Issue Paper Number **10-009**

- ☐ Board Meeting
- ☐ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☒ Property Tax Committee
- ☐ Other

Board of Equalization

Key Agency Issue

Assessors' Handbook Section 401, *Change in Ownership*

I. Issue

Should the Board of Equalization (Board) adopt and authorize publication of Assessors' Handbook Section 401, *Change in Ownership*?

II. Alternative 1 - Staff Recommendation

Staff recommends that the attached proposed draft of Assessors' Handbook Section 401, *Change in Ownership*, be adopted and authorized for publication (Attachment A).

III. Other Alternative(s) Considered

None

IV. Background

Section 15606, subdivision (c), of the Government Code directs the Board to prescribe rules and regulations governing county assessors in the performance of their duties, and subdivision (h) provides that the Board shall issue instructions, such as those set forth in proposed Assessors' Handbook Section 401 (AH 401).

On June 6, 1978, the voters in California approved Proposition 13 which added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of the real property. For purposes of this limitation, the Constitution defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred.

In its original form and at the time of its passage in 1978, Proposition 13 did not provide for any exclusion from a change in ownership. However, even during the implementation process of Proposition 13, various exclusions were contemplated. In defining change in ownership, the Legislature also provided examples of what is not a change in ownership (for example, interspousal transfers). In addition, subsequent amendments to article XIII A have been approved by voters which enacted other change in ownership exclusions. Examples of these include base year value transfers for persons over the age of 55 and the exclusion of parent-child transfers.

The California Legislature codified the definition of change in ownership and any implemented amendments to article XIII A dealing with change in ownership by enacting Revenue and Taxation Code sections 60 through 69.5. This proposed section of the *Assessors' Handbook* is a compilation of the information included in the Revenue and Taxation Code statutes, Property Tax Rules, and court cases as they relate to change in ownership.

Topics covered in this handbook section include changes in ownership as they pertain to tenancies in common, joint tenancies, trusts and estates, legal entities, leases, cooperative housing, interspousal transfers, domestic partners, and others. This handbook also discusses the more common change in ownership exclusions and the various base year value transfers.

V. Discussion

In June 2008, a draft of proposed AH 401 was distributed via Letter To Assessors (LTA) 2008/043 requesting comments from interested parties. Suggested language changes and proposed additions were received from interested parties. Since the comments from interested parties were substantial, a second draft of AH 401 was prepared.

The second draft of AH 401 was distributed on September 14, 2009 via LTA 2009/042. After review of the additional comments received from interested parties, an interested parties meeting was held at the Board's headquarters in Sacramento on June 9, 2010.

The attached draft represents a consensus of interested parties who participated in the project (Attachment A).

VI. Alternative 1 - Staff Recommendation

Staff recommends that the attached proposed draft of Assessors' Handbook Section 401, *Change in Ownership*, be adopted and authorized for publication (Attachment A).

A. DESCRIPTION OF ALTERNATIVE 1

Staff recommends that the Board issue guidance that discusses the following issues related to property tax changes in ownership and changes in control under Proposition 13:

- Trusts, life estates, and leases
- Various legal entities operating in California
- Manufactured homes, common interest developments, and taxable possessory interests
- Exclusions from the meaning of change in ownership:
  - Interspousal
  - Registered domestic partners
  - Parent-child and grandparent-grandchild
  - Persons over age 55 or severely and permanently disabled
  - Property taken by governmental actions
  - Property damaged or destroyed by disaster
  - Toxic and contaminated properties

Proposed AH 401 contains comprehensive information regarding the above change in ownership and change in control issues.

B. PROS OF ALTERNATIVE 1

Alternative 1 is reflective of the best information that is available at this time and will provide a current reference document for county assessors' offices when processing transfers involving change in ownership and change in control transactions. Additionally, Alternative 1 will provide a comprehensive reference for property tax attorneys, taxpayers' representatives, and others interested in property tax assessments in California.

C. Cons of Alternative 1

None

D. Statutory or Regulatory Change for Alternative 1

None

E. Operational Impact of Alternative 1

None

F. Administrative Impact of Alternative 1

1. **Cost Impact**

   No cost impact is anticipated. Electronic copies of the document will be distributed.

2. **Revenue Impact**

   No revenue impact is anticipated.

G. Taxpayer/Customer Impact of Alternative 1

Publication of proposed AH 401 will help to ensure that county assessors' staffs are provided with sufficient information to assist them in processing transfers of property involving changes in ownership and changes in control.

H. Critical Time Frames of Alternative 1

None

VII. Other Alternatives

A. Description of Alternative

None

Preparer/Reviewer Information

Prepared by: Property and Special Taxes Department, County-Assessed Properties Division

Current as of: August 3, 2010

ASSESSORS' HANDBOOK
SECTION 401

CHANGE IN OWNERSHIP

SEPTEMBER 2010

CALIFORNIA STATE BOARD OF EQUALIZATION

BETTY T. YEE, SAN FRANCISCO	FIRST DISTRICT
MICHELLE STEEL, ROLLING HILLS ESTATES	THIRD DISTRICT
JEROME E. HORTON, LOS ANGELES	FOURTH DISTRICT
JOHN CHIANG	STATE CONTROLLER
BARBARA ALBY, ACTING MEMBER, SACRAMENTO	SECOND DISTRICT

RAMON J. HIRSIG, EXECUTIVE DIRECTOR

Foreword

On June 6, 1978, the voters in California approved Proposition 13 which added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of 1 percent of the full cash value of the real property. For purposes of this limitation, the Constitution defines *full cash value* to mean a county assessor's valuation of real property as shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. As long as the property has the same owner, its assessed value generally cannot increase by more than 2 percent each year—even if the property's market value is increasing at a faster rate. As a result, the market value of many properties is often higher than the assessed value.

In its original form and at the time of its passage in 1978, Proposition 13 did not provide for any exclusion from a change in ownership. However, even during the implementation process of Proposition 13, various exclusions were contemplated. In defining change in ownership, the Legislature also provided examples of what is not a change in ownership (for example, interspousal transfers). In addition, subsequent amendments to article XIII A have been approved by voters which enacted other change in ownership exclusions. Examples of these include base year value transfers for persons over the age of 55 and the exclusion of parent-child transfers.

The California Legislature codified the definition of change in ownership and any implemented amendments to article XIII A dealing with change in ownership, by enacting Revenue and Taxation Code sections 60 through 69.5. This section of the *Assessors' Handbook* is a compilation of the information included in the Revenue and Taxation Code statutes, Property Tax Rules, and court cases as they relate to change in ownership.

Topics covered in this handbook section include changes in ownership as they pertain to tenancies in common, joint tenancies, trusts and estates, legal entities, leases, cooperative housing, interspousal transfers, domestic partners, and others. This handbook also discusses the more common change in ownership exclusions and the various base year value transfers.

Section 15606, subdivision (c), of the Government Code directs the State Board of Equalization (Board) to prescribe rules and regulations governing county assessors in the performance of their duties, and subdivision (f) provides that the Board shall issue instructions, such as those set forth in this handbook section. While rules and regulations adopted by the Board are binding as law, Board-adopted handbook sections are advisory only. Nevertheless, courts have held that they may be properly considered as evidence in the adjudicatory process.[1]

[1] *Coca-Cola Co. v. State Board of Equalization* (1945) 25 Cal.2d 918; *Prudential Ins. Co. v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142; *Hunt-Wesson Foods, Inc. v. County of Alameda* (1974) 41 Cal.App.3d 163.

