominal monthly lease fee over the 99-year ground lease term.⁶⁶ Finally, in the third approach, jurisdictions use a set percentage to reduce the market value of the land.⁶⁷ For example, in Orcas Island, Washington, the county assessor lowers the market value of the land owned by the OPAL Community Land Trust by 40 percent.⁶⁸

501(c)(3), the CLT cannot be providing housing solely to moderate-income individuals; at least 75 percent of the units must be occupied by low-income households, which is defined as up to 80 percent of the area median income).

59. FLA. STAT. ANN. § 196.196(5) (West 2016); *id.* at (b)(4) (stating that the five-year exemption can be extended if the organization can show they are taking “affirmative steps to develop the property.”)

60. REV. & TAX. CODE § 214(a)(ii)(E)(7) (West 2016); *id.* at (g) (including organizations that provide rental housing units to lower-income families).

61. *Id.* at (g)(1)(c).

62. HEALTH & SAFETY CODE § 50053(b)(1)–(3) (West 2016).

63. See THE CLT TECH. MANUAL, *supra* note 17, at Ch. 17, 6 (stating that Texas “adopted legislation providing for reduced property taxes for CLT programs, but the legislation defines CLT programs as necessarily serving a lower range of household incomes than the majority of CLT programs (at least in other states) do serve.”); TEX. LOC. GOV’T CODE ANN. § 373B.006(d) (West 2016) (Texas law states that a CLT can only lease to families with a household income of up to 60 percent of the area median income.).

64. REV. & TAX. CODE § 214.15 (West 2016) (stating that the financing must be “in the form of a zero rate interest loan”); Letter No. 2014/058 from Dean R. Kinnee, Acting Deputy Dir., St. Bd. of Equalization to County Assessors 13 n.10 (Nov. 21, 2014), available at <https://www.boe.ca.gov/proptaxes/pdf/lta14058.pdf> (on file with *The University of the Pacific Law Review*) (In November 2014, Habitat for Humanity was the only organization in California eligible for this exemption).

65. Davis & Jacobus, *supra* note 13, at 25–26. This approach is known as the income appraisal method. *Id.* The county assessor values the land no more than the “net present value of the income stream generated by monthly fees collected over the term of the lease.” *Id.*

66. *Id.* at 26.

67. *The Community Land Trust Report for Austin, Texas*, HUD EXCHANGE 1, 33 (2005), available at <https://www.hudexchange.info/resources/documents/Community-Land-Trust-Report-for-Austin-Texas.pdf> (on file with *The University of the Pacific Law Review*).

68. *Id.*; John Emmeus Davis, *Shared Equity Homeownership: The Changing Landscape of Resale-Restricted, Owner-Occupied Housing*, NAT’L HOUS. INST. 88 (2006), available at http://www.nhi.org/research/522/shared_equity_homeownership/ (on file with *The University of the Pacific Law Review*).

2. *Property Taxes on the Structure*

Jurisdictions take three approaches to how they tax structures on CLT land.⁶⁹ In the first approach, jurisdictions value the home at the restricted-resale price contained in the ground lease.⁷⁰ For example, Maryland and North Carolina both use this approach.⁷¹ In the second approach, jurisdictions recognize the affordability restrictions placed on CLT homes and consider them when valuing the structures.⁷²

Finally, in the third approach, jurisdictions tax CLT homes using a set percentage to reduce the market value of the structure.⁷³ These reductions can be anywhere from 10 percent to 40 percent lower than market value.⁷⁴ For example, in Madison, Wisconsin, the county assessor appraises CLT homes 33 percent lower than their market value, while in Vermont, the county assessor appraises CLT homes at 30–40 percent lower than their market value.⁷⁵ While this approach is easy to implement, it is usually arbitrary⁷⁶ and makes reassessments unpredictable because it is based on market value, which can increase over time.⁷⁷

III. CHAPTER 701

Chapter 701 amends Section 402.1 by adding another enforceable land use restriction a county assessor must consider when valuing property.⁷⁸ This amendment requires the county assessor to consider the affordability restrictions

69. THE CLT TECH. MANUAL, *supra* note 17, at Ch. 17, 4–5, 7–8.

70. *Id.*

71. M.D. CODE ANN. REAL PROP. § 14-509 (West 2016); N.C. GEN. STAT. ANN. § 105-277.17(c) (West 2016) (also excluding from the initial price any silent mortgage on the property); GENERAL ASSEMBLY OF NORTH CAROLINA, LEGISLATIVE FISCAL NOTE OF HB 1586, at 2 n.3 (July 14, 2009), available at <http://www.ncleg.net/Sessions/2009/FiscalNotes/House/PDF/HFN1586v2.pdf> (on file with *The University of the Pacific Law Review*) (“A silent mortgage is a mortgage that earns no interest and requires no repayment prior to the satisfaction of any interest-earning mortgage or the transfer of the property, whichever occurs first.”)

72. THE CLT TECH. MANUAL, *supra* note 17, at Ch. 17, 4–5, 7–8; TEX. TAX CODE ANN. §23.21(c)–(d) (West 2016) (Washington and Texas are examples of jurisdictions that use this method.); DEPT. OF REV. WASH. ST., PROPERTY TAX ADVISORY ON VALUATION OF COMMUNITY LAND TRUST (RESALE RESTRICTED) PROPERTIES 3 (Nov. 17, 2014, No. PTA 17.0.2014), available at http://dor.wa.gov/Docs/Pubs/Prop_Tax/PTA17_0_2014.pdf (on file with *The University of the Pacific Law Review*).

