



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

CONSENT
May 5, 2009

Honorable Members of the
Law and Legislation Committee

Title: Legislation Position: Support AB 1246 Relating to Limited Equity Housing Cooperatives

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee adopt a support position on AB 1246.

Contact: Desmond Parrington 808-5044

Presenters: Desmond Parrington, Infill Coordinator

Department: Planning Department

Division: Long Range Planning

Organization No: 4912

Description/Analysis

Issue: Limited equity housing cooperatives (LEHC's) are an alternative form of homeownership that can be a viable option for those who want to own a home but lack the means to make large mortgage payments. However, LEHC's remain an underutilized housing option due in part to a lack of public/private finance options.

AB 1246, authored by Assembly Member Dave Jones, makes amendments to a 31 year old law that governs the sponsoring, organization, and dissolutions of limited equity housing cooperatives in California. AB 1246 would help encourage additional affordable homeownership housing in the City by improving the regulatory structure to encourage the sponsorship and development of LEHC's. If the City were ever to take a proactive role in the development of LEHC's, the provisions of AB 1246 would help expedite any future efforts. For these reasons, Staff recommends a support position for AB 1246.

AB 1246 encourages broader participation in the sponsorship of LEHC's by:

- Expanding the types of sponsors (both public and private) that can benefit from special financial regulations for cooperatives; and
- Clarifying the rights of sponsors to participate in the cooperative's organization.

Additionally, the bill would establish a clear process for the dissolution of a cooperative. This new process would be done by a third party and would prevent individual members of the cooperative from enriching themselves while allowing other cooperatives to buy the units.

Policy Considerations: This bill is consistent with the 2008-2013 Housing Element's policy of promoting "homeownership opportunities through alternative construction methods and ownership models (Policy H-6.4)".

Environmental Considerations: None.

Committee/Commission Action: None.

Rationale for Recommendation: Staff recommends support of AB 1246 because it would help promote the financing and development of an affordable homeownership product. Limited equity housing cooperatives can also play an important role in the creation of permanently affordable housing.

Financial Considerations: None

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: 
Desmond Parrington
Infill Coordinator

Approved by: 
Thomas S. Pace
Long Range Planning Manager

Recommendation Approved:


Patti Bisharat
Director of Governmental Affairs

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Attachment 1 - Draft Letter of Support

May 5, 2009

Assemblymember Dave Jones
Chair Assembly Health Committee
Capitol Office, Room 6005
PO Box 942849
Sacramento CA 94249-0009

**RE: AB 1246 (Jones) Limited Equity Housing Cooperatives
NOTICE OF SUPPORT**

Dear Assemblymember Jones:

The City of Sacramento is pleased to support AB 1246.

On behalf of the City of Sacramento, we would like to express our appreciation for this new legislation that strengthens the role of limited equity housing cooperatives in developing a range of housing options for the citizens of California. The more ownership tools Californians have in this economic climate the more opportunities we have to help people with their housing needs.

AB 1246 would improve the regulatory structure of existing state law to create a welcome environment for the sponsorship and development of limited equity housing cooperatives. The City of Sacramento has long searched for options to increase homeownership for our moderate and lower income residents. The City would benefit from AB 1246 because it would help to promote the finance and development an alternative homeownership product, particularly one that has been known for its permanent affordability.

Thank you for introducing this important piece of legislation.

Sincerely,

Sandy Sheedy, Chair
Law and Legislation Committee

Cc: Mayor Johnson and Members of the City Council
Members and Consultant, Assembly Local Government Committee
Members and Consultant, Assembly Transportation and Housing Committee
David Jones, Emanuels and Jones and Associates

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1246

Introduced by Assembly Member Jones

February 27, 2009

An act to amend Section 11003.4 of the Business and Professions Code, and to amend Section 33007.5 of, ~~and to add Section 33075.6 to~~ *to add Sections 33007.6 and 33007.7 to, and to add Article 4 (commencing with Section 33520) to Chapter 5 of Part 1 of Division 24 of, the Health and Safety Code, relating to housing.*

LEGISLATIVE COUNSEL’S DIGEST

AB 1246, as amended, Jones. Housing cooperative trust and workforce housing cooperative trust.

