Sixty-third
Legislative Assembly
of North Dakota

SENATE BILL NO. 2338

Introduced by

Senators Cook, Hogue, Laffen, Schneider

Representatives Bellew, Kreun

A BILL for an Act to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to a conditional exemption and payments in lieu of taxes for affordable rental residential property; to amend and reenact subsection 8 of section 57-02-08 of the North Dakota Century Code, relating to the property tax exemption for property owned by institutions of public charity; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 57-02-08 of the North Dakota Century Code is amended and reenacted as follows:

8. All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit.

   ~~a.~~ The exemption provided by this subsection includes any dormitory, dwelling, or residential-type structure, together with necessary land on which such structure is located, owned by a religious or charitable organization recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code which is occupied by members of said organization who are subject to a religious vow of poverty and devote and donate substantially all of their time to the religious or charitable activities of the owner.

   ~~b. For purposes of this subsection and section 5 of article X of the Constitution of North Dakota, property is not used wholly or in part for public charity or charitable or other public purposes if that property is residential rental units leased to~~

~~tenants based on income levels that enable the owner to receive a federal low-income housing income tax credit.~~

SECTION 2. A new subsection to section 57-02-08 of the North Dakota Century Code is created and enacted as follows:

All residential rental property, inclusive of land and administrative and auxiliary buildings, used as affordable housing shall be exempt from taxation for the property's period of affordability.

a. ~~The exemption under this section applies to residential rental property if,~~The property is exempt under this section if the housing finance agency certifies to the county director of tax equalization that on January 1, 2013, or thereafter, the residential rental property ~~is in compliance~~complies with the following:

(1) The property is subject to and in compliance with a land use restriction agreement that enumerates the mandatory income and rent restrictions;

(2) The property ~~must be~~is owned by a qualified nonprofit entity, as defined in section 2 of the Internal Revenue Code [26 U.S.C. 421]. If under a partnership agreement or other legally enforceable instrument, a for-profit entity, such as a limited partner, has an ownership interest in the property, then ~~under a partnership~~the agreement ~~or other legally enforceable instrument, the ownership interest must transfer to the nonprofit entity at a stated time, without financial gain to the for-profit entity; and~~must provide that the nonprofit entity must have the right of first refusal in any transfer of the ownership interest in the property. The partnership agreement or other legally enforceable instrument also must provide that any transfer of the ownership interest by the for-profit entity must be without financial gain; and

(3) The general partner or other ownership entity is owned or controlled by a nonprofit entity or a political subdivision.

b. For projects beginning after December 31, 2012, the exemption begins for the first taxable year after the owners of the rental property receive a building permit from the local jurisdiction in which the affordable housing residential rental property will be located.

c. If part of the residential rental property is not eligible to receive assistance through state or federal affordable housing programs, the exemption under this section is calculated by dividing the number of income and rent-restricted units by the total number of rental units.

d. In lieu of the ad valorem taxes that would otherwise be assessed, the project owners shall make a payment equal to five percent of the balance of the total annual rents collected during the preceding calendar year, minus the utility costs for the property ~~and~~ paid by the owner of the property.

e. If an affordable housing rental property fails to comply with the requirements of this section, or fails to comply with rent and household income restrictions under a local, state, or federal affordable housing program, on or before March fifteen of each calendar year, the housing finance agency shall notify the director of tax equalization and the state supervisor of assessments that the property is no longer eligible for the exemption.

f. For the purposes of this subsection, "affordable housing" includes property eligible for or receiving assistance through a state or federal affordable housing ~~program(s)~~program and in which rent and household income restrictions apply, and which is owned by nonprofit entities organized for the purpose of providing affordable housing. Affordable housing is limited to residential rental property owned by or with a controlling ownership or management interest by an organization organized and operated exclusively for exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)].

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2012.