73. THE CLT TECH. MANUAL, *supra* note 17, at Ch. 17, 4; Davis, *supra* note 68, at 87.

74. Davis, *supra* note 68, at 87.

75. *Id.* at 128 n.159; VT. STAT. ANN. tit. 32 § 3481(1)(C) (West 2016).

76. THE CLT TECH. MANUAL, *supra* note 17, at Ch. 6, 4.

77. See Annie Gowen, *Burned by the Boom in N.Va. Real Estate*, WASH. POST (Feb. 14, 2005), available at <http://www.washingtonpost.com/wp-dyn/articles/A21836-2005Feb13.html> (on file with *The University of the Pacific Law Review*) (discussing Habitat for Humanity families in Northern Virginia whose property taxes increased rapidly due to rising market values of their homes).

78. REV. & TAX. CODE § 402.1(a)(11) (as amended by Chapter 701).

in a CLT ground lease when appraising the property.⁷⁹ In order for the county assessor to consider the underlying land lease and affordability restrictions, several requirements must be met in a contract.⁸⁰

First, the contract must be “a renewable 99-year ground lease between a community land trust and the qualified owner.”⁸¹ Second, the contract must impose affordability restrictions on the dwelling and the land on which it sits.⁸² Third, a public agency or official must find that the affordability restriction’s purpose is to maintain affordable housing for LMI households.⁸³ Finally, the contract must be recorded and provided to the county assessor.⁸⁴

Chapter 701 specifies several conditions that qualify as “affordability restrictions.”⁸⁵ First, the dwelling “can only be sold or resold to a qualified owner as a principle place of residence.”⁸⁶ Another condition requires that the CLT use a specific formula to calculate the restricted-resale price of the residence to guarantee LMI families can afford it.⁸⁷ To further ensure the homes are affordable for LMI individuals, another condition is that “[t]here is a purchase option for the dwelling or unit in favor of a community land trust.”⁸⁸ Lastly, there must be a “99-year ground lease,” which guarantees LMI families will be able to continue to afford the home.⁸⁹

Chapter 701 defines “community land trust” as a “nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code.”⁹⁰ The nonprofit corporation must have both a primary purpose to create affordable housing and also to sell each residence to a qualified owner.⁹¹ The homes must either be the qualified owner’s principal place of residence or must be rented to LMI individuals.⁹² Furthermore, the nonprofit corporation must lease the land to

79. SENATE COMMITTEE ON GOVERNANCE AND FINANCE, COMMITTEE ANALYSIS OF AB 2818, at 4 (June 29, 2016).

80. REV. & TAX. § 402.1(a)(11)(A)(i)–(iv) (as amended by Chapter 701).

81. *Id.* at (a)(11)(A)(i).

82. *Id.* at (a)(11)(A)(ii).

83. *Id.* at (a)(11)(A)(iii)(I)–(V) (defining public agency or official as, “the director of the local housing authority or equivalent agency; the county counsel; the director of a county housing department; the city attorney; or the director of a city housing department.”)

84. *Id.* at (a)(11)(A)(iv).

85. *Id.* at (a)(11)(B)(i)(I)–(IV).

86. *Id.* at (a)(11)(B)(i)(I) (defining “qualified owner” as, “persons and families of low or moderate income” or a limited equity housing cooperative); *id.* at (a)(11)(B)(v) (stating “persons and families of low or moderate income” is the same as in HEALTH & SAFETY CODE § 50093, meaning families whose income is 120 percent or less than the area median income).

87. *Id.* at (a)(11)(B)(i)(II).

88. *Id.* at (a)(11)(B)(i)(III).

89. *Id.* at (a)(11)(B)(i)(IV).

90. *Id.* at (a)(11)(B)(ii).

91. *Id.* at (a)(11)(B)(ii)(I)–(II).

92. *Id.* at (a)(11)(B)(ii)(II).

the qualified owner for “a renewable term of 99 years.”⁹³ Assemblymembers Chiu and Thurmond introduced Chapter 701 to ensure consistent property tax assessments of CLT homes and guarantee these homes remain affordable for LMI individuals.⁹⁴

IV. ANALYSIS

Municipalities are interested in ensuring that all property is taxed because the revenue from property taxes pays for public schooling, public safety, and infrastructure.⁹⁵ However, rising property taxes leads to gentrification, which impacts not only LMI households, but also impacts society.⁹⁶ To combat this, Chapter 701 initially extended the welfare exemption to all CLTs and required local assessors to appraise CLT homes equal to the restricted-resale price.⁹⁷ However, the legislature amended Chapter 701 to require county assessors to consider the affordability restrictions, but what exactly does this mean?⁹⁸

A. *Social Ramifications of Increased Property Taxes*

Property taxes are used to support public schools, public safety, and infrastructure, which are vital services LMI families, like those who buy CLT homes, need access to.⁹⁹ Some argue that because LMI families use these services as much as, if not more than, other households, they should be required to pay their fair share of property taxes.¹⁰⁰ Others argue that if the state raised property taxes, it would reduce income and sales tax.¹⁰¹ They claim the state should lower taxes on activities it wants to encourage, like work and spending.¹⁰² On the other hand, not having affordable housing impacts the entire community by decreasing the amount LMI households can spend on healthcare and other

93. *Id.* at (a)(11)(B)(ii)(III).

94. SENATE COMMITTEE ON GOVERNANCE AND FINANCE, COMMITTEE ANALYSIS OF AB 2818, at 3–4 (June 29, 2016).

95. Craig, *supra* note 30.

96. *See infra* Part IV.A. (discussing the social ramifications of increased property taxes on LMI households).

97. *See infra* Part IV.B. (examining what Chapter 701 initially proposed).

98. *See infra* Part IV.C. (discussing whether Chapter 701 will create consistent property tax assessments).