The citations and law references in this publication were current as of the writing of the handbook section. Board staff met with members of the California Assessors' Association, County Counsels' Association of California, and industry representatives to solicit input for this handbook section. The Board approved this handbook section on_____

David J. Gau
Deputy Director
Property and Special Taxes Department
California State Board of Equalization
Date

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CHAPTER 1: OVERVIEW

ASSESSMENT PRE- AND POST-PROPOSITION 13

In June 1978, when California voters approved Proposition 13 (article XIII A was added to the California Constitution), California property taxation was changed by:

1. Limiting the property tax rate applied to assessed values to 1 percent plus additional rates necessary to retire voter-approved bonded indebtedness;

2. Placing explicit limitations on the power of government to impose additional property taxes; and

3. Limiting increases in assessed values by significantly changing the method of property assessment.

Prior to Proposition 13, annual assessments for both real property and personal property were based on current fair market value. As a practical matter, fiscal and staffing constraints prevented county assessors from physically revaluing each property in their respective counties every year. Consequently, reappraisals were usually conducted on a cyclical basis. Typically, these cycles ranged in duration from three to five years. Between physical reappraisals, county assessors would often apply interim value increases based on trending factors. This system of assessment ensured that all property, subject to the limitations of cyclical appraisal programs, was assessed at its current fair market value.

Proposition 13 changed the method of property taxation from a current market value system to an acquisition value system. Under Proposition 13, property assessments were rolled back to the 1975-76 levels and locally assessed property would thereafter be reassessed to fair market value only upon a change in ownership or completion of new construction. *Acquisition value assessment* refers to the process of assessing property at its fair market value at the time of a change in ownership or completion of new construction. The new assessment at such time becomes the property's new base year value, which is subject to the annual inflation adjustment discussed below.

Locally assessed real property is the only category of property subject to the provisions of article XIII A of the California Constitution. Locally assessed personal property and state-assessed properties are not subject to its provisions and are annually assessed as of the January 1 lien date at current fair market value by county assessors and the State Board of Equalization, respectively.

Specifically, under Proposition 13:

- Property assessments were rolled back to their 1975-76 levels for the 1978-79 fiscal year.[2] Properties that have not been sold or newly constructed, in whole or in part, since March 1, 1975 are said to have a 1975 base year value. The *base year value* is the current fair market value (or full cash value) of real property in 1975-76, or in any subsequent year in which a change in ownership or the completion of new construction occurs.[3]
- Each property's base year value is adjusted annually to reflect inflation as measured by the California Consumer Price Index, but may not exceed an increase of 2 percent. This taxable value reflecting the annual inflation indexing is known as the *adjusted* or *factored base year value*.[4] The adjusted base year value is the maximum assessable amount for a property for that particular year unless a change in ownership or completion of new construction occurs.
- When a change in ownership occurs, a new base year value is established at the current fair market value on the date of the change in ownership.[5] The base year value of any newly completed construction is its current fair market value as of its date of completion. New construction in progress is appraised at its fair market value on the January 1 lien date.[6]
- If a partial change in ownership occurs, only the portion that changes ownership is given a new base year value based upon its current fair market value on the date of the change in ownership, and the portion that did not change ownership retains its existing adjusted base year value. Similarly, with new construction (for example, the addition of a bedroom), the new construction is given a new base year value upon the completion of the construction at its current fair market value, while the pre-existing portion(s) of the property retains its existing adjusted base year value. Thus, an assessment for one parcel may have multiple base year values reflecting its separate portions.

Property assessments may be reviewed each year for a decline in value and if a property's fair market value drops below its adjusted base year value, it will be temporarily reassessed at the lower fair market value.[7] This reduction is frequently referred to by the number of its ballot initiative approved by the voters—a *Proposition 8* adjustment.[8] Even though a property may be temporarily assessed at its current market value, its base year value is still annually adjusted by the inflation factor. When the property's current fair market value returns to or exceeds its adjusted base year value, the adjusted base year value is restored to the assessment roll.[9]

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[2] For counties that had trended values on the 1975 roll, they had until the 1980 roll to determine and establish a 1975 base year value for all properties.
[3] Revenue and Taxation Code sections 50 through 51.5; section 75.10(a); section 110.1. All statutory references are to the Revenue and Taxation Code unless otherwise indicated.
[4] Section 51.
[5] Section 50; section 75.10(a); section 110.1(a) and (b).
[6] Sections 70 and 71.
[7] Section 51(a)(2) and (e).
[8] Approved by the voters on November 7, 1978.
[9] *County of Orange v. Bezaire* (2004) 117 Cal.App.4th 121.

Since Proposition 13 did not define change in ownership, the Assembly Revenue and Taxation Committee formed a task force to study the issue and make recommendations for law changes. This task force consisted of 35 members that included legislative and Board of Equalization staff, county assessors, trade associations, and lawyers in the public and private sectors. The effort of this task force resulted in a report to the Assembly Revenue and Taxation Committee on January 22, 1979. The recommendations in the task force report resulted in the enactment of various Revenue and Taxation Code sections. The provisions regarding change in ownership are codified beginning with section 60. Subsequent constitutional amendments to article XIII A and corresponding implementing statutes have resulted in additional exclusions from the definition of change in ownership.

CHANGE IN OWNERSHIP

Locally assessed real property subject to Proposition 13 is reassessed upon a change in ownership or new construction. Section 60 defines a *change in ownership* as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. For those transfers that are not specifically addressed by statutes, regulations, or court decisions, section 60 provides the fundamental criteria for determining whether a change in ownership has occurred.[10]

- A *transfer* may be voluntary or involuntary and may happen by operation of law or may result from: a purchase or sale; a grant, gift or devise through inheritance or through a trust; an addition or deletion of an owner; or a property settlement.[11] Payment or consideration is not required. Consideration is something of value (for example, the exchange of other property, the assumption of a debt, the cancellation of an outstanding debt, the creation of a debt) that may be exchanged for the property.
- A *present interest* is one which entitles the person having such interest to the immediate possession, present use, or present enjoyment of the property. This requirement excludes from the definition of change in ownership the transfer of contingent and future interests, including revocable transfers. (See Chapter 3 for a discussion of revocable trusts.)
- The term *beneficial use* means the right to enjoy the benefits of a property and includes the right to occupy a property and the right to receive income produced by a property.[12] This requirement excludes from the definition of change in ownership transfers involving trustees, conservators, fiduciaries, security interest holders such as lenders, and other title changes where there are no transfers of the beneficial use.[13]

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[10] *Shuwa Investments Corporation v. Los Angeles County* (1991) 1 Cal.App.4th 1635, 1647.
[11] Property Tax Rule 462.001. All references to Rules or Property Tax Rules are to Title 18, Public Revenues, California Code of Regulations.
[12] *Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480; *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334, 338-339; *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 162.
[13] Rules 462.001, 462.200, and 462.240.

- A change in ownership requires that the transferred property interest be substantially equal to the value of the fee interest in the property.[14] Fee simple ownership means absolute ownership of property. Thus, *substantially equal to the value of a fee interest* means an ownership interest that is substantially equal to the value of absolute ownership. This is known as the value equivalency test, and it ensures that there is only one primary owner for property tax purposes at any point in time. A major purpose of this third element is to avoid unwarranted complexity so that only a transfer by the primary owner will be a change in ownership.[15] Under this test, the primary owner may be someone other than the record owner of the property and may not be the person legally responsible for payment of property taxes.

