

RULE 462.040

CHANGE IN OWNERSHIP - JOINT TENANCIES

- Issue No. 1** Should the joint tenancy rule be amended to delete the "*3rd person requirement*" in the definition of "original transferors"?
- * Subdivision (b)(1) - Requires only that a transferor be among the transferees in order to be "*original transferors.*"
- Issue No. 2** Should one become an "original transferor" by transferring a joint tenancy interest into a trust or will for the benefit of the other joint tenant?
- Example 4(a) – Should this be limited to homeowner's exemption properties only?
- Issue No. 3** Should Assessor be able to presume that a joint tenant is an "original transferor," if there is reasonable cause based on specific evidence?
- * Subdivision (d) and Example 14 - adds language to rebut the deed presumption and to establish "original transferor" status.
- Issue No. 4** Should the step transaction doctrine be applied to joint tenancy transactions undertaken for tax avoidance and no estate planning purposes? * Example 9
- Issue No. 5** Should the "original transferor" status cease whenever a joint tenancy terminates? * Subdivision (b)(3) and Example 13
- Issue No. 6** Should a statement of intent be added - that the "original transferor" concept excludes transfers between family members and those in intimate personal relationships, and does not include legal entities and commercial transfers?
- * Subdivision (e)

RULE 462.240

THE FOLLOWING ARE NOT A CHANGE IN OWNERSHIP – DOMESTIC PARTNER TRANSFERS

- Issue No 1** Should the amendment to Rule 462.240 interpret the Probate Code and AB 2216, Stats. 2002, ch. 447 (Keeley) to provide an exclusion for transfers occurring on the death of a domestic partner?

Rule 462.040 Change in Ownership -- Joint Tenancies

CREATION OF "ORIGINAL TRANSFERORS" ISSUE NO. 1 -- THIRD PERSON NOT REQUIRED ISSUE NO. 2 -- TRANSFERS TO TRUST OR WILL

Bruton/ Knickmeyer Option

1. Clarifies that "original transferors" may be created when a person, the transferor, transfers to himself/herself, the transferee, in joint tenancy. There is no requirement that the transferees include at least one other person who was not a transferor. Example illustrates that a third person is not required in order to create "original transferors".
2. Specifies that such a transfer may be effected by transferring joint tenancy interests to a trust or will for the benefit of another joint tenant. Example illustrates that "original transferors" may be created by transfers to a trust or will.

Subdivision (b)(1)

(b) EXCEPTIONS. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy, including an interest in a trust or will, interest and after such creation or transfer, ~~all the~~ transferor(s) ~~are among~~ is one of the joint tenants.

Such a transferor(s) ~~who are~~ is also a transferee(s) ~~in this situation are~~ and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. All other initial and subsequent joint tenants are considered to be "other than original transferors."

Amend Example 4

Example 4: A and B purchase own property as tenants in common and transfer the property to A and B as joint tenants. A and B are ~~not both~~ "original transferors." ~~To become original transferors, the transfer must be from A and B to A and B at least one other person.~~

Add Example 4(a)

Example 4(a): A and B purchase property as joint tenants. Later A and B transfer their property interests to each other as joint tenants through their respective trusts or wills. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors."

Staff Option 1

- Same as the Bruton Option but further clarifies in subdivision (b)(1) that any joint tenant may become an "original transferor" by transferring his or her joint tenancy interest to his or her trust or will for the benefit of the other joint tenant or joint tenants.

Subdivision (b)(1)

(b) EXCEPTIONS. The following transfers do not constitute a change in ownership:

(1) The transfer creates or transfers any joint tenancy interest, including an interest in a trust or will, and after such creation or transfer, ~~all the~~ transferor(s) ~~are among~~ is one of the joint tenants.

Such a transferor(s) ~~who are~~ is also a transferee(s) ~~in this situation are~~ and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. Any joint tenant may also become an "original transferor" by transferring his or her joint tenancy

interest to the other as joint tenant(s) through his or her trust or will. All other initial and subsequent joint tenants are considered to be “other than original transferors.”

Staff Option 2

1. Clarifies that “original transferors” may be created when a person, the transferor, transfers to himself/herself, the transferee, in joint tenancy. There is no requirement that the transferees include at least one other person who was not a transferor.
2. Specifies that “original transferors” may be created by transferring joint tenancy interests to a trust or will for the benefit of another joint tenant only if the property held in joint tenancy is the principal residence of the joint tenants and qualifies for the homeowners’ exemption. Example shows that joint tenants become “original transferors” if each transfers to his or her trust or will for the other joint tenant’s benefit, and the property they reside in is a principal residence eligible for the homeowners’ exemption.