(1) Existing law defines “limited-equity housing cooperative” to be a corporation that meets specified criteria. Existing law exempts a limited-equity housing cooperative from specified requirements for the regulation of transactions of subdivided lands.

This bill would revise the definition of a “limited-equity housing cooperative” to also apply to a “housing cooperative trust” and “workforce housing cooperative trust.” The bill would exempt an entity as so defined from these provisions governing the regulation of transactions of subdivided land if, among other organizations, the Federal Home Loan Bank System or any of its member institutions and school districts directly finance or subsidize at least 50% of the total construction or development cost or \$100,000, whichever is less. The bill also would exempt such an entity from these provisions if the real property to be occupied by the cooperative was sold or leased by the Department of Transportation, other state agency, a city, a county, or

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a school district for the development of the cooperative and has a regulatory agreement, as specified.

(2) The Community Redevelopment Law defines “limited-equity housing cooperative” to mean a corporation organized on a cooperative basis that meets specified requirements.

This bill would revise the definition of a “limited-equity housing cooperative” to also apply to a “housing cooperative trust” and “workforce housing cooperative trust.” The bill would prohibit a board of directors from returning transfer value, either full or partial, to a member of the board while he or she still remains a member of the board, and would prohibit an existing member of the board of directors from accepting the return of his or her transfer value, either full or partial. The bill would require that, in any suit against a board of directors and its members for not upholding the statutes that apply to such an entity the ~~plaintiff prevailing party~~ be awarded all ~~attorneys attorneys’~~ fees and ~~compensatory and~~ punitive damages. The bill would prohibit an organization formed under this section that uses public funds from using any corporate funds to avoid compliance with the Community Redevelopment Law, and from pursuing dissolution if the intent or outcome is for the members to occupy those units upon dissolution. The bill would prohibit the members of the board of directors and the board of directors from arranging to occupy units in fee simple or as a rental after dissolution of the organization. *The bill would impose procedural requirements relating to the dissolution of the organization.*

This bill also would provide for the manner in which a workforce housing cooperative trust is organized and operated, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11003.4 of the Business and Professions
- 2 Code is amended to read:
- 3 11003.4. (a) A “limited-equity housing cooperative” or a
- 4 “housing cooperative trust” or a “workforce housing cooperative
- 5 trust” is a corporation that meets the criteria of Section 11003.2
- 6 and that also meets the criteria of Sections 33007.5 and 33007.6
- 7 of the Health and Safety Code, as applicable. Except as provided
- 8 in subdivision (b), a limited-equity housing cooperative shall be

1 subject to all the requirements of this chapter pertaining to stock
 2 cooperatives.

3 (b) A limited-equity housing cooperative, a housing cooperative
 4 *trust*, and a workforce housing cooperative trust shall be exempt
 5 from the requirements of this chapter if the limited-equity housing
 6 cooperative, housing cooperative *trust*, or workforce housing
 7 cooperative trust complies with all the following conditions:

8 (1) The United States Department of Housing and Urban
 9 Development, the Farmers Home Administration, the National
 10 Consumers Cooperative Bank, the California Housing Finance
 11 Agency, or the Department of Housing and Community
 12 Development, the Federal Home Loan Bank System or any of its
 13 member institutions, alone or in any combination with each other,
 14 or with the city, county, school district, or redevelopment agency
 15 in which the cooperative is located, directly finances or subsidizes
 16 at least 50 percent of the total construction or development cost
 17 or one hundred thousand dollars (\$100,000), whichever is less; or
 18 the real property to be occupied by the cooperative was sold or
 19 leased by the Department of Transportation, other state agency, a
 20 city, a county, or a school district for the development of the
 21 cooperative and has a regulatory agreement approved by the
 22 Department of Housing and Community Development for the term
 23 of the permanent financing, notwithstanding the source of the
 24 permanent subsidy or financing.

25 (2) No more than 20 percent of the total development cost of a
 26 limited-equity mobilehome park, and no more than 10 percent of
 27 the total development cost of other limited-equity housing
 28 cooperatives, is provided by purchasers of membership shares.