TRANSFERS THAT DO NOT CONSTITUTE A CHANGE IN OWNERSHIP

Some transfers of title to real property reflect transfers that do not meet one or more of the requirements of section 60, and are therefore not considered changes in ownership. Many of these transfers are discussed in the other chapters of this handbook. Rules 462.200 and 462.240 interpret the statutory provisions of sections 60 through 69.5 to explain that certain transfers, although they involve recorded deeds or other apparent transfers of real property, do not represent changes in ownership that result in reappraisal of the interests transferred. Examples include:

- Transfer of only bare legal title, without the accompanying beneficial interest,[16] including substitution of a trustee.[17]
- Transfer for the purpose of perfecting title[18] or to reform or correct a deed to reflect the intentions of the parties.[19]
- Creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession, or profits,[20] such as lender on title as security for a loan.[21]
- Transfer to or from a person or entity that acts only on behalf of and at the direction of the principal conveying the title, thereby creating a *holding agreement*. However, there is a change in ownership if there is a change in principals or the title is conveyed to another principal.[22]

---

[14] *Pacific Southwest Realty Company v. County of Los Angeles* (1991) 1 Cal.4th 155, 164.
[15] *Report of the Task Force on Property Tax Administration*, January 22, 1979, California Assembly Revenue and Taxation Committee; *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334, 338.
[16] Rule 462.240(a).
[17] Section 62(c)(1); Rule 462.240(b).
[18] Section 62(b); Rule 462.240(a)(1).
[19] Section 62(l); Rule 462.240(f).
[20] Section 62(c)(2); Rule 462.240(a)(2).
[21] Rule 462.200(a).
[22] Rule 462.200(c).

- Sale and leaseback when the transaction is demonstrated to be a financing mechanism rather than a change in beneficial interest.[23]
- Transaction involving shares of mutual funds.[24]

Other transfers are specifically excluded from change in ownership by constitutional or statutory provisions. The effect of a change in ownership exclusion is that the property is not reassessed to current market value when its ownership changes. Specific change in ownership exclusions that are discussed in detail in this handbook include:

- The interspousal exclusion (see Chapter 11).
- The registered domestic partner exclusion (see Chapter 11).
- The parent-child and grandparent-grandchild exclusion (see Chapter 12).

BASE YEAR VALUE TRANSFERS

Another type of change in ownership exclusion is a base year value transfer. This means, under certain circumstances, an eligible claimant may transfer the base year value from one property to another. The effect of an eligible base year value transfer is that the replacement property is assessed at the adjusted base year value of the claimant's original property rather than establishing a new base year value based on the current fair market value as required under section 110.1.

This handbook discusses the following base year value transfers:

- Principal residence of property owners over the age of 55 or severely and permanently disabled (see Chapter 14).
- Property taken by governmental action such as eminent domain (see Chapter 15).
- Property substantially damaged or destroyed by a Governor-proclaimed disaster (see Chapter 16).
- Property environmentally contaminated (see Chapter 17).

DATE OF CHANGE IN OWNERSHIP

SALES

The date of change in ownership for property that is sold is rebuttably presumed to be the recording date if a deed or other document evidencing the transfer is recorded.[25] If a deed is unrecorded, the change in ownership date is rebuttably presumed to be the date on the transfer document.[26] These presumptions may be overcome by proving that (a) all the parties' escrow

[23] Rule 462.200(d).
[24] Section 62(h); Rule 462.240(c).
[25] Rule 462.260(a)(1).
[26] Rule 462.260(a)(2).

instructions were met on another date, or (b) the parties' agreement was specifically enforceable on another date.[27]

Sales Contract

A sales contract creates a mutual obligation. One party is obligated to sell and the other to buy within a limited time. Sales contracts for purposes of change in ownership are to be distinguished from real estate purchase contracts typically used for the earnest money deposit and opening escrow in most real estate transactions. The date that a sales agreement opens escrow is not considered to be the date of change in ownership because the escrow instructions have not yet been met.

A sales contract that transfers the use and control of a property to the buyer or vendee, while the seller or vendor retains title as security for payment, is a financing mechanism that results in the buyer becoming the beneficial owner of the property. Under this type of contract, a change of ownership results when the contract is entered into. If the buyer defaults and the property reverts back to the seller, another change in ownership occurs.

Another type of sales contract is an installment or conditional land sale contract. This is an agreement where one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which does not require conveyance of title within one year from the date of the formation of the contract. In the case of the typical installment land contract, when equitable ownership is transferred to the buyer, the seller retains bare legal title as a security interest in the property and the buyer acquires equitable title to the property as well as possession. Upon complying with the contract (that is, full payment), the buyer's equitable estate becomes absolute and the buyer is entitled to receive the legal title. Under these circumstances, the date the contract becomes specifically enforceable is the date of change in ownership and not the date of recording.

Option to Purchase

An option to purchase obligates only the selling party. An option does not result in a change in ownership until the buyer exercises the option. Generally, the date of change in ownership is the date the option is exercised.

However, even though a potential purchaser (optionee) has no legal obligation to purchase the property, there are circumstances where the optionee is economically compelled to complete the transaction. This occurs whenever the optionee would realize a significant and immediate equity in the property merely by exercising the option. When significant equity is present at the time the option is originated or it can be determined at the time of origination that equity will be established with certainty within a short period, the option is a form of sales agreement and a change in ownership occurs as of the date the option was created.

INHERITANCE

[27] Rule 462.260(a)(1) and (a)(2).

The date of change in ownership for transfers that occur as a result of inheritance by will or intestate succession is the date of death of the decedent, even if the actual transfer deed is recorded later.[28]

Example 1-1

> X held his principal residence in his own name. Pursuant to the terms of X's will, his residence was to go to a charity upon his death. X died on January 15. X's will was probated and the residence was ultimately transferred to the charity on August 30.
>
> The date of the change in ownership was the date of X's death on January 15.

The only exception to this general rule is the unique situation of a parent-child transfer when the decedent died before November 5, 1986, and the probate court decree of distribution was issued on or after November 5, 1986. In this particular case, the date of transfer is considered to be the date of the court decree of distribution, thus allowing for the parent-child exclusion even though the decedent died prior to the effective date of the exclusion.[29]

TRUSTS

For transfers made through a trust, the date of change in ownership is the date property is transferred into an irrevocable trust.[30] If the property is held in a revocable trust, the date of the change in ownership is the date the trust becomes irrevocable (for example, upon the death of the trustor).

Example 1-2

> X transferred a property into an inter vivos irrevocable trust. His nephew, B, was the sole present beneficiary of the trust. Upon X's death, the trustee recorded a deed transferring the property from the trust to B.
>
> The property underwent a change in ownership on the date it was transferred into the irrevocable trust. There was no change in ownership when the trustee transferred the property from the trust to B.

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[28] Rule 462.260(c).
[29] *Larson v. Duca* (1989) 213 Cal.App.3d 324, 334. For a more complete discussion of *Larson v. Duca*, see Chapter 12.
[30] Rule 462.260(d).

Example 1-3

X creates an inter vivos revocable trust that becomes irrevocable upon X's death. The date of change in ownership of any real property held in the trust is the date of X's death.[31]

LIFE ESTATE

The date of a change in ownership upon the termination of a life estate is the date the right of present possession or enjoyment of the property vests in the remainderman.[32]

Example 1-4

X transfers real property to an irrevocable trust, which grants to X's wife, B, a life estate in the property, with a remainder to C and D who are unrelated to X and B.

The creation of a life estate in B is a transfer excluded from change in ownership under the interspousal exclusion. Upon the termination of B's life estate upon her death, a change in ownership occurs because on that date C and D have an immediate right to the present possession and enjoyment of the property.[33]

LEASES

The date of a change in ownership in the case of a lease is the date that the lessee has the right to possession as evidenced by an executed lease.[34]

REBUTTABLE PRESUMPTION REGARDING OWNERSHIP INTERESTS

When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have an ownership interest in the property conveyed by that deed.[35] The presumption may be rebutted by clear and convincing evidence to the contrary. *Clear and convincing evidence* is proof that is explicit and unequivocal, so clear as to leave no doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind.[36] To establish that the property is actually owned differently from that shown on the deed, a county assessor may give consideration to, but is not limited by, the following:[37]

- A written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.
- Evidence of the monetary contribution of each party.