99. Bagdol, *supra* note 18, at 940.

100. Irvine Renter, *Tales of Foreclosure and Eviction: Putting People Out of their Former Houses*, IRVINE HOUS. BLOG (Sept. 16, 2011), <http://www.irvinehousingblog.com/2011/09/16/tales-of-foreclosure-and- eviction-putting-people-out-of-their-former-houses/>.

101. Shane Phillips, *Prop 13, Part 1: California’s Property Tax Law is Completely Broken*, BETTER INST. BLOG (July 1, 2015), <http://www.betterinstitutions.com/blog/2015/07/prop-13-california-broken-property-tax-part-1>.

102. *Id.*

essentials, which increases healthcare costs for all.¹⁰³ It also increases traffic congestion and reduces air quality because families are forced to move to less expensive areas that are further from public transit.¹⁰⁴

Additionally, housing insecurity impacts children because they are “more likely than their peers to drop out of school, repeat grades, perform poorly in school, disengage in the classroom, and suffer from learning disabilities and behavior problems.”¹⁰⁵ For most families, the neighborhood they choose to live in determines the school their children will attend.¹⁰⁶ But for many LMI families there is little choice because they can only afford to live in certain communities.¹⁰⁷ CLTs provide LMI families with more options because CLTs are typically located in wealthy, gentrified areas—areas most LMI households could not afford to live in without the CLT.¹⁰⁸

Many cities’ primary source of revenue comes directly from property taxes.¹⁰⁹ In order to increase their income, many cities encourage gentrification.¹¹⁰ Rising property taxes produce more income, which results in economic benefits for the city, county, and state.¹¹¹ On the other hand, rising property taxes produce higher costs of living, displacing long-term residents because they cannot afford the higher costs.¹¹² Low-income households pay a greater percentage of their monthly income towards property taxes than higher

103. See *Impact of Affordable Housing on Families and Communities: A Review of the Evidence Base*, ENTER. COMM. PARTNERS, INC. 1, 6 (2014), available at https://s3.amazonaws.com/KSPProd/ERC_Upload/0093581.pdf [hereinafter *Impact of Affordable Housing*] (on file with *The University of the Pacific Law Review*) (explaining the negative impact of housing insecurity on the health of children and adults).

104. Bus. & Prof. People for Pub. Int., *Myths and Facts About Affordable Housing*, AFFIRMED HOUSING (2004), available at http://www.affirmedhousing.com/resources/myths_stereotypes.pdf (on file with *The University of the Pacific Law Review*).

105. *Impact of Affordable Housing*, *supra* note 103, at 5.

106. James J. Kelly, Jr., *Sustaining Neighborhoods of Choice: From Land Bank(ing) to Land Trust(ing)*, 54 WASHBURN L. J. 613, 613 (2015).

107. *Id.*

108. Cf. Penn Loh, *How One Boston Neighborhood Stopped Gentrification in Its Tracks*, YES! MAG. (Jan. 28, 2015), <http://www.yesmagazine.org/issues/cities-are-now/how-one-boston-neighborhood-stopped-gentrification-in-its-tracks> (on file with *The University of the Pacific Law Review*) (discussing the advantage of CLTs as a tool in an expensive urban area like Boston); *Housing Co-Op a Long Term Solution to Displacement of Families and Seniors from San Francisco*, SF BAY VIEW (Oct. 13, 2011), available at <http://sfbayview.com/2011/10/housing-co-op-a-long-term-solution-to-displacement-of-families-and-seniors-from-san-francisco/> (on file with *The University of the Pacific Law Review*); ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 2 (May 25, 2016).

109. See, e.g., Khalida Sarwari, *Monte Sereno, Saratoga, Cupertino: Property Tax Problem Solved, and that Means Cities Will Share \$2.5M*, MERCURY NEWS (Sept. 30, 2015, 6:08 PM), available at http://www.mercurynews.com/cupertino/ci_28903192/los-gatos-saratoga-cupertino-property-tax-problem-solved (on file with *The University of the Pacific Law Review*) (discussing the City of Saratoga’s income from property taxes).

110. Seeger, *supra* note 12, at 474 n.9; Bagdol, *supra* note 18, at 944 (Gentrification is “the upward change in land use to middle and upper income residential.”).

111. Bagdol, *supra* note 18, at 944.

112. *Id.*

income households.¹¹³ A recent example of gentrification occurred in Richmond, California, where from 2010 to 2015 the average home price increased from \$199,000 to \$362,000.¹¹⁴ Many low-income families were “displaced after public housing they were living in was razed as part of redevelopment.”¹¹⁵ The new homes built in place of the low-income housing usually reserved fewer units for low-income residents.¹¹⁶

Property tax relief can stop the displacement of low-income families through gentrification.¹¹⁷ In California, when local assessors undervalue property, the state must subsidize the “difference between the statutory revenue guarantees” and the actual property tax proceeds from the General Fund.¹¹⁸ Decreases in property tax revenue increase General Fund spending by approximately 50 percent.¹¹⁹

Uniform and consistent property tax assessments, which Chapter 701 helps provide, ensure that county assessors do not undervalue property.¹²⁰ Although conventional homeowners may need to pay a higher share of the local taxes if their county has CLTs, the “[l]egislature makes policy judgments all the time that affect the way a town can tax property, and thus[,] impact the tax liability of other local taxpayers.”¹²¹ On balance, the impact to society of not providing affordable housing outweighs any loss of revenue from not appraising CLT homes at current market value.¹²²

B. What Chapter 701 Originally Proposed to Do

When Chapter 701 was introduced, it extended the “welfare exemption” to all CLTs and it required local assessors to appraise CLT homes equal to the restricted-resale price in the ground lease.¹²³ These two provisions would have guaranteed that CLT homes remained affordable for LMI families by making CLT land completely exempt from property taxes and ensuring that CLT homeowners would not pay property taxes on a value higher than they actually

113. *California: State and Local Taxes in 2015*, THE INST. ON TAX’N. & ECON. POL’Y, <http://www.itep.org/whopays/states/california.php> (last visited on Aug. 27, 2016).

