

# Legislative Session Incentivizes Creation of Low-Income Housing

BY CHAD PACE, ESQ.

Nevada's housing crisis is well documented, and lawmakers considered a flurry of bills regarding housing security in the recent session. However, our legislative and executive branches of government failed to reach a consensus regarding frontline tenant protections. Governor Joe Lombardo vetoed Assembly Bills (AB) 340 and 218 as well as Senate Bill (SB) 78, which would have overhauled the summary eviction process and barred certain fees in residential leases. Similar protections did not proceed to the governor's desk. SB 155, as introduced, would have precluded local legislation that prohibits homeless persons from sleeping, eating, or occupying a vehicle in public spaces, but the Legislature amended and removed this language before passing the bill. Similarly, SB 143 intended to expand protections against housing discrimination, but died in committee.

Nevada's legislative and executive branches did, however, find consensus where public funds can spur housing development. Lombardo signed AB 310, which appropriated more than \$32 million for the newly created Nevada Supportive Housing Development Fund to develop and implement grants for housing and supportive services. He also signed AB 528 into law, which funds the newly established Homeless Support

Services Matching Account (HSSMA) with \$100 million. HSSMA provides matching funds for homelessness prevention and assistance. As amended by these bills, NRS Chapters 319 and 231 provide public funding for affordable housing projects. This consensus led the session's housing agenda, and AB 62 and AB 448 also incentivize development of low-income housing.

## AB 62 and AB 448 Fund Low-Income Housing by Closing the Real Property Transfer Tax Loophole

### AB 62 Expands Property Tax Exemptions for Low-Income Housing

Before July 1, 2023, Nevada law created inefficiencies and disincentives for the development of low-income housing projects. NRS 361.082 exempted low-income housing from property taxes only if the Federal HOME





Investment Partnerships Act (HOME) funded the project. HOME is the largest federal block grant to state and local governments for low-income housing. Through HOME, Congress provides formula grants to states and localities that communities use—often in partnership with local nonprofit groups—to fund affordable housing. HOME funds are primarily used for building, buying, and rehabilitating affordable housing for rent, and (previously) Nevada law required developers to utilize HOME funds to trigger the property tax exemption. The exemption is critical for the financial feasibility of a project that has below-market rents for 30 years or more. As a result, developers needed to sprinkle HOME funds into every project.

But HOME funds represent a small part of the capital stack proportionately and are not necessary to make a project economically viable. For example, the Low-Income Housing Tax Credit serves households with incomes at or below 60 percent of area median income, and

the Federal Housing Trust Fund targets more deeply subsidized units. Thus, HOME funds are important, but their real significance comes in the property tax exemption they trigger. The resulting inefficiency forestalls projects with real financing needs. Other states use HOME funds for rental assistance, security deposits, or other eligible housing uses, and Nevada could use HOME funds for other uses if the state expanded the sources of funding that trigger its property tax exemption.

Additionally, the necessary use of HOME funds creates an administrative logjam because the significant federal compliance needed to obtain HOME funds can increase costs, delay projects, and often kill projects due to timing constraints. The city of Reno estimates that staff underwrite, fund, and service nearly double the amount of loans each year than would be necessary if the eligibility for property tax exemptions were to be

expanded. Collectively, NRS 361.082(2) created inefficiencies for low-income housing projects and disincentives for developments because it required the use of HOME funds to trigger the property tax exemption.

### *Legislative Fix*

Assembly Bill 62 removes this barrier and streamlines financing of affordable housing because it increases the eligible funding sources that trigger property tax exemptions, and HOME funds are no longer the exclusive trigger mechanism qualifications for the property tax exemption. NRS 361.082, as amended by AB 62, triggers the real property tax exemption when developers use any of the following funding sources for low-income housing projects: the Low-Income Housing Tax Credit<sup>1</sup>, the State Affordable Housing Trust Fund, the federal Housing Trust Fund<sup>2</sup>, and the Supportive Housing for the Elderly Act.<sup>3</sup> This amendment to NRS 361.082 will expand property tax exemptions for low-income housing and incentivize development.

**[AB] 62 removes this barrier and streamlines financing of affordable housing because it increases the eligible funding sources that trigger property tax exemptions ...**

### *Real Property Transfer Taxes Fund Low-Income Housing Development*

NRS Chapter 375 taxes real property transfers, and the state generated more than \$330 million in transfer tax revenue last fiscal year.<sup>4</sup> State law

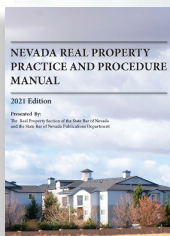
provides several exemptions to the transfer tax including transfers between former spouses following divorce and transfers between certain affiliated business entities. Exemptions have a direct effect on low-income housing because a small portion of the transfer tax funds Nevada's Affordable Housing Trust Fund (AHTF). The Nevada Housing Coalition estimates the AHTF lost \$20 million in revenue due to the exemption for affiliated business entities since it was enacted in 2009. AHTF funding is more critical than ever because, following AB 62 (as described above), use of AHTF funds now triggers the exemption from real property taxes. A robust AHTF, funded by transfer taxes, will provide more incentives for developers to buy, construct, and rehabilitate low-income housing.