Subdivision (b)(1)

(b) EXCEPTIONS. The following transfers do not constitute a change in ownership:

(2) The transfer creates creation or transfers of any joint tenancy interest, including the transfer of a joint tenancy interest in a dwelling eligible for the homeowners’ exemption to a trust or will, and after such creation or transfer, all the transferor(s) are among is one of the joint tenants. Such a transferor(s) who are is also a transferee(s) in this situation are and is, therefore, considered to be an “original transferor(s)” for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. Any joint tenant may also become an "original transferor" by transferring his or her joint tenancy interest to the other as joint tenant(s) through his or her trust or will provided that the the property is the principal residence of the joint tenants and is eligible for the homeowner’s exemption.

All other initial and subsequent joint tenants are considered to be “other than original transferors.”

Amend Example 4

Example 4: A and B purchase own property as tenants in common and transfer the property to A and B as joint tenants. A and B are ~~not both~~ “original transferors.” ~~To become original transferors, the transfer must be from A and B to A and B at least one other person.~~

Add Example 4(a)

Example 4(a): A and B acquire property as joint tenants and the property is eligible for the homeowner's exemption. Later A and B transfer their property interests to each other as joint tenants through their respective trusts. As A and B are transferors who are among the joint tenants, each is thereafter considered to be an “original transferor.”

These option(s) do not represent language approved by the Board or by any Board Member.

Rule 462.040 Change in Ownership -- Joint Tenancies

ISSUE NO. 2 -- Creation of “Original Transferors” – Example of Trust or Will Transfer

BRUTON/KNICKMEYER OPTION

- Example shows that joint tenants become “original transferors” if each transfers to his/her trust or will for other joint tenant's benefit.

Add Example 4(a)

Example 4(a): A and B purchase property as joint tenants. Later A and B transfer their property interests to each other as joint tenants through their respective trusts or wills. A and B are transferors who are among the joint tenants and are, therefore, considered to be “original transferors.”

Staff Option

- Example shows that joint tenants become “original transferors” if each transfers to his or her trust or will for the other joint tenant's benefit, and the property they reside in is a principal residence eligible for the homeowners' exemption.

Add Example 4(a)

Example 4(a): A and B acquire property as joint tenants and the property is eligible for the homeowner's exemption. Later A and B transfer their property interests to each other as joint tenants through their respective trusts. As A and B are transferors who are among the joint tenants, each is thereafter considered to be an “original transferor.”

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Rule 462.040 Change in Ownership -- Joint Tenancies

ISSUE NO. 3 – Reasonable Cause to Establish Joint Tenants and “Original Transferors”

Bruton/Knickmeyer Option

- **Allows an assessor to presume that a joint tenant is an “original transferor,” if an assessor has “reasonable cause” to support such a presumption based on specified types of evidence. Example shows the type of evidence needed to prove “original transferor” status.**

Add Subdivision (d)

(d) For purposes of this section, the assessor may presume that each joint tenant is an original transferor if there is “reasonable cause” to believe that the joint tenant was a transferor among the joint tenants. “Reasonable cause” means a deed, Affidavit of Death of Joint Tenant, a trust, will, estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction doctrine exist.

ADD EXAMRLE 14

Example 14: A transfers the property to A and B as joint tenants. The deed establishes that A became an “original transferor.” Subsequently, A and B each execute revocable living trusts transferring their respective joint tenancy interests to their trusts for the benefit of each other. The assessor may determine that the deed and trust instruments establish that B also became an “original transferor.”

Staff Option

- **Allows an assessor to consider persons holding joint title to property to be joint tenants and “original transferors”, if an assessor has “reasonable cause” to believe that they intended to create a joint tenancy and original transferor status. Example shows the type of evidence needed to rebut the presumption that they are not joint tenants and “original transferors”.**

Add Subdivision (d)

(d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants and “original transferors” if there is “reasonable cause” to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. “Reasonable cause” means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was a transferor among the joint tenants, unless circumstances causing the application of the step transaction doctrine exist.

ADD EXAMPLE 14

Example 14: A and B jointly purchase their primary residence and title is recorded as tenants in common. The sales contract states that A and B intended to take title as joint tenants. Subsequently, A and B each execute revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each other. The assessor may determine that the sales contract and trust instruments establish that A and B intended to hold title as joint tenants upon purchase and that each subsequently became an “original transferor.”

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Rule 462.040 Change in Ownership -- Joint Tenancies

ISSUE NO. 4 – Application of the Step Transaction Doctrine in Tax Avoidance Schemes

Bruton/Knickmeyer Option

- Example shows that the step transaction doctrine is applicable when circumstances exist to indicate that transfers of joint tenancy interests have no estate planning purpose and have been made in order to avoid a change in ownership.