29 (3) A regulatory agreement that covers the cooperative for a
 30 term of at least as long as the duration of the permanent financing
 31 or subsidy, notwithstanding the source of the permanent subsidy
 32 or financing has been duly executed between the recipient of the
 33 financing and either (A) one of the federal or state agencies
 34 specified in paragraph (1) or (B) a local public agency that is
 35 providing financing for the project under a regulatory agreement
 36 meeting standards of the Department of Housing and Community
 37 Development. The regulatory agreement shall make provision for
 38 at least all of the following:

39 (A) Assurances for completion of the common areas and
 40 facilities to be owned or leased by the limited-equity housing

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1 cooperative, unless a construction agreement between the same
2 parties contains written assurances for completion.

3 (B) Governing instruments for the organization and operation
4 of the housing cooperative by the members.

5 (C) The ongoing fiscal management of the project by the
6 cooperative, including an adequate budget, reserves, and provisions
7 for maintenance and management.

8 (D) Distribution of a membership information report to any
9 prospective purchaser of a membership share, prior to purchase
10 of that share. The membership information report shall contain
11 full disclosure of the financial obligations and responsibilities of
12 cooperative membership, the resale of shares, the financing of the
13 cooperative including any arrangements made with any partners,
14 membership share accounts, occupancy restrictions, management
15 arrangements, and any other information pertinent to the benefits,
16 risks, and obligations of cooperative ownership.

17 (4) The federal, state, or local public agency that executes the
18 regulatory agreement shall satisfy itself that the bylaws, articles
19 of incorporation, occupancy agreement, subscription agreement,
20 any lease of the regulated premises, any arrangement with partners,
21 and arrangement for membership share accounts provide adequate
22 protection of the rights of cooperative members.

23 (5) The federal or state agency shall receive from the attorney
24 for the recipient of the financing or subsidy a legal opinion that
25 the cooperative meets the requirements of Section 33007.5 of the
26 Health and Safety Code and the exemption provided by this section.

27 (c) Any limited-equity cooperative, housing cooperative or
28 workforce housing cooperative *trust*, trust that meets the
29 requirements for exemption pursuant to subdivision (b) may elect
30 to be subject to all provisions of this chapter.

31 (d) The developer of the cooperative shall notify the Department
32 of Real Estate, on a form provided by the department, that an
33 exemption is claimed under this section. The Department of Real
34 Estate shall retain this form for at least four years for statistical
35 purposes.

36 SEC. 2. Section 33007.5 of the Health and Safety Code is
37 amended to read:

38 33007.5. "Limited-equity housing cooperative" or a "housing
39 cooperative trust" or a "workforce housing cooperative trust"
40 means a corporation organized on a cooperative basis that, in

- 1 addition to complying with Section 33007.6 as may be applicable,
2 meets all of the following requirements:
- 3 (a) The corporation is any of the following:
 - 4 (1) Organized as a nonprofit public benefit corporation pursuant
 - 5 to Part 2 (commencing with Section 5110) of Division 2 of Title
 - 6 1 of the Corporations Code.
 - 7 (2) Holds title to real property as the beneficiary of a trust
 - 8 providing for distribution for public or charitable purposes upon
 - 9 termination of the trust.
 - 10 (3) Holds title to real property subject to conditions that will
 - 11 result in reversion to a public or charitable entity upon dissolution
 - 12 of the corporation.
 - 13 (4) Holds a leasehold interest, of at least 20 years' duration,
 - 14 conditioned on the corporation's continued qualification under
 - 15 this section, and providing for reversion to a public entity or
 - 16 charitable corporation.
 - 17 (b) (1) The articles of incorporation or bylaws require the
 - 18 purchase and sale of the stock or membership interest of resident
 - 19 owners who cease to be permanent residents, at no more than a
 - 20 transfer value determined as provided in the articles or bylaws,
 - 21 and that shall not exceed the aggregate of the following:
 - 22 (A) The consideration paid for the membership or shares by the
 - 23 first occupant of the unit involved, as shown on the books of the
 - 24 corporation.
 - 25 (B) The value, as determined by the board of directors of the
 - 26 corporation, of any improvements installed at the expense of the
 - 27 member with the prior approval of the board of directors.
 - 28 (C) Accumulated simple interest, or an inflation allowance at
 - 29 a rate that may be based on a cost-of-living index, an income index,
 - 30 or market-interest index. Any increment pursuant to this paragraph
 - 31 shall not exceed a 10 percent annual increase on the consideration
 - 32 paid for the membership or share by the first occupant of the unit
 - 33 involved.
 - 34 (2) For purposes of a return of transfer value, all of the following
 - 35 are prohibited:
 - 36 (A) A board of directors returning transfer value, either full or
 - 37 partial, to a member of the board while he or she still remains a
 - 38 member of the board.
 - 39 (B) An existing member of the board of directors accepting the
 - 40 return of his or her transfer value, either full or partial.