CONTINUED ON PAGE 10

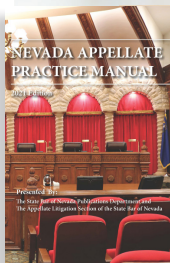
# BOOKS FROM THE BAR



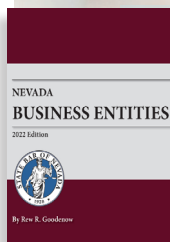
The State Bar of Nevada has several reference publications available to meet the needs of Nevada attorneys, from comprehensive guides to compilations of templates in a variety of practice areas.



## Nevada Real Property Practice and Procedure Manual - 2021 Edition



## Nevada Appellate Practice Manual - 2021 Edition



## Nevada Business Entities - 2022 Edition



## FREE: Contract Templates for Nevada Attorneys

To see all of the current titles available, visit:  
[www.nvbar.org](http://www.nvbar.org) > News and Publications > Resources > Books and Manuals

# Legislative Session Incentivizes Creation of Low-Income Housing

## *Sophisticated Hotel-Casino Sale and Leaseback Transactions on the Strip Utilize the Transfer Tax Exemption Intended for Closely Held Entities*

Lawmakers intended the transfer tax exemption to assist small, closely held businesses, but lucrative real estate deals recently claimed the exemption and spared large corporations from a tax regularly incurred on the sale of primary residences.<sup>5</sup> Multiple sales in Las Vegas would have generated millions in transfer taxes but were structured in ways that resulted in the state receiving no taxes whatsoever. In such deals, sellers transfer real property subject to sale into a subsidiary, pay no transfer taxes, and then buyers acquire the subsidiary in lieu of making a direct real estate purchase.

MGM Resorts International sold the Bellagio's real estate to private equity group Blackstone in 2019 in what was the most expensive casino purchase in Las Vegas history, but the deed listed the transfer tax due as "\$N/A"—exempt transfer from an entity to its wholly-owned subsidiary.<sup>6</sup> Blackstone also implemented this strategy when it bought and sold The Cosmopolitan of Las Vegas. The sale deed showed no tax due and left the declaration of value form's corresponding line completely blank.<sup>7</sup> Similar tax-free transfers were reported when Las Vegas Sands Corp. sold The Venetian Las Vegas and The Palazzo at The Venetian Resort for \$6.25 billion in 2022 and when VICI Properties Inc. acquired the real property under the Venetian for \$4 billion in cash. From these and similar transactions, \$27.5 billion of Las Vegas area casino transactions generated no transfer tax revenue.<sup>8</sup>

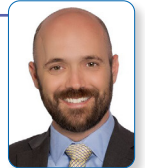
## *AB 448 Imposes Transfer Taxes if the Subsidiary was Formed to Avoid Those Taxes*

Assembly Speaker Steve Yeager (D-Las Vegas) introduced AB 448 to close this exemption and generate several million dollars for affordable housing development. AB 448 provides that the transfer tax exemption for affiliated businesses

does not apply "if the business entity to which the real property is transferred was formed for the purpose of avoiding those taxes." The devil remains in the details because the intent of unnatural persons is a fact yet to be proven. When asked to comment on the bill's fiscal impact, Humboldt County Recorder Tia H. Lange said, "There is no way to determine which business entities are formed for the purpose of avoiding taxes."<sup>9</sup> The Legislature instructed the Department of Taxation to provide guidance to County Recorders.

In 2023, lawmakers enacted uniquely Nevadan solutions to address housing crisis. Nevada's governor vetoed the Legislature's direct assistance for tenants and the homeless, but the political branches agreed to incentivize development and fund low-income housing projects.

**CHAD PACE** is a trial attorney at MOBO Law at Lake Tahoe, Nevada, and his practice focuses on commercial litigation. He is an avid skier and newlywed as of October 2023.



### ENDNOTES:

- 26 U.S.C. § 42.
- 12 U.S.C. § 4568, 24 CFR Part 93.
- 12 U.S.C. § 1701q (the HUD 202 Program).
- Eli Segall, *Nevada Lawmakers Look to Close Loophole on Real Estate Transfer Taxes*, Las Vegas Review-Journal (March 28, 2023).
- Id.*
- Clark Co. Recorder's Office Instrument No. 20191114-0002550.
- Clark Co. Recorder's Office Instrument No. 20220517-0000525.
- Segall, *supra* note 4, at 3.
- Nevada Legislative Counsel Bureau Fiscal Analysis Division, Local Government Fiscal Note Agency's Estimates re BDR 32-938, AB 448 (April 12, 2023).