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[31] Rule 462.260(d)(1), Example 1.
[32] Rule 462.260(d)(2)(B).
[33] Rule 462.260(d)(1), Example 4.
[34] Rule 462.260(b).
[35] Rule 462.200(b).
[36] *Tannehill v. Finch* (1986) 188 Cal.App.3d 224, 228; *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320; *Sheehan v. Sullivan* (1899) 126 Cal. 189, 193.
[37] Rule 462.200(b)(1) and (b)(2).

The best evidence of any fact is a final judicial finding, order, or judgment.[38] Proof may also be made by a declaration under penalty of perjury, accompanied by written evidence such as written agreements, canceled checks, insurance policies, and tax returns which substantiate the declared facts.

Example 1-5

X and Y wanted to purchase an investment property together. Since X had poor credit, Y purchased the property solely in his own name. Later, upon refinancing the property, Y conveyed a 50 percent tenancy in common interest to X. In response, the county assessor issued a supplemental assessment for 50 percent of the fair market value of the property at the time X was placed on title as a cotenant.

X and Y provided the county assessor with declarations made under penalty of perjury, supported by canceled checks showing that X paid one-half of the mortgage, insurance, and property taxes on the property during the time that only Y was on title. In addition, tax returns indicated that X had taken the benefit of deductions for 50 percent of the deductible interest and property taxes paid. This documentation constitutes clear and convincing evidence sufficient to rebut the deed presumption and to conclude that X had a 50 percent beneficial ownership interest in the property since the date of purchase. Thus, no change in ownership occurred when X was added to title.

Any transfer resulting from correcting a deed which (1) inaccurately described the property intended to be transferred, (2) adds or omits some terms not agreed to, or (3) otherwise fails to express the parties' true intent, does not result in a change in ownership.[39]

Example 1-6

X agrees to sell one acre to Y. The deed mistakenly describes a two-acre area.

Correction of the deed to describe the original acre intended to be transferred is not a change in ownership.[40] However, a deed which is recorded simply to undo a prior deed which triggered a reassessment which was not the true intent of the parties may be treated as a rescinded transfer (see below).

[38] Rule 462.200(b)(2).
[39] Rule 462.240(f).
[40] Rule 462.240, Example 1.

VOID AND VOIDABLE TRANSFERS

Upon a change in ownership, real property is reassessed unless an exclusion from change in ownership applies. If a transfer is *void*, there is no change in ownership because the transfer has no force and effect from its inception. Thus, the taxpayer is entitled to a refund of taxes paid if a timely and valid refund claim is filed. Examples of void transfers include a forged deed or one signed by a minor.

Conversely, a *voidable* agreement is binding unless rescinded. Thus, a transfer of property which is voidable results in a change of ownership and a new base year value. If the transfer is rescinded or voided, no refund of taxes would be due.

RESCINDED TRANSFERS

A transfer may be *rescinded* by the parties. That is, the parties to the transfer agree to undo the transaction and are placed in the same position in which they stood before the transfer took place. However, the original transfer remains valid until the rescission occurs.

The legal effect of a rescission is that it relates back to the creation of the deed—it is as though the transfer had never been made. When a county assessor recognizes the rescission of a transfer, the transferor's name is placed on the assessment roll as the assessee and the former base year value is enrolled on the ensuing lien date. Restoration of a base year value as a result of rescission is not subject to supplemental assessment.

Accordingly, any increase in the assessment prior to the rescission remains in effect until the lien date following the effective date of the rescission. Thus, a rescission is not retroactive with respect to the taxes due and owing prior to the date of rescission. There is no refund or cancellation of unpaid taxes assessed for the period prior to the rescission since property taxes are determined by the facts existing on the lien date.[41]

REPORTING CHANGES IN OWNERSHIP

CHANGE IN OWNERSHIP STATEMENT

Whenever there is a change in ownership of real property or a manufactured home that is subject to local taxation, the transferee must file a *Change in Ownership Statement* (COS)[42] with the assessor for the county in which the property is located.[43] The statement must be filed at the time of recording the transfer of property or, if the transfer is not recorded, within 45 days of the date of the change in ownership unless the change in ownership occurred as the result of a death.

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[41] *Long v. Newlin* (1956) 144 Cal.App.2d 509; *Doctors General Hospital v. County of Santa Clara* (1957) 150 Cal.App.2d 53; *Scollan v. Government Emp. Ins. Co.* (1963) 222 Cal.App.2d 181; *Seegmiller v.County of Nevada* (1997) 53 Cal.App.4th 1397, 1400.
[42] Form BOE-502-AH, *Change of Ownership Statement.*
[43] Section 480(a).

In the case of change in ownership resulting from death, the COS[44] must be filed with each county in which the decedent's real property is located, as follows:[45]

- If the estate is probated, prior to or at the time the inventory and appraisal are filed with the court clerk; or
- If the estate is not probated, within 150 days after the date of death.

The COS must contain information detailing the transfer, including: a description of the property, the date of transfer, the parties to the transaction, the amount of consideration paid for the property (if any), and the terms of the transaction. The COS must be signed under penalty of perjury unless the COS is attached to or accompanies the deed or other transfer document evidencing a change in ownership. In that case, the notice, declaration under penalty of perjury, and any information contained in the deed or other transfer document otherwise required on the COS may be omitted.[46] The law authorizes a county assessor to impose a penalty for failure to file change in ownership statements.[47] COSs are also required for reporting changes in control of legal entities (discussed below).[48]

PRELIMINARY CHANGE OF OWNERSHIP REPORT

In general, the *Preliminary Change of Ownership Report* (PCOR)[49] must be completed and may be filed with the county recorder at the time any document evidencing a real property change in ownership is recorded.[50] If a PCOR is not filed with the county recorder at that time, the county recorder may impose a $20 additional recording fee.[51]

The PCOR is used by county assessors to assist in the determination as to whether:

- A transfer results in a change in ownership;
- Any change in ownership exclusions apply; and
- The purchase price reflects fair market value.

Even though a document may "evidence" a change in ownership, once all the facts are presented, it may not involve a change in ownership.

REPORTING CHANGES IN CONTROL OF LEGAL ENTITIES

Whenever there is a change in ownership as a result of change in control under section 64(c)(1) of any corporation, partnership, LLC, or other legal entity (see Chapter 6), or whenever there is a section 64(d) change in ownership, a COS must be filed with the State Board of Equalization

[44] Form BOE-502-D, *Change in Ownership Statement, Death of Real Property Owner*.
[45] Section 480(b).
[46] Section 480(c) and (d).
[47] Sections 480(c) and 482(a) and (b).
[48] Sections 480.1 and 480.2.
[49] Form BOE-502-A, *Preliminary Change of Ownership Report.*
[50] Section 480.3.
[51] Section 480.3(b).

(Board) by the person or legal entity that acquired ownership control of such entity under section 64(c)(1), or by the legal entity that underwent a change in ownership under section 64(d).

The COS must be signed under penalty of perjury and must be filed within 45 days from the date of the change in ownership, or within 45 days of a written request by the Board for the COS regardless of whether a change in ownership has occurred.[52] The entity is subject to a 10 percent penalty under section 482(b) if the COS is not filed with the Board within 45 days of the earlier of either:

1. The date of change in control or change in ownership of the legal entity (the event date) under section 64(c) or 64(d); or

2. The date the Board makes a written request to file a COS.

The penalty for failure to respond timely to a Board's written request to file a COS applies whether or not a change in control or change in ownership actually occurred. The amount of penalty under section 482(b) is either:

1. 10 percent of the taxes applicable to the new base year value of the real property owned by the legal entity, if the entity has undergone a change in control or change in ownership; or

2. 10 percent of the current year's taxes on the real property owned by the entity if the entity has not undergone a change in control or change in ownership.