114. Karina Ioffe, *Richmond’s African-American Population Declining*, MERCURY NEWS (May 22, 2015, 10:36 AM), http://www.mercurynews.com/my-town/ci_28170467/after-years-black-city-richmonds-african-american-population (on file with *The University of the Pacific Law Review*).

115. *Id.*

116. *Id.*

117. Kelly, *supra* note 106, at 623.

118. *An Overview*, *supra* note 29, at 2.

119. SENATE COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 1 (Aug. 1, 2016).

120. *An Overview*, *supra* note 29, at 2.

121. *Franks v. Town of Essex*, 87 A.3d 418, 433 (Vt. 2013).

122. *See Impact of Affordable Housing*, *supra* note 103 (explaining the negative impact on society of not providing affordable housing).

123. *See infra* Part IV.B.1–2 (explaining that Chapter 701 would have extended the “welfare exemption” to all CLTs and required county assessors to value CLT homes equal to their restricted-resale price).

own.¹²⁴ By removing these provisions, the legislature weakened the impact Chapter 701 will have on keeping CLT homes affordable for LMI families.¹²⁵ Now, Chapter 701 merely requires county assessors to consider the restricted-resale price in the ground lease, but it does not mandate a decrease in appraisal value.¹²⁶ Accordingly, even with Chapter 701's enactment, some CLT homeowners may still pay more in property taxes than the restricted-resale value of their home.¹²⁷

1. No Property Taxes on the Land

Similar to the Florida statute, Chapter 701 originally proposed expanding the California “welfare exemption” to include all CLTs.¹²⁸ However, the Assembly Committee on Appropriations amended Chapter 701 to remove this provision.¹²⁹ Under existing law, a qualified CLT must sell homes to families whose income does not exceed 80 percent of the area median income.¹³⁰ CLTs that sell homes to moderate-income families currently may not qualify for this exemption.¹³¹ However, the proposed expansion would have included these CLTs as well.¹³²

The revenue loss due to the expansion of the welfare exemption was unknown; however, even if the loss was moderate to significant, it seems that it would have been manageable.¹³³ California has double the amount of CLTs as Florida, however, that does not mean making CLT land exempt from property taxes would impact California twice as much.¹³⁴ California's most populous cities, San Francisco, Los Angeles, San Jose, and San Diego, only have 3.4–3.7

124. *Id.*

125. *See infra* Part IV.C (discussing what Chapter 701 does do).

126. *See infra* Part IV.C.2 (explaining that Chapter 701 requires county assessors to consider the impact of the affordability restrictions).

127. *See infra* Part IV.C.3 (discussing how Chapter 701 does not mandate how the county assessors are to consider the impact of the affordability restrictions).

128. AB 2818, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as passed by Assembly, May 12, 2016).

129. AB 2818, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as passed by Assembly, June 1, 2016); Complete Bill History of AB 2818, available at http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=2015201_60AB2818 (last visited Dec. 13, 2016) (on file with *The University of the Pacific Law Review*).

130. REV. & TAX. CODE § 214.15 (West 2016); HEALTH & SAFETY CODE § 50079.5 (West 2016); REV. & TAX. CODE § 214(g)(1)(c) (West 2016) (They can also qualify for the exemption by renting 90 percent of the units to families with incomes that are 30–60 percent of the area median income.); HEALTH & SAFETY CODE § 50053(b)(1)–(3) (West 2016).

131. ASSEMBLY COMMITTEE ON REVENUE & TAXATION, COMMITTEE ANALYSIS OF AB 2818, at 8 (May 9, 2016) (individuals of moderate income are defined as up to 120 percent of the area median income).

132. *Id.*; AB 2818, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as passed by Assembly, May 12, 2016).

133. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 2 (May 25, 2016).

134. *See Property Tax Exemption Data for U.S. Cities*, GOVERNING, <http://www.governing.com/gov-data/tax-exempt-property-values-totals-for-cities.html> (last visited on Aug. 30, 2016) (stating the percentage of tax exempt property in the 20 most populous cities).

percent of their property completely exempt from property taxes.¹³⁵ In one of Florida's most populous cities, Jacksonville, 28.8 percent of its property is completely exempt from property taxes.¹³⁶

Like the Florida statute, Chapter 701 proposed extending the welfare exemption for five years to all CLTs that had acquired land but had not started developing the properties.¹³⁷ CLTs rely heavily on state and federal funding, which has been cut in recent years.¹³⁸ Between 2008 and 2014, the state of California and the federal government slashed funding for affordable housing by \$1.5 billion annually.¹³⁹ Providing CLTs with a property tax exemption before construction started would have provided them the opportunity to find funding to develop the property, which can be extremely challenging and prohibitive.¹⁴⁰

2. *Assessment Equal to the Restricted-Resale Price for Taxing Structures on CLT Land*

Similar to the North Carolina statute, Chapter 701 originally required the local assessor to appraise the CLT home equal to the purchase price, which was defined as a "price that does not exceed the sale or resale formula."¹⁴¹ But, the Assembly Committee on Revenue and Taxation analysis expressed concern that requiring local assessors to appraise CLT homes at the restricted-resale price would not reach its intended result because existing law already includes a rebuttable presumption that current market value is the purchase price.¹⁴² Chapter 701 now requires county assessors to *consider* the affordability restrictions; however, it does not require them to lower the appraisal value to the restricted-resale price.¹⁴³

In *The City-CLT Partnership*, a policy focus report, John Emmeus Davis illustrates the impact on the homeowner of valuing CLT homes higher than the restricted-resale price.¹⁴⁴ If a home is initially purchased from a CLT for \$85,000,

135. *Id.* (stating that San Francisco and Los Angeles' percentages include government-owned nontaxable property, but San Jose and San Diego's do not).