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- 1 (c) The articles of incorporation or bylaws require the board of
2 directors to sell the stock or membership interest purchased as
3 provided in subdivision (b), to new member-occupants or resident
4 shareholders at a price that does not exceed the “transfer value”
5 paid for the unit.
- 6 (d) The “corporate equity,” which is defined as the excess of
7 the current fair marketed value of the corporation’s real property
8 over the sum of the current transfer values of all shares or
9 membership interests, reduced by the principal balance of
10 outstanding encumbrances upon the corporate real property as a
11 whole, shall be applied as follows:
- 12 (1) So long as any such encumbrance remains outstanding, the
13 corporate equity shall not be used for distribution to members, but
14 only for the following purposes, and only to the extent authorized
15 by the board, subject to the provisions and limitations of the articles
16 of incorporation and bylaws:
- 17 (A) For the benefit of the corporation or the improvement of
18 the real property.
- 19 (B) For expansion of the corporation by acquisition of additional
20 real property.
- 21 (C) For public benefit or charitable purposes.
- 22 (2) Upon sale of the property, dissolution of the corporation, or
23 occurrence of a condition requiring termination of the trust or
24 reversion of title to the real property, the corporate equity is
25 required by the articles, bylaws, or trust or title conditions to be
26 paid out, or title to the property transferred, subject to outstanding
27 encumbrances and liens, for the transfer value of membership
28 interests or shares, for use for a public or charitable purpose.
- 29 (e) Amendment of the bylaws and articles of incorporation
30 requires the affirmative vote of at least two-thirds of the
31 resident-owner members or shareholders.
- 32 (f) In any suit against a board of directors ~~and~~ or its members
33 for not upholding the statutes that apply to limited-equity housing
34 cooperatives, the plaintiff shall be awarded all attorneys fees and
35 punitive damages.
- 36 (g) (1) If an organization formed under this section uses public
37 funds, it shall not use any corporate funds to avoid compliance
38 with this act and to pursue dissolution if the intent or outcome is
39 for *some or all of* the members to occupy those units upon
40 dissolution.

1 ~~(2) The members of the board of directors and~~ or the board of
2 directors shall not arrange to occupy units in fee simple or as a
3 rental as an outcome of their dissolution of the organization.

4 SEC. 3. Section 33007.6 is added to the Health and Safety
5 Code, to read:

6 33007.6. (a) A “workforce housing cooperative trust” is an
7 entity organized under this section that complies with Section
8 33007.5 and with all of the following:

9 (1) Allows the governing board to be composed of two classes
10 of board members. One class is elected by the residents, and one
11 class is appointed by sponsor organizations, including employer
12 and employee organizations, chambers of commerce, government
13 entities, unions, religious organizations, nonprofit organizations,
14 cooperative organizations, and other forms of organizations.
15 Resident members shall elect a majority of the board members.
16 However, sponsor organizations may appoint up to one less than
17 a majority of the board members. The numerical composition and
18 class of the sponsor and resident board members shall be set in the
19 articles of incorporation and in the bylaws.

20 (2) Requires the charter board of a workforce housing
21 cooperative trust to be composed of only sponsor board members,
22 to remain in place for the first three years after the first resident
23 occupancy. After three years of occupancy, resident members shall
24 elect a majority of the board members.

25 (3) Prohibits the removal of the appointees of sponsor
26 organizations, except for cause.

27 (4) (A) Allows for the issuance of separate classes of shares to
28 sponsor organizations or support organizations. These shares shall
29 be denominated as “workforce housing shares” and shall receive
30 a rate of return of no more than 10 percent simple interest pursuant
31 to paragraph (3) of subdivision (b) of Section 33007.5.