The COS must list all the counties in which the legal entity owns real property and must include a description of the property owned by the entity, the parties to the transaction, and the date of the change in ownership.

The Board's Legal Entity Ownership Program (LEOP) has a cooperative arrangement with the Franchise Tax Board (FTB) to assist in the discovery of legal entity changes in ownership. Several questions on the income tax returns filed by legal entities inquire whether there has been a change in ownership of the taxpayer in the past year.[53] If the taxpayer answers any of the questions in the affirmative, the FTB informs the Board. The Board then sends a questionnaire[54] to the legal entity to assist it in determining whether the reported change in ownership results in a reappraisal of the entity's real property.

Monthly, the Board sends each county assessor a report identifying any properties in the county owned by a legal entity that may have undergone a change in ownership. A copy of the COS filed by the legal entity is also sent to the appropriate county assessor(s).

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[52] Sections 480.1 and 480.2.

[53] For corporations, Form 100, question J; for partnerships, Form 565, question T; and for LLCs, Form 568, question O.

[54] Form BOE-100-B, *Statement of Change in Control and Ownership of Legal Entities.*

CONSEQUENCES OF CHANGE IN OWNERSHIP

A change in ownership results in the establishment of a new base year value for the portion of a property that has undergone such change in ownership, unless an exclusion applies.

Exclusions discussed in this handbook include the joint tenancy exclusion (see Chapter 2), the interspousal and registered domestic partner exclusions (see Chapter 11), the parent-child and grandparent-grandchild exclusions (see Chapter 12), the partition exclusion (see Chapter 13), the de minimis transfer exclusion (see Chapter 13), and the proportional interest transfer exclusion (see Chapter 6). Chapters 14 through 17 discuss transfers of base year values from previously owned to newly acquired properties.

CHAPTER 2: FORMS OF INDIVIDUAL PROPERTY OWNERSHIP

OVERVIEW OF FORMS OF PROPERTY OWNERSHIP

Ownership in real property can be held in four primary ways:

- Sole ownership
- Tenancy in common
- Joint tenancy
- Community property

Sole ownership (also called ownership in severalty) means that property ownership is vested in a single person or in a single legal entity such as a corporation or partnership. No division of the bundle of property rights is involved.

Tenancy in common, joint tenancy, and community property are forms of *concurrent ownership*; that is, ownership vests in two or more persons. Concurrent owners are known as co-owners or co-tenants. Community property is a form of concurrent ownership of property specific to married couples and registered domestic partners. (See Chapter 11 for a discussion of interspousal and registered domestic partner exclusions.)

TENANCY IN COMMON

Tenancy in common is a form of concurrent property ownership in which multiple owners have an undivided interest in property. Each tenant in common owns a *fractional share* of the property and is entitled to simultaneous possession and enjoyment of the entire property. In addition, tenants in common may own the property in unequal shares and do not have the right of survivorship. This means that when one tenant in common dies, that person's share will not pass to the other co-owners by operation of law. As a result, each co-tenant may sell or pledge his or her separate interest in the property and may bequeath the interest to his or her heirs. Both individuals and legal entities may own property as tenants in common.

The creation, transfer, or termination of a tenancy in common interest is a change in ownership of the undivided interest transferred.[55]

Example 2-1

> X owns 60 percent of a property, and Y owns 40 percent as tenants in common. X dies. X's 60 percent interest will pass to his heirs, not to Y.
>
> The transfer of X's 60 percent interest to his heirs will undergo a change in ownership unless an exclusion applies. Y's 40 percent interest in the property will remain unchanged and will not undergo a change in ownership. Y and X's heirs will become tenants in common.

[55] Section 61(f).

JOINT TENANCY

Joint tenancy is a form of concurrent ownership in real property that is characterized by equal undivided interests in property. The owners are called co-owners, co-tenants, or more commonly, joint tenants. Each joint tenant owns an equal share of the property and is entitled to the simultaneous possession and enjoyment of the entire property.[56] If the deed creating a joint tenancy specifies unequal interests, a valid joint tenancy is not created. Instead, the property owners will be considered tenants in common.

The most significant feature of a joint tenancy is that it involves a right of survivorship. This means that upon the death of a joint tenant his or her interest in the property is equally divided and transferred to the remaining joint tenants. This transfer occurs automatically by operation of law; no probate or other estate administration is necessary. A form called the "Affidavit of Death of Joint Tenant" is commonly recorded to remove the deceased from title.

Example 2-2

> Siblings A, B, and C acquire property in 1990 as joint tenants. Each has an undivided 1/3 interest in the property. When A dies in 2002, his joint tenancy interest automatically passes equally to B and C, who remain joint tenants (each would have an undivided 50 percent interest). This results in a change in ownership of 1/3 of the property.
>
> When B dies in 2007, her joint tenancy interest automatically passes entirely to C, who automatically becomes the sole owner of the property. This results in a change in ownership of 1/2 of the property.

For a joint tenancy to be created, it must be expressly stated in the deed. If a deed indicates co-ownership and does not clearly and expressly state that the property is a joint tenancy, the title is presumed to be a tenancy in common.[57] If a joint tenant transfers a joint tenancy interest to a third party without specifying joint tenancy, the transferee becomes a tenant in common. For example, a deed that states the following would be interpreted as creating a joint tenancy:

> "A and B, as joint tenants"

Only individuals, not legal entities, can be joint tenants because the statutory definition of a joint interest is one that is "owned by two or more persons in equal shares." Additionally, joint tenancy interests may be held in trust (see discussion below).

TRANSFERS OF JOINT TENANCY INTEREST

The general rule provides that the creation, transfer, or termination of a joint tenancy interest is a change in ownership in the interest transferred.[58] Upon a change in ownership of a joint tenancy interest, only the interest that has been transferred is reappraised.

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[56] Civil Code section 683(a).
[57] Civil Code section 686.
[58] Section 61(e).

Example 2-3

The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property unless an exclusion applies.

Example 2-4

The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 2-5

The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50 percent of the property.

JOINT TENANCY ORIGINAL TRANSFEROR EXCLUSION

An exception to the general change in ownership rule is the original transferor exclusion. An *original transferor* is a person who creates a joint tenancy by transferring real property to others and remains among the resulting joint tenants.[59] All joint tenants that do not qualify as original transferors are referred to as *other than original transferors*.

Example 2-6

X owns a property as a sole owner. X deeds the property to herself and B as joint tenants.

No change in ownership results because X is an original transferor (since she was both transferor and a resulting joint tenant). B did not own the property before the transfer. Therefore, B is an other than original transferor.

Rule 462.040[60] broadened the ability of co-owners to obtain original transferor status in two ways:

1. It allowed tenants in common to obtain original transferor status by transferring property held as tenants in common to themselves as joint tenants without adding an additional joint tenant (discussed below); and

2. It allowed joint tenants to transfer their joint tenancy interests to their revocable trusts for the benefit of all of the other joint tenants to obtain original transferor status (discussed below).

The advantage of obtaining original transferor status is that the transaction that creates the status and subsequent transfers do not result in a change in ownership as long as the property remains in joint tenancy and an original co-owner is on title. Thus, the following transfers do not constitute a change in ownership:[61]

[59] Section 65(b).
[60] Amendments effective November 13, 2003.
[61] Rule 462.040(b)(1).