Amend Example 9

Example 9: A and B transfer to A, B and C as joint tenants and, thereafter, C transfers his or her interest to A and B purchase property as joint tenants and shortly thereafter transfer their joint tenancy interests to each other through their respective trusts, wills and/or estate plans. A and B become “original transferors”. A sells his/her interest to C, and C shortly thereafter transfers his/her joint tenancy interest to B through a trust, will and/or estate plan, so that C becomes an “original transferor”. B then sell his/her interest to D, and D shortly thereafter makes a transfer similar to C in order to become an “original transferor”. Under these or other tax avoidance circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate, A, B, C, and B D do not become “original transferors” as a the result of the their transfers to A, B and C each other.

Staff Option

- Example shows that the step transaction doctrine is applicable when circumstances exist to indicate that transfers of joint tenancy interests have no estate planning purpose and have been made in order to avoid a change in ownership.

Amend Example 9

Example 9: A and B transfer to A, B and C as joint tenants and, thereafter, C transfers his or her interest to A and B purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts. A and B become “original transferors”. A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other through their trusts, so that both become “original transferors”. A and B then sell their remaining 50% to C and D, and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate, A, B, C, and B D do not become “original transferors” as a the result of the their transfers to A, B and C each other.

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Rule 462.040 Change in Ownership -- Joint Tenancies

ISSUE NO. 5 – Termination of Joint Tenancy Eliminates Original Transferor Status

Staff Options

- **Clarifies that termination of a joint tenancy terminates the original transferor status of the joint tenants.**
- **Examples show that original transferor status ceases when the joint tenancy terminates.**

Amend Subdivision (b)(3)

(b)(3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor. The original transferor status of any remaining joint tenants ceases when a joint tenancy is terminated.

DELETE EXAMPLE 7-2

~~Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an original transferor because he was the spouse of an original transferor and he acquired an interest by means of a transfer from A.~~

Add Example 13(a)

Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors". A dies and A's joint tenancy interest passes to B by operation of law without a change in ownership because B is an "original transferor". Upon A's death, the joint tenancy is terminated and B ceases to be an "original transferor".

Add Example 13(b)

Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become "original transferors". Thereafter, A and B transfer to B and C and thereby sever the joint tenancy between A and B resulting in a change in ownership of A's 50% interest which transfers to C.

Add Example 13(c)

Example 13: A owns real property and transfers to A and B as joint tenants. The transfer does not result in a change in ownership and A becomes an "original transferor". A and B subsequently transfer to B and C as joint tenants resulting in a change in ownership of 100% of the interests in the property because the joint tenancy between A and B terminates and the interests do not vest in an "original transferor"

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Rule 462.040 Change in Ownership -- Joint Tenancies

ISSUE NO. 6 -- Joint Tenancy "Intent"

Statement of Intent Limiting Joint Tenancy to Non-Commercial Transactions – Subdivision (e)

Staff Option

- Clarifies that the “original transferor” concept was intended to exclude from change in ownership only transfers between family members and other persons in intimate personal relationships, and does not include legal entities and commercial transfers.

(e) This rule and chapter interpret, implement and make specific the provisions of section 65 of the Revenue and Taxation Code which provide that the creation, transfer or termination of a joint tenancy interest results in a change in ownership unless the transferor, classified as an "original transferor," remains as one of the joint tenants. This treatment was intended by the Legislature to protect family joint tenancy interests and those of the original owners from changes in ownership until the termination of the last original transferor's interest. The Legislature found that a joint tenant's survivorship rights in property replicate a transfer to the beneficiary under a trust or will who is usually a family member or another person in an intimate personal relationship with the decedent. In applying these change in ownership exclusion provisions, therefore, "original transferors" shall not include legal entities and shall not include persons with ownership interests in nonresidential investment property.

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Rule 462.240. The Following Transfers Do Not Constitute A Change In Ownership

ISSUE NO. 1 – TRANSFERS TO SURVIVING DOMESTIC PARTNERS

Bruton Option

- Interprets Probate Code sections that provide for testamentary and intestate transfers to surviving domestic partners in the same manner as transfers to surviving spouses.

Add Subdivision (k)

(k) Any transfer of separate property inherited by a surviving domestic partner, as defined in subdivision (b) of section 37 of the Probate Code, whether by intestate succession, will, or trust, or other estate plan, upon the death of a registered domestic partner.

Knickmeyer Option

Add Subdivision (k)

(k) Any transfer of property to a “surviving domestic partner,” as defined in subdivision (b) of section 37 of the Probate Code, whether by intestate succession, will, trust, or other method, upon the death of the other “domestic partner” as defined in subdivision (a) of section 37 of the Probate Code.

Staff Option

Add Subdivision (k)

(k) Any transfer of separate property as defined in Revenue and Taxation Code section 401.4, inherited by a surviving domestic partner, as defined in subdivision (b) of section 37 of the Probate Code, whether by intestate succession, will, or trust, or other estate plan, upon the death of a registered domestic partner.

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