136. *Id.*

137. AB 2818, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as passed by Assembly, May 12, 2016).

138. Sungu-Erylimaz & Greenstein, *supra* note 17, at 17–19.

139. Nancy Amdur, *Bay Area Cities Struggle to Finance Affordable Housing in Wake of Redevelopment Funding Halt*, THE REGISTRY (June 9, 2014), available at <http://news.theregistrysf.com/bay-area-cities-struggle-finance-affordable-housing-wake-redevelopment-funding-halt/> (on file with *The University of the Pacific Law Review*).

140. ASSEMBLY COMMITTEE ON REVENUE & TAXATION, COMMITTEE ANALYSIS OF AB 2818, at 4 (May 9, 2016); see also Amdur, *supra* note 139 (stating that a San Jose company which provides affordable housing finds that finding funding is extremely challenging).

141. AB 2818, 2016 Leg., 2015–2016 Sess. (Cal. 2016) (as passed by Assembly, May 12, 2016).

142. REV. & TAX. CODE § 110(b) (West 2016); ASSEMBLY COMMITTEE ON REVENUE & TAXATION, COMMITTEE ANALYSIS OF AB 2818, at 6 (May 9, 2016).

143. REV. & TAX. CODE § 402.1(a)(11) (as amended by Chapter 701).

144. Davis & Jacobus, *supra* note 13, at 23.

but the actual market value is \$210,000, using a resale “formula that allows the homeowner to pocket 25 percent of the appreciated market value when the property is resold” and an annual appreciation rate of 7 percent, after seven years the restricted-resale price of the home would be \$116,804, but the market value would be \$337,215.¹⁴⁵ Appraising the home at market value would force the CLT homeowner to pay property taxes on \$220,411, which there is no title to.¹⁴⁶ Essentially, the homeowner pays property taxes on the value of a home he or she probably could not have afforded to purchase.¹⁴⁷

When county assessors value CLT properties higher than their restricted-resale price, it can lead to homeowners “pay[ing] more in property taxes and insurance than they do to pay off their mortgages.”¹⁴⁸ For LMI families, spending more on housing costs means making tradeoffs to spend less on other essential household items.¹⁴⁹ Low-income individuals or families that spend more than 50 percent of their monthly income on housing costs spend “39 percent less on food” than low-income individuals or families that spend less than 50 percent on housing costs.¹⁵⁰ Ensuring that CLT homes are valued according to their restricted-resale price would help safeguard these families from having to make tradeoffs for other essential household items.¹⁵¹

Moreover, this approach would have made it easier for a CLT to predict how county assessors will value homes “in order to factor the cost of property taxes into its affordability calculations in pricing, financing, and selling its resale-restricted homes.”¹⁵² Also, it allows the CLT to easily explain to their homebuyers, who may not be familiar with the CLT model or even homeownership, the cost of their property taxes because it is based on the restricted-resale price.¹⁵³

However, this approach creates a high burden on county assessors because there are several different formulas that CLTs use to calculate the restricted-resale price.¹⁵⁴ The county assessor would need to annually evaluate the formula

145. *Id.*

146. *Id.*

147. *Franks v. Town of Essex*, 87 A.3d 418, 433 (Vt. 2013).

148. *See Gowen*, *supra* note 77 (reporting on a group of Habitat for Humanity homeowners in Northern Virginia, who are facing this problem). One mother reported in 18 months, her mortgage, which includes property taxes, went from \$515 to \$954. *Id.*

149. Taylor, *supra* note 5, at 27.

150. *Id.*

151. *See Low Income Community In Gilroy Overcharged On Property Taxes For 13 Years*, CBS SF BAY AREA (Aug. 13, 2015, 9:09 PM), available at <http://sanfrancisco.cbslocal.com/2015/08/13/low-income-community-in-gilroy-overcharged-on-property-taxes-for-13-years/> (on file with *The University of the Pacific Law Review*) (discussing a family’s choice between house payments and groceries).

152. John Emmeus Davis, Rick Jacobus & Maureen Hickey, *City-CLT Partnerships: In Search of Best Practices*, THE LINCOLN INST. OF LAND POL’Y 23–24, available at http://www.burlingtonassociates.com/files/8613/4463/2405/3-Best_and_Worst.pdf (on file with *The University of the Pacific Law Review*).

153. *Id.* at 24 n.9.

