

1                   **THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED**  
2                   **RULE 140.1 DOES NOT REFLECT OR REPRESENT THE POSITION**  
3                   **OF THE BOARD OR ANY BOARD MEMBER.**

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5                   **DRAFT OF PROPOSED PROPERTY TAX RULE 140.1**  
6                   **REQUIREMENTS FOR MANAGING GENERAL PARTNER**  
7                   **OF LIMITED PARTNERSHIP FOR WELFARE EXEMPTION**  
8                   **FOR LOW-INCOME HOUSING PROPERTIES**  
9

10  
11 (a) Definitions. The definitions set forth in this regulation shall govern the construction of  
12 Revenue and Taxation Code section 214, subdivision (g), which provides the requirements  
13 for the welfare exemption for low-income housing properties owned by a limited partnership  
14 in which the managing general partner is an eligible nonprofit corporation.

15  
16 (1) "General partner" means "general partner" as defined by section 15611, subdivision (n)  
17 of the Corporations Code.

18  
19 (2) "Limited partner" means "limited partner" as defined by section 15611, subdivision (q)  
20 of the Corporations Code.

21  
22 (3) "Limited partnership" means a "limited partnership" as defined by section 15611,  
23 subdivision (r) of the Corporations Code, or a "foreign limited partnership" as defined by  
24 section 15611, subdivision (l) of the Corporations Code.

25  
26 (4) "Limited partnership agreement" means any valid written agreement of the partners as to  
27 the affairs of a limited partnership and the conduct of its business, including all  
28 amendments thereto.

29  
30 (5) "Majority in interest of the general partners" means more than 50 percent of the interests  
31 of the general partners, and does not include the interests of any of the limited partners,  
32 in the current profits derived from business operations of the limited partnership.

33  
34 (6) "Managing general partner" means a general partner that:

35  
36 (i) is a nonprofit corporation, or an eligible limited liability company meeting the  
37 requirements of Revenue and Taxation Code section 214, designated in the  
38 limited partnership agreement as the "managing general partner" of the limited  
39 partnership;

40  
41 (ii) is authorized to receive a partnership management fee, or similar form of  
42 compensation, payable in the amount and the manner set forth in the limited  
43 partnership agreement or other agreement executed by all of the general  
44 partners for performing its duties;

45  
46 (iii) has "material participation," as defined in subdivision (a)(7) below, in the  
47 control, management, and direction of the limited partnership's business; and  
48

1 (iv) the officers and directors of the for-profit general partners, for-profit limited  
2 partners, or any of its for-profit affiliates, do not, as individuals or  
3 collectively, have a controlling vote or majority interest in the nonprofit  
4 managing general partner.

5  
6 (7) "Material participation" means that the limited partnership agreement or other  
7 agreement executed by all of the general partners expressly provides that the  
8 managing general partner:

9  
10 (i) has a right to vote in all the "major decisions," defined in subdivision (a)(8)  
11 below;

12  
13 (ii) performs "substantial management duties," defined in subdivision (a)(10)  
14 below; ~~and~~

15  
16 (iii) directly, or indirectly under its supervision, manages the limited partnership;

17  
18 (iv) annually conducts a physical inspection of the low-income housing property  
19 to ensure that the property is being used as low-income housing and meets all  
20 of the requirements set forth in Regulation 140; and

21  
22 (v) annually submits a certification to the county assessor for the county in which  
23 the property is located that the low-income housing property meets all of the  
24 requirements set forth in Regulation 140.

25  
26  
27 (8) "Major decisions" means those acts, if any, that require a vote of a majority in interest  
28 of the general partners.

29  
30 (9) "Partner" means a limited or general partner.

31  
32 (10) "Substantial management duties" means that the managing general partner actually  
33 performs ~~two~~ five or more of the following partnership management duties on  
34 behalf of the limited partnership:

35  
36 (i) rents, maintains and repairs the low-income housing property, or if such duties  
37 are delegated to a property management agent, participates in hiring and  
38 overseeing the work of the property management agent;

39  
40 (ii) participates in hiring and overseeing the work of all persons necessary to  
41 provide services for the management and operation of the limited partnership  
42 business;

43  
44 (iii) executes and enforces all contracts executed by the limited partnership;

45  
46 (iv) executes and delivers all partnership documents on behalf of the limited  
47 partnership;