- Transfers that create or transfer a joint tenancy interest if after such transfer the transferor is one of the joint tenants (an original transferor).
- Transfers back to an original transferor.
- Transfers to all of the remaining joint tenants where at least one remaining joint tenant is an original transferor.

Example 2-7 [62]

Y is the sole owner of a property. Y deeds to X, Y, and Z as joint tenants. Y is an original transferor, and X and Z are other than original transferors. Subsequently, X transfers her interest to Y and Z.

No change in ownership results from X's transfer of her interest to Y and Z because X transferred her interest to the remaining joint tenants, which includes an original transferor, Y.

To create original transferor status, all the transferors must be among the transferee joint tenants. If a transferor is missing, none of the transferors obtain original transferor status.[63]

Example 2-8

A and B own property as tenants in common. A and B transfer to B, C, and D as joint tenants.

Because A is not among the transferees, B does not become an original transferor. B, C, and D are merely joint tenants. The transfer to C and D results in a 2/3 change in ownership.

A corollary to the original transferor exclusion is that when the interest of the last surviving original transferor is terminated, that interest and all other interests that were previously excluded will undergo a change in ownership. Consequently, 100 percent of the property will be subject to reappraisal.[64]

Example 2-9

X and B transfer property to X, B, C, and D as joint tenants.

X dies first and no change in ownership results because B, an original transferor, remains as a joint tenant. However, assuming no other exclusion applies, a 100 percent change in ownership will occur when B dies because B will be the last surviving original transferor and C and D are other than original transferors.

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[62] Rule 462.040.
[63] Rule 462.040(b)(1), Example 8.
[64] Section 65(c); Rule 462.040(b)(2).

Spouse of Original Transferor

A spouse of an original transferor who acquires an interest in a joint tenancy property during the time the original transferor owns the property will also be considered to be an original transferor. In addition, a spouse who acquires an interest in the joint tenancy property by means of a transfer from the original transferor will also be considered to be an original transferor.[65] In order for a spouse to become an original co-owner, the spouse has to acquire an interest in the joint tenancy property during the period that the original transferor spouse is on title.

Example 2-10

X and B are joint tenants and transfer their property to X, B, C, and D as joint tenants. D is X's wife. C is unrelated to all.

No change in ownership results upon the transfer because transferors X and B are among the resulting joint tenants and therefore become original transferors. D becomes an original transferor because she received her interest by way of a transfer during her spouse's lifetime. C is an other than original transferor. Property will be subject to 100 percent reassessment when X, B, and D come off title and C is the sole owner.

Transfer from Tenancy in Common

Prior to November 13, 2003, a third person was required to be added as a co-tenant in the resulting joint tenancy in order to create original transferor status. Thus, prior to November 13, 2003, if co-tenants transferred property to themselves as joint tenants, without adding an additional joint tenant, the co-tenants were merely joint tenants and would not become original transferors. However, effective for transfers on or after November 13, 2003, co-tenants obtain original transferor status solely by transferring their co-tenancy interests to themselves as joint tenants.

Example 2-11

X and Y own property as tenants in common and transfer it to themselves as joint tenants.

If this transfer occurs on or after November 13, 2003, X and Y become original transferors and no change in ownership occurs.

If the transfer occurred prior to November 13, 2003, the transfer is still effective to make X and Y joint tenants and is excluded from change in ownership as a change in the method of holding title, but both are merely joint tenants and do not obtain original transferor status.

Example 2-12

X and Y own property as tenants in common, with X owning 60 percent and Y owning 40 percent. X and Y transfer it to themselves as joint tenants.

[65] Section 65(b); Rule 462.040(b)(1).

If this transfer occurs on or after November 13, 2003, X and Y become original transferors and no change in ownership occurs.

If the transfer occurred prior to November 13, 2003, the transfer is still effective to make X and Y joint tenants. However, since joint tenants have equal interests, the transfer of X's 10 percent interest to Y results in a reassessment of that interest.

Example 2-13

X and B, tenants in common, transfer their property to X, B, and C as joint tenants.

No change in ownership results because X and B are original transferors. Prior to November 13, 2003, the addition of C was required for X and B to obtain original transferor status.

Revocable Trusts and Joint Tenancies

Joint tenants can transfer their respective property interests to revocable living trusts (or a joint trust) for the purpose of maintaining the ownership and survivorship aspects of joint tenancy. A transfer of existing joint tenancy interests into a revocable trust will not sever a joint tenancy for property tax purposes if the trust provisions maintain the characteristics of a joint tenancy, including the right of survivorship. To maintain the right of survivorship, the trust must require that upon death the joint tenant's interest passes equally to all of the surviving joint tenants. A trust that passes a life estate in the joint tenant's interest to the surviving joint tenant maintains the right of survivorship for property tax purposes.

So long as a revocable trust meets these requirements, the transfer of joint tenancy interests into such a trust for the equal benefit of all other joint tenants makes the transferring joint tenants original transferors if the transfer occurs on or after November 13, 2003;[66] transfers prior to that date do not result in original transferor status.

Example 2-14

X and B acquired property as joint tenants. Subsequently, X and B transfer their property to themselves as trustees of the X-B Revocable Living Trust, which provides that: (1) each joint tenant places his respective joint tenancy interest in trust for the benefit of the other joint tenant; (2) on X's death, X's interest will transfer to B; and (3) on B's death, B's interest will transfer to X.

For property tax purposes, upon the transfer of the property into the revocable trust, there is no change of ownership.[67] If the transfer occurred before November 13, 2003, the joint tenancy was not severed, but no original transferor status was obtained. If the transfer occurred on or after November 13, 2003, no severance of the joint tenancy occurs because the trust provisions duplicate the essential characteristics of a joint tenancy; both X and B

[66] Rule 462.040(b)(1).
[67] Section 62(d).

become original transferors.[68] Upon the death of either X or B, there will be no reassessment upon the transfer to the remaining original transferor.

Example 2-15

A owns property and transfers it to A, B, and C as joint tenants. A is the original transferor. B and C are other than original transferors. Subsequently, B transfers his share to himself as trustee of B's revocable living trust, which provides that upon B's death, B's interest will transfer to A and C. B becomes an original transferor. C remains an other than original transferor. Then C transfers his interest to C's revocable trust, which provides that upon C's death, X is the beneficiary.

The transfer of C's interest to C's Trust terminates the joint tenancy as to C's interest because C's trust does not provide that the other joint tenants are the beneficiaries. Thus, C becomes a tenant in common, and the transfer results in a change in ownership of C's 1/3 interest. A and B remain joint tenants and original transferors as to their 2/3 interest.

PRESUMPTION OF ORIGINAL TRANSFEROR STATUS

For all joint tenancies created on or before March 1, 1975, there is a rebuttable presumption that all current joint tenants as of that date are original transferors.[69] Generally, a rebuttable presumption is an inference that, in the absence of any evidence to the contrary, is to be made and accepted as an established fact. This presumption permits (but does not require) the county assessor to assume in such cases that persons are original transferors when, in fact, they may not be. The presumption was created for administrative convenience for the county assessor.[70] However, if the county assessor chooses to investigate the origin of a joint tenancy, the presumption may be rebutted by a review of the chain of title or other evidence. Where contradictory evidence exists, the presumption may be overcome.

Example 2-16

X and B purchased a property together and then B died in 1971. In 1973, X transferred the property to herself and C, as joint tenants. X died in 1981 and the entire property passed to C by operation of law as the surviving joint tenant. There is documentation of all purchases and transfers.

In this case, substantiating documentation establishes a complete chain of title. Such evidence is sufficient to overcome the presumption that C is an original transferor; as a consequence, C is not an original transferor.