32 (B) *A sponsor organization of a workforce housing cooperative*
33 *trust shall be entitled to perfect a security interest in a cooperative*
34 *interest or in sponsor shares it has funded.*

35 (5) Requires, upon amendment of the bylaws and articles of
36 incorporation of a workforce housing cooperative trust, as needed,
37 the affirmative vote of at least a majority of the resident-owner
38 members or shareholders and a majority of each class of board
39 members. The rights of the sponsor board members or the sponsors

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1 shall not be changed without the affirmative vote of two-thirds of
2 the sponsor board members.

3 (6) Requires conformance with every aspect of this section to
4 seat sponsor directors in accordance with the original bylaws.
5 These directors shall be removed only for cause. This section also
6 applies to any organization previously formed under this section
7 prior to January 1, 2010, that had sponsor seats designated in its
8 bylaws.

9 (b) A workforce housing cooperative trust shall be entitled to
10 operate ~~statewide~~ *at multiple locations* in order to sponsor
11 limited-equity housing cooperatives ~~at multiple locations~~. A
12 workforce housing cooperative trust may either own or lease land
13 for the purpose of developing limited-equity housing cooperatives.

14 (c) A workforce housing cooperative trust may be created when
15 at least 51 percent of the occupied units in a multifamily property
16 that is in foreclosure support efforts to buy the building or property.

17 *SEC. 4. Section 33007.7 is added to the Health and Safety*
18 *Code, to read:*

19 *33007.7. The procedure for the dissolution of a limited equity*
20 *housing cooperative, housing cooperative trust, or workforce*
21 *housing cooperative trust shall be as follows:*

22 (a) *A public hearing, conducted by the county in which the*
23 *limited equity housing cooperative, housing cooperative trust, or*
24 *workforce housing cooperative trust is located, shall be held. The*
25 *cooperative or trust shall pay for all costs associated with the*
26 *public hearing.*

27 (b) *The county shall provide notice to all interested parties. The*
28 *notice shall be given at least 120 days prior to the date of the*
29 *hearing. The notice shall be provided to all other limited equity*
30 *housing cooperatives and cooperative development organizations*
31 *in the state in an effort to create a merger with an existing limited*
32 *equity housing cooperative, housing cooperative trust, or workforce*
33 *housing cooperative trust, and shall be mailed first-class, postage*
34 *prepaid, in the United States mail.*

35 (c) *If the dissolving limited equity housing cooperative, housing*
36 *cooperative trust, or workforce housing cooperative trust merges*
37 *with an existing cooperative or trust, to the extent possible, the*
38 *merger shall be with the geographically closest cooperative or*
39 *trust.*

1 (d) *If the dissolving limited equity housing cooperative, housing*
2 *cooperative trust, or workforce housing cooperative trust does not*
3 *merge with an existing cooperative or trust, both of the following*
4 *shall occur:*

5 (1) *The public hearing required under subdivision (a) shall*
6 *ensure that any dissolution plan is free of private inurement, and*
7 *meets the requirements of state and federal law.*

8 (2) *Any dissolved housing units held by the limited equity*
9 *housing cooperative, housing cooperative trust, or workforce*
10 *housing cooperative trust shall be made available through a public*
11 *lottery supervised by the county in which the cooperative or trust*
12 *is located.*

13 SEC. 5. *Article 4 (commencing with Section 33520) is added*
14 *to Chapter 5 of Part 1 of Division 24 of the Health and Safety*
15 *Code, to read:*

16
17 *Article 4. Actions Involving Limited-Equity Housing*
18 *Cooperatives, Housing Cooperative Trusts, and Workforce Housing*
19 *Cooperative Trusts*
20

21 33520. *Each entity named as a sponsor organization of a*
22 *workforce housing cooperative trust formed under Section 33007.5*
23 *shall have the legal standing of a member unless it revokes, in*
24 *writing, its sponsorship.*

25 33521. *In any action instituted against a board of directors*
26 *and its members based upon a breach of corporate or fiduciary*
27 *duties or a failure to comply with statutes that apply to*
28 *limited-equity housing cooperatives, housing cooperative trusts,*
29 *or workforce housing cooperative trusts, the prevailing party shall*
30 *be awarded compensatory and punitive damages and attorney's*
31 *fees.*