154. THE CLT TECH. MANUAL, *supra* note 17, at Ch. 17, 5.

used in each CLT ground lease to determine the appraisal value of the property.¹⁵⁵ In contrast, Chapter 701 creates a low burden on county assessors because it only requires them to consider the restricted-resale price, which some assessors already do.¹⁵⁶ It also would have deviated from precedent set by Chapter 698 by giving a more generous property tax reduction to CLTs than Habitat for Humanity.¹⁵⁷ Originally, Chapter 701 required the appraisal value of CLT homes to be equal to the restricted-resale price, whereas Chapter 698 only mandates that county assessors consider the restricted-resale price of Habitat for Humanity homes, which may not lead to a decrease in market value.¹⁵⁸

The committee analysis estimated that if in one year CLTs sold 30 homes throughout the state and county assessors appraised the homes at the restricted-resale price, there would be a decrease of \$336,000 in property tax revenue.¹⁵⁹ This decrease in property tax revenue would result in the state subsidizing municipalities with \$168,000 from the General Fund.¹⁶⁰ However, as CLTs continue to grow, this number would increase.¹⁶¹ Although this approach would have the largest impact on property tax revenue collected by the state, it also provides the best protection to CLT homeowners.¹⁶²

C. What Chapter 701 Does Do

Consistent with precedent set by Chapter 698, Chapter 701 mandates that local assessors consider the affordability restrictions in a CLT ground lease, helping produce more consistent property tax assessments.¹⁶³ Although it allows county assessors to consider a private-party restriction, it does not open the door for all private-party restrictions to be considered.¹⁶⁴ It requires county assessors to consider the restricted-resale price, but it does not *require* the assessor to

155. Davis, *supra* note 68, at 128 n.158.

156. See SENATE COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 688, at 3 (June 25, 2015) (explaining that the burden to county assessors implementing Chapter 698 was relatively minor).

157. ASSEMBLY COMMITTEE ON REVENUE & TAXATION, COMMITTEE ANALYSIS OF AB 2818, at 8 (May 9, 2016).

158. *Id.* at 1, 3; CAL. ST. BD. OF EQUALIZATION, LEGISLATIVE ENROLLED BILL ANALYSIS OF AB 668, at 4 (Jan. 1, 2016).

159. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 2 (May 25, 2016) (if 30 of the homes were “sold to households who had income levels at 80 percent of the area median income in both Los Angeles and the San Francisco Bay Area, and an additional 30 homes were sold across the rest of the state”).

160. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 2 (May 25, 2016).

161. *Id.*

162. See THE CLT TECH. MANUAL, *supra* note 17, at Ch. 17, 8 (stating model legislation for property tax appraisals of CLT homes should require that the appraisal value not exceed the restricted-resale price).

163. REV. & TAX. CODE § 402.1(a)(11) (as amended by Chapter 701).

164. See *infra* Part IV.C.1 (discussing Chapter 701’s maintenance of a public purpose focus).

reduce the appraised value of the home to the restricted-resale price.¹⁶⁵ It also does not specify *how* the assessors should consider the affordability restrictions.¹⁶⁶

1. Chapter 701 Maintains a Public Purpose Focus

Under California law, there is a rebuttable presumption that the purchase price of property is equal to the market value.¹⁶⁷ Chapter 701 expands the definition of market value because it adds the affordability restrictions in a CLT ground lease to the list of enforceable restrictions that must be considered by county assessors.¹⁶⁸ Before Chapter 701 and Chapter 698, county assessors only had to consider government-imposed restrictions.¹⁶⁹ But now, county assessors are required to consider private-party restrictions in two instances.¹⁷⁰

When Chapter 698 was first introduced, it required county assessors to consider affordability restrictions in a recorded contract between a nonprofit organization that creates affordable housing, and LMI families.¹⁷¹ This would have required county assessors to consider any contract a nonprofit organization recorded against a property, which imposed affordability restrictions for a minimum of 30 years.¹⁷² The California Assessors' Association opposed the bill for several reasons.¹⁷³

One concern was that there are many different types of private-party restrictions that “are not readily discoverable.”¹⁷⁴ On the other hand, government restrictions “are generally recorded, discoverable, and provided to the assessor.”¹⁷⁵ In response to this concern, the legislature amended Chapter 698 to require that the contract must be provided to the assessor.¹⁷⁶ Similarly, Chapter 701 includes this provision.¹⁷⁷

The second concern was that allowing private-party encumbrances on the list of enforceable restrictions enabled the “organization and homeowners to achieve

165. See *infra* Part IV.C.2 (explaining that Chapter 701 requires county assessors to consider the impact of the affordability restrictions).

166. See *infra* Part IV.C.3 (discussing that Chapter 701 does not mandate how the county assessors are to consider the impact of the affordability restrictions).

167. REV. & TAX. CODE § 110(b) (West 2016).

168. REV. & TAX. § 402.1(a)(11) (as amended by Chapter 701).

169. *Carlson v. Assessment Appeals Bd. I*, 167 Cal. App. 3d 1004 (1985).

170. REV. & TAX. § 402.1(a)(10)–(11) (as amended by Chapter 701).

171. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 668, at 1 (Apr. 15, 2015).

172. *Id.* at 3.

173. *Id.* at 3–4.

174. *Id.* at 3.

175. *Id.*

176. REV. & TAX. CODE § 402.1(a)(10)(E) (West 2016).

177. REV. & TAX. CODE § 402.1(a)(11)(A)(iv) (as amended by Chapter 701).

tax savings without a public process.”¹⁷⁸ The argument was that the state government, not two private parties, should determine if the loss in property tax revenue was justified by the benefit to society.¹⁷⁹ The legislature amended Chapter 698 to require the local housing authority or similar government agency to find that the “contract serve[s] a public purpose.”¹⁸⁰ Chapter 701 also includes this provision.¹⁸¹

The combination of these two provisions keeps future consideration of private-party encumbrances limited to those that have a public purpose focus.¹⁸² By requiring a public agency to make a determination that the restricted-resale price serves a public purpose, Chapter 701 does not open the door for county assessors to consider any private-party encumbrance a homeowner chooses to impose on his or her property.¹⁸³ Chapter 701 also limits the burden on county assessors because it requires the contract be recorded and provided to the assessor.¹⁸⁴ This makes the information easily available to the assessor and it limits the consideration to only CLTs that comply with the procedures.¹⁸⁵

2. What Does “Shall Consider” Mean?

What does “shall consider” actually mean—does it require a decrease in market value?¹⁸⁶ The Supreme Court of Vermont recently dealt with this question in *Franks v. Town of Essex*.¹⁸⁷ In 2013, Vermont had a statute analogous to Chapter 701 with a similar presumption for market value.¹⁸⁸ The statute stated that county assessors shall consider a decrease in market value for residential housing subject to a restricted-resale price.¹⁸⁹ The majority held that the statute did not require “a so-called automatic reduction[,] . . . but instead demand[ed] an individualized consideration of the effect a particular covenant has on a

178. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 668, at 2 (May 20, 2015).