There is a change in ownership requiring a 100 percent reassessment of the property as of the date of X's death in 1981, unless an exclusion applies.

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[68] Rule 462.040(b)(1).
[69] Section 65(e).
[70] *Report of the Task Force on Property Tax Administration*, January 22, 1979; *Implementation of Proposition 13, Property Tax Assessment,* October 29, 1979, California Assembly Revenue and Taxation Committee.

REASONABLE CAUSE TO PRESUME JOINT TENANCY

When more than one person's name appears on a deed, it is rebuttably presumed that all persons listed on the deed have ownership interests in property. In overcoming this presumption, consideration may be given, but not limited, to the existence of a written document executed prior to or at the time of the conveyance or other written evidence. [71] The standard for rebutting the deed presumption in most instances is clear and convincing evidence. As mentioned earlier, operative words must be clearly expressed declaring the intent to create a joint tenancy. If the deed does not express this intent, some other documentation must be provided that declares the intent to create a joint tenancy.

Persons holding joint title to property, such as tenants in common, may be considered 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 sales contract, deed, affidavit of death of joint tenant, a trust, will, or estate plan or other written agreement.[72]

Other types of evidence might include sales contracts, Deposit Receipt and Purchase Agreements, escrow instructions, recorded Deeds of Trust, wills, notarized agreements, and affidavits. The most weight would be given to those documents that were executed and notarized prior to or contemporaneous with the recording of the deed. Next in weight would be those documents that were executed prior to the recording, but that were not notarized. The least weight, if any, would be given to affidavits signed much later in time. The county assessor must make a determination based on all the facts available to him or her.

Example 2-17

On December 20, 2000, X and B jointly purchase their principal residence and title is recorded as tenants in common. The sales contract states that X and B intended to take title as joint tenants. In 2004, X and B each create a revocable living trust transferring their respective interests in the property to their trusts for the benefit of each other.

Since the transfer to the trusts occurred after November 13, 2003, the county assessor may determine that the sales contract and trust instruments establish that X and B intended to hold title as joint tenants upon purchase, and that each subsequently became an original transferor.

TERMINATION OF JOINT TENANCY AND OF ORIGINAL TRANSFEROR STATUS

When a joint tenancy is terminated, the original transferor status of a joint tenant terminates.[73]

Example 2-18

X owns real property and transfers a 50 percent interest to B as a tenant in common resulting in a change in ownership of that 50 percent interest. They subsequently transfer to

[71] Rule 462.200(b).
[72] Rule 462.040(d).
[73] Rule 462.040(b)(3).

themselves as joint tenants and, as a result, become original transferors. X dies and his joint tenancy interest passes to B by operation of law without a change in ownership because B is an original transferor. Upon X's death, the joint tenancy is terminated and B ceases to be an original transferor.

SEVERING A JOINT TENANCY

A joint tenant may sever his or her joint tenancy interest[74] by written deed or declaration. Such a document must be properly executed by the severing joint tenant and must express an intent to sever. In addition to an agreement to sever, the following transfers may sever a joint tenancy interest:

- Transfer of a joint tenant's interest to a third person (except spouse).
- Transfer of a joint tenant's interest to a trust for the benefit of a third person (contrary to joint tenants' survivorship rights) or to a legal entity (such as a partnership).
- Transfer of a severing joint tenant's interest to a remaining joint tenant.

The effect of a valid severance is that the survivorship rights are extinguished as between the severing joint tenant and the other joint tenants, resulting in a tenancy in common to that extent. The transfer does not affect the continuation of the joint tenancy between the interests of any two or more remaining joint tenants. The requirement that a severance be in writing is to prevent a "secret" severance by one joint tenant by making his or her attempt invalid and ineffective for terminating the survivorship rights of the other joint tenants in his or her interest, unless it is recorded or all joint tenants agree in writing. Only upon the accomplishment of a valid severance does one's position as a joint tenant and an original transferor, if applicable, cease.

[74] Civil Code section 683.2

CHAPTER 3: TRUSTS

A primary characteristic of a trust that distinguishes it from other interests in real property is that a trust involves a separation of legal title to the property held in trust from the equitable or beneficial title to such property. For all trusts, the trustee holds the legal title. For revocable trusts, the equitable or beneficial title is held by the trustor; and for irrevocable trusts, the equitable or beneficial title is held by the present beneficiary. Only a transfer of the present beneficial ownership interest will result in a change in ownership of real property held in the trust.

DEFINITIONS

The following definitions pertain to the various types of trusts used to hold title to interests in real property or legal entities.

TRUST TERMS

The *trustor*, also called the *settlor, creator,* or *grantor*, is the person who establishes the trust and transfers assets into the trust. With revocable trusts, the trustor retains the present beneficial ownership interest of the property transferred to the trust because the trustor has the power to amend or revoke the trust. A trust may have multiple trustors, such as a married couple.

A *trustee* is the individual or entity (such as a bank) who administers the trust and holds legal title to the trust property as a fiduciary. The trustee is not considered to be the present beneficial owner of the trust property.

A *successor trustee* is a trustee who follows or succeeds an earlier trustee.

The *beneficiaries* are the persons or entities (such as a charity) designated by the trust instrument to receive the benefit of ownership of the trust's property and assets. Such benefit may include the ability to use the property or receive income from the property.

A present beneficiary in an irrevocable trust is the person or entity who has the current beneficial use of the property. A present beneficiary in a revocable trust is the person who will receive the interest upon the death of the trustor(s).

A *future beneficiary* is someone who will only receive the beneficial use of the trust property at some future time.

A *remainderman* is a future beneficiary who will receive the beneficial use of the trust property after an intervening estate terminates, such as a life estate or estate for years.

A *power of appointment* is "general" so long as it can be exercised in favor of the donee, his or her estate, his or her creditors, or the creditors of his or her estate. A grant of a general power of appointment is equivalent to a grant of absolute ownership. A power of appointment that is not

general is "special" and includes a power of appointment that is limited by an ascertainable standard relating to a person's health, education, support or maintenance.[75]

TYPES OF TRUSTS

Inter vivos trusts (also called *living trusts*) take effect during the life of the trustor and may be revocable or irrevocable.

A *revocable trust* is an arrangement in which the trustor retains beneficial ownership and control of the property transferred into the trust by reserving the power to amend or revoke the trust. Revocable trusts are created during the life of the trustor. The trust becomes irrevocable upon the death of the trustor or upon circumstances specified in the trust (for example, upon the trustor's incapacity). A revocable trust is the most common type of inter vivos or living trust.

An *irrevocable trust* is an arrangement in which the trustor relinquishes control of the property. The trustor cannot revoke or amend the trust after it is established. Thus, an irrevocable trust permanently dedicates the property transferred into the trust to the benefit of the trust beneficiaries. The *present beneficial owners* of property held in an irrevocable trust are the named present beneficiaries, who may or may not include the trustor.

Testamentary trusts are created by will, take effect only upon death of the trustor, and are always irrevocable.

A *charitable remainder trust* is an irrevocable trust to which the trustor transfers property, the terms of which provide for (1) an income interest (an annuity or unitrust interest) retained by the trustor or transferred to another non-charitable beneficiary; and (2) a charitable remainder in the property at the termination of that income interest. Under section 62(d), a transfer to such a trust would not be a change in ownership if the trustor or the trustor's spouse is the present income beneficiary of the trust.

A *charitable lead annuity trust* (CLAT) is an irrevocable trust into which the grantor transfers property for the benefit of a charity which is the sole income beneficiary for a number of years, upon the expiration of which the remainder beneficiaries, who are family members, receive the remainder in the property at the termination of the income interest. The trust is irrevocable by the grantor and no interest is retained by the grantor, except the right to report all the income payable to the charity on the grantor's personal tax returns.