- 1 (v) prepares or causes to be prepared all reports to be provided to the partners or  
2 lenders on a monthly, quarterly, or annual basis consistent with the  
3 requirements of the limited partnership agreement;
- 4
- 5 (vi) coordinates all present and future development, construction, or rehabilitation  
6 of low-income housing property that is the subject of the limited partnership  
7 agreement;
- 8
- 9 (vii) monitors compliance with all government regulations and files or supervises  
10 the filing of all required documents with government agencies;
- 11
- 12 (viii) acquires, holds, assigns or disposes of property or any interest in property;
- 13
- 14 (ix) borrows money on behalf of the limited partnership, encumbers limited  
15 partnership assets, places title in the name of a nominee to obtain financing,  
16 prepays in whole or in part, refinances, increases, modifies or extends any  
17 obligation;
- 18
- 19 (x) pays organizational expenses incurred in the creation of the partnership and all  
20 operational expenses; ~~and~~
- 21
- 22 (xi) determines the amount and timing of distributions to partners and establish  
23 and maintain all required reserves; and
- 24
- 25 (xii) ensures that charitable services or benefits, such as vocational training,  
26 educational programs, childcare and after-school programs, cultural activities,  
27 family counseling, transportation, meals, and linkages to health and/or social  
28 services are provided or information regarding charitable services or benefits  
29 are made available to the low-income housing tenants.
- 30

31 (b) The managing general partner must maintain records and documents evidencing the duties  
32 performed by the managing general partner. Such records and documents may include, but  
33 are not limited to:

- 34
- 35 (1) accounting books and records;
- 36 (2) tax returns;
- 37 (3) budgets and financial reports;
- 38 (4) reports required by lenders;
- 39 (5) documents related to the construction or rehabilitation of real property;
- 40 (6) legal documents such as contracts, deeds, notes, leases, and deeds of trust;
- 41 (7) documents related to complying with government regulations and filings;
- 42 (8) documents related to property inspections;
- 43 (9) documents related to charitable services or benefits provided or the information  
44 provided regarding such services or benefits;
- 45 (10) reports prepared for the partners;
- 46 (11) bank account records;
- 47 (12) audited annual financial statement of the limited partnership; and
- 48 (13) property management agreement.

1  
2 (c) Substitution of Managing General Partner. A limited partnership in which the managing  
3 general partner is an eligible nonprofit corporation or an eligible limited liability company  
4 that has qualified for the welfare exemption for low-income housing may allow a substitution  
5 of its managing general partner by another eligible nonprofit corporation without affecting  
6 the organizational qualification for the welfare exemption provided that:

7  
8 (1) the limited partnership agreement authorizes the withdrawal or removal of the managing  
9 general partner and the admission of a substitute managing general partner on the same  
10 effective date and such admission of the substituting managing general partner into the  
11 limited partnership is in compliance with the requirements of section 15641 of the  
12 Corporations Code; and

13  
14 (2) the substitute managing general partner meets all of the requirements of a managing  
15 general partner set forth in subdivision (a)(6) above.

16  
17 (d) Delegation of Authority Clause. If the limited partnership agreement contains a delegation of  
18 authority clause, such clause must provide either that:

19  
20 (1) the managing general partner may not delegate any of its substantial management duties  
21 defined in (a)(10) above; or

22  
23 (2) the managing general partner may delegate its substantial management duties, defined in  
24 (a)(10) above, to persons who, under its supervision, may perform such duties for the  
25 partnership subject to the supervision by the managing general partner. If the managing  
26 general partner elects to delegate one or more of its substantial management duties, the  
27 managing general partner must demonstrate that it is actually supervising the  
28 performance of the delegated duties.

29  
30 (e) Certification Requirements. The limited partnership must file for and receive a supplemental  
31 clearance certificate from the Board as provided in Regulation 140.2.

32  
33 (f) The provisions of this regulation shall apply prospectively to claims or applications for the  
34 welfare exemption under Revenue and Taxation Code section 214 and supplemental  
35 clearance certificates under Regulation 140.2, filed on or after the effective date of this  
36 regulation. For supplemental clearance certificates issued prior to the effective date of this  
37 regulation, claimants shall have until the January 1, 2007 lien date to be in compliance with  
38 this regulation unless the Board has issued a written notice of noncompliance. If the Board  
39 has issued such notice, claimant shall have 90 days from the date of the notice to comply  
40 with this regulation. Upon written request for an extension of time prior to the expiration of  
41 the 90-day period to comply, the Board shall grant a reasonable amount of time to comply  
42 with this regulation.