179. *Id.*

180. REV. & TAX. § 402.1(a)(10)(D).

181. REV. & TAX. § 402.1(a)(11)(A)(iii) (as amended by Chapter 701).

182. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF AB 668, at 3 (Apr. 15, 2015) (showing that future consideration of private-party encumbrances will need to have these two provisions).

183. REV. & TAX. § 402.1(a)(11)(A)(iii) (as amended by Chapter 701).

184. *Id.* at (a)(11)(A)(iv).

185. *Id.* at (a)(11) (stating that all the affordability requirements must be met).

186. See *Franks v. Town of Essex*, 87 A.3d 418, 431 (Vt. 2013) (discussing the meaning of “shall include a consideration of a decrease in value in nonrental residential property due to a housing subsidy covenant.”)

187. *Id.* at 420.

188. *Id.* at 421 (Market value is defined as: “the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value.”)

189. *Id.*

property's fair market value."¹⁹⁰ In response to *Franks*, the Vermont legislature took action and amended the statute to state that the restricted-resale price materially decreases the market value of the CLT home, and the county assessor must appraise the home between 60–70 percent of the unrestricted market value.¹⁹¹

With Chapter 701 in place, California courts may soon need to grapple with the meaning of “shall consider” as used in Chapter 701.¹⁹² California courts have interpreted “shall” to mean “must.”¹⁹³ Most likely, the court is going to interpret the word shall, as used in Chapter 701, as having a mandatory effect: the county assessor will be required to consider the effect of the restricted-resale price in the CLT ground lease.¹⁹⁴ If a court was to interpret “shall” as meaning voluntary, that interpretation would go against the legislature's intent of Chapter 701.¹⁹⁵

The court will then need to look at the plain meaning of “consider,” which is “to think about with care or caution” or “a taking into account.”¹⁹⁶ This means that the local assessor will need to take the restricted-resale price into account when appraising CLT homes and land.¹⁹⁷ However, this does not imply that the assessor is required to decrease the appraisal value of the home or land to the restricted-resale price.¹⁹⁸ If the Legislature intended for an automatic decrease in value, it should have stated it unambiguously.¹⁹⁹

After Chapter 698 was enrolled, the California State Board of Equalization analyzed the bill and determined it only required a county assessor to “exercise his or her judgment to determine whether the value of the property . . . is equal to, or more or less than, the purchase price as a result of the impact of the enforceable restriction.”²⁰⁰ Most likely, the court will follow this interpretation of “consider,” as used in Chapter 701, and require the county assessor to analyze the

190. *Id.*

191. VT. STAT. ANN. tit. 32 § 3481(1)(C) (West 2016); *Hearing on H.884 Before the S. Fin. Comm.*, 2014 Leg., 2013–2014 Sess. (Vt. 2014), available at <http://legislature.vermont.gov/committee/document/2014/25/Bill/51038> (on file with *The University of the Pacific Law Review*) (from Apr. 8, 2014, witness testimony by Chris Donnelly).

192. REV. & TAX. CODE § 402.1(a)(11) (as amended by Chapter 701).

193. *E.g.*, *Larson v. St. Pers. Bd.*, 33 Cal. Rptr. 2d 412, 419 (Cal. Ct. App. 1994) (interpreting “shall” as meaning must).

194. *See id.* (interpreting “shall” as having a mandatory effect).

195. CONCURRENCE IN SENATE AMENDMENTS, COMMITTEE ANALYSIS OF AB 2818, at 5 (Aug. 22, 2016).

196. *Franks v. Town of Essex*, 87 A.3d 418, 422 (Vt. 2013).

197. CONCURRENCE IN SENATE AMENDMENTS, COMMITTEE ANALYSIS OF AB 2818, at 5 (Aug. 22, 2016).

198. CAL. ST. BD. OF EQUALIZATION, LEGISLATIVE ENROLLED BILL ANALYSIS OF AB 668, at 4 (Jan. 1, 2016).

199. *See Franks*, 87 A.3d at 422–23 (arguing that if the Legislature intended an automatic decrease, it would have used a definite article: “the” decrease, instead of an indefinite article, “a” decrease; also, the Legislature did not specify a set percentage to decrease the market value of the home by).

200. CAL. ST. BD. OF EQUALIZATION, LEGISLATIVE ENROLLED BILL ANALYSIS OF AB 668, at 4 (Jan. 1, 2016).

affordability restrictions in each CLT contract to determine whether they impact the market value of the property.²⁰¹

3. *Chapter 701 Does Not Mandate How the County Assessor is to Appraise CLT Property*

Chapter 701 creates consistency because county assessors are now required to consider the restricted-resale price, but it does not create consistency in *how* they are to consider the restricted-resale price.²⁰² Chapter 701 gives county assessors discretion to decide how the restricted-resale price impacts the market value of the home.²⁰³ It does not guarantee that CLT homeowners will not pay property taxes on an appraisal value that is higher than the restricted-resale price.²⁰⁴

When county assessors consider the effect of the restricted-resale price, some base appraisal value of the home on “whether or not city or county funds were involved,” while others base the value on a “verbal agreement with the local assessor.”²⁰⁵ Chapter 701 leaves open the question of how the restricted-resale price should impact the unrestricted market value of the property.²⁰⁶ Even property taxes that are 10–20 percent higher than the restricted-resale price of a CLT home put the homeowner at risk of foreclosure or of not having enough money to maintain the property.²⁰⁷

4. *Fiscal Impact of Chapter 701*

The committee analysis notes that the Legislature cannot put an exact value on the loss of revenue from Chapter 701.²⁰⁸ Currently in California, there are

201. *See id.* at 4 (interpreting “shall consider”).