A *grantor retained annuity trust* (GRAT) is an irrevocable trust into which the grantor transfers property for the benefit of a remainder beneficiary who is a family member. The grantor retains the right to receive the trust income, in periodic fixed amounts, for a specified term. For property tax purposes, such trusts involve a transfer to an irrevocable trust, with the income therefrom reserved to the trustor or other beneficiary and with any remainder in the property at the termination of the income interest to designated family members as the remaindermen.

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[75] Probate Code section 611.

A *qualified personal residence trust* (QPRT) is an inter vivos, irrevocable trust in which the trustor (generally the parent) retains the present beneficial enjoyment of the home (whether a principal residence or vacation home) for a set period of years. At the end of the trust term, the trust terminates and the trustee of the trust transfers title to the residence to the beneficiaries (generally children).

An *Individual Retirement Account* (IRA) is a trust established by an individual to provide income to the individual during his or her retirement years. (See Chapter 10 for a discussion of IRAs.)

Massachusetts trusts or *business trusts* are legal entities that are managed for profit for the benefit of trust certificates holders similar to corporate stockholders. For property tax purposes, a Massachusetts or business trust is treated as a legal entity and not as a trust.[76] (See Chapter 6 for a discussion of Massachusetts trusts.)

CHANGE IN OWNERSHIP

As a general rule, transfers of real property into and out of a trust result in a change in ownership, unless an exclusion applies.[77] Additionally, a transfer upon the termination of a trust results in a change in ownership, unless an exclusion applies.[78]

For purposes of change in ownership, it is necessary to determine whether the present beneficial ownership has changed. To determine who has the present beneficial ownership interest in the trust property, you must disregard the trustee's legal title and look to the present beneficiary named in an irrevocable trust and to the trustor in a revocable trust. This is referred to as "looking through" a trust.

REVOCABLE TRUSTS

The trustor retains the present beneficial ownership interest of the property transferred to a revocable trust because the trustor has the power to amend or revoke a revocable trust. Thus, transfers of property into or out of a revocable trust do not result in a change in ownership, unless, as noted above, the transfer is to someone other than the trustor or to a person for whom an exclusion is unavailable.[79] This is true even if the trustor has given a third party beneficiary the right to use the trust property or the right to receive income from the trust property, or the trustee has the right to sell or encumber the trust property.

[76] Rule 462.160(e).
[77] Rule 462.160(a).
[78] Rule 462.160(c) and (d).
[79] Section 62(d).

Example 3-1

X and B transfer property into the X-B Revocable Living Trust for the benefit of C. Five years later, they decide to revoke the trust and title to the property is transferred back to X and B.

X and B at all times retained the present beneficial ownership of the trust property because they had the power to revoke the trust. There is no change in ownership when property was transferred into or out of the revocable trust upon the trust creation or termination, respectively.

IRREVOCABLE TRUSTS

The present beneficial owners of property held in an irrevocable trust are the named present beneficiaries because the trustor does not have the power to amend or revoke an irrevocable trust. Because the trustor makes a permanent dedication of such property and thereby passes the present beneficial ownership interest to the named beneficiaries, a transfer of real property into an irrevocable trust results in a change in ownership, unless an exclusion applies.[80] In addition, when a revocable trust becomes an irrevocable trust (for example, upon the death of the trustor), there is a change in ownership, unless an exclusion applies.

Example 3-2

Z transfers income-producing real property to revocable living Trust X in which Z is the trustor. Trust X provides that upon Z's death, income from the trust property is to be distributed to Z's brother B for his lifetime.

Upon Z's death, 100 percent of the property held in Trust X, representing B's present beneficial interest, undergoes a change in ownership.[81]

There is no change in ownership when property is transferred to an irrevocable trust (or when a revocable trust becomes irrevocable) *and either*:

(1) The trustor or trustor's spouse is the sole present beneficiary of the trust; *or*

(2) All present beneficiaries of the trust qualify for exclusions from change in ownership.

Because the present beneficiary of an irrevocable trust is considered the owner of the trust property, the distribution of trust property to a beneficiary upon the termination of an irrevocable trust does not result in a change in ownership.[82] If the ownership interest is identical before and after the transfer, this is merely a change in the method of holding title and no change in

[80] Rule 462.160(a).
[81] Rule 462.160, Example 1.
[82] Rule 462.160(b)(5).

ownership occurs.[83] However, if ownership interests are not the same, the property may be subject to a change in ownership, unless an exclusion applies.

Multiple Beneficiaries and Sprinkle Provisions

Where a trustee of an irrevocable trust has total discretion to distribute the trust property or income to a number of potential beneficiaries (*sprinkle power*), the property is subject to change in ownership if any of the potential beneficiaries lack an exclusion. This is because even though the trustee may not elect to distribute the trust property or income to a non-excludable beneficiary, the trustee has the authority to make such a distribution.[84] However, if all potential beneficiaries to whom the property may be distributed under the trustee's sprinkle power qualify for an exclusion, there is no change in ownership.

Example 3-3

A trustor created an irrevocable trust into which he transferred real property. The trust instrument recites that the trust is created for the benefit of the trustor's descendants, without naming specific persons. The provision for distribution of the trust income and principal authorizes the trustee, at any time and from time to time, to distribute all or any part of the net income and/or principal of such trust to any one or more of the beneficiaries of such trust at the sole discretion of the trustee.

Since the trust grants the trustee sole discretion to make distributions to any member of the class of beneficiaries, this constitutes a "sprinkle power." Furthermore, the beneficiaries of the trust may include descendants for whom no exclusions are available (for example, great grandchildren). Therefore, 100 percent of the property interests transferred is subject to change in ownership and reappraisal because the trustee could potentially distribute 100 percent of those interests to a beneficiary who is not excludable.

Example 3-4

A revocable trust is established for the benefit of the trustor's spouse, children, and nephew in equal shares. When the trustor dies and the trust becomes irrevocable, there will be a change in ownership of the interest transferred to the nephew because the nephew does not qualify for an exclusion.

If, instead of specifying the interest that each beneficiary was to receive, the trust had given the trustee a sprinkle power, all of the real property held in the trust would undergo a change in ownership and be reassessed because the nephew *could* receive 100 percent of the property or income.

Filing of a Subdivision Map for Property Held in a Trust

The recording of a subdivision map for the purpose of dividing properties held in an irrevocable trust does not result in a change in ownership.

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[83] Section 62(a)(2); Rule 462.160(d)(1).
[84] Rule 462.160(b)(1)(A).

Example 3-4

X establishes an irrevocable trust for his three children. The principal asset in the trust is a three-acre parcel of real property. Under the terms of the trust, each of X's three children is to receive a specific one-acre portion of the parcel.

The recording of a map dividing the three acres into three one-acre parcels prior to the termination of the trust will not cause a change in ownership or a reappraisal. A subsequent transfer of each parcel from the trust to each child is not a change in ownership because the ownership of each parcel is the same before and after the transfer.

CHAPTER 4: LIFE ESTATES AND ESTATES FOR YEARS

A change in ownership is a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of a fee interest.[85] The creation or termination of a life estate or estate for years for 35 years or longer is substantially equivalent to a transfer of a fee interest in the property.[86] The following is a discussion of the statutes as applied to life estates and estates for years.

LIFE ESTATES

A *life estate* grants the right to the use of a property or the income from a property for the lifetime of a designated person. The designated lifetime can be that of either the life tenant or another person. The property owner who grants the right is known as the *transferor*, *creator*, or *grantor*. The party