202. REV. & TAX. CODE § 402.1(a)(11) (as amended by Chapter 701).

203. *See* CAL. ST. BD. OF EQUALIZATION, LEGISLATIVE ENROLLED BILL ANALYSIS OF AB 668, at 4 (Jan. 1, 2016) (stating that Chapter 698 allows county assessors to determine how the affordability restrictions impact the market value of the home).

204. *See id.* at 4 (stating the county assessor must use his or her judgment whether the appraisal value of the home should be “equal to, or more or less than, the purchase price”).

205. SENATE COMMITTEE ON TRANSPORTATION AND HOUSING, COMMITTEE ANALYSIS OF AB 668, at 3 (June 23, 2015).

206. *See* REV. & TAX. § 402.1(a)(11) (as amended by Chapter 701) (not stating how the county assessor is to consider the affordability restrictions).

207. Oakland City Council, *City Res. File #15-1088 Supplemental Report Version 3*, CITY OF OAKLAND CAL. (June 9, 2016), available at <https://oakland.legistar.com/LegislationDetail.aspx?ID=2737084&GUID=7E63C85C-0588-45EA-B471-D7369754B622> (on file with *The University of the Pacific Law Review*).

208. SENATE COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 1, 3 (Aug. 1, 2016) (noting that for the next two years “only one CLT is building new homes that will be ready for sale,” which would result in a loss of \$24,500 annually).

1,600 CLT homes in the planning stages or under construction;²⁰⁹ however, the committee analysis estimated up to 2,500 CLT homes could be developed and sold, which would result in a loss of about \$3 million in property tax revenue over several years.²¹⁰ On balance, even though Chapter 701 may result in a \$3 million loss in property tax revenue, that money is kept in the pockets of LMI families.²¹¹

V. CONCLUSION

CLTs provide affordable housing for LMI individuals and families, which is something California desperately needs.²¹² However, these homes will not remain affordable if the homeowner is forced to pay property taxes on an appraisal value higher than the restricted-resale price in the ground lease.²¹³ Before Chapter 701, county assessors were not required to consider the restricted-resale price because it was considered a private-party restriction.²¹⁴ Accordingly, some county assessors were appraising CLT property at fair market value, while others were reducing the appraisal value because of the restricted-resale price.²¹⁵ In an effort to keep CLT homes affordable and to create consistency in how CLT properties are appraised, Assemblymembers Chiu and Thurmond wrote Chapter 701.²¹⁶

Chapter 701 mandates county assessors to consider the restricted-resale price in a CLT ground lease.²¹⁷ However, it leaves open the question of whether that consideration requires the county assessor to decrease the unrestricted market value.²¹⁸ Accordingly, even with Chapter 701 in place, CLT homeowners may still pay property taxes on an appraisal value higher than the price homeowners

209. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 2 (May 25, 2016).

210. SENATE COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 2818, at 3 (Aug. 1, 2016) (“[a]ssuming (1) similar property tax savings for low and moderate income buyers, and (2) an equal split between low and moderate income buyers.”).

211. See Austin Smith, *3 Ways to Legally Reduce Your Taxes in 2016*, USA TODAY (Aug. 9, 2016, 2:05 PM), <http://www.usatoday.com/story/sponsor-story/motley-fool/2016/06/09/3-ways-legally-reduce-your-taxes-2016/85590916/> (on file with *The University of the Pacific Law Review*) (explaining that when homeowners reduce their property taxes more money is kept in their pockets).

212. See *supra* Part I (explaining that LMI individuals and families cannot afford a home in California).

213. See *supra* Part IV.B. (discussing the impact on homeowners if the appraisal value of their home is higher than the restricted-resale price).

214. See *supra* Part II.B. (discussing the only enforceable restrictions that a county assessor was required to consider).

215. See *supra* Part II.C. (discussing before Chapter 701, county assessors varied on if they considered the affordability restrictions on CLT homes).

216. See *supra* Part III (explaining the changes Chapter 701 makes to existing law).

217. See *supra* Part IV.C.2. (discussing that the court will likely interpret “shall consider” to have a mandatory effect).

218. See *supra* Part IV.C.3. (explaining that Chapter 701 gives county assessors discretion to decide how the restricted-resale price impacts the market value of the home).

would get if they sold their home.²¹⁹ If the Legislature's intent was to protect CLT homeowners to ensure they are not paying more in property taxes than the value they actually own, Chapter 701 falls short.²²⁰ By not mandating how county assessors are to consider the restricted-resale price, Chapter 701 most likely will not achieve its purpose of creating uniform and consistent appraisals for CLT property.²²¹ However, the Assemblymembers are heading in the right direction to protect low-to-moderate income homeowners, like Marianne Blend, by enacting Chapter 701.²²²

219. *Id.*

220. *Id.*

221. *See supra* Part III (explaining that the purpose of Chapter 701 is to create consistent property tax appraisals for CLTs).

222. *See supra* Part IV.C. (discussing how Chapter 701 will provide protection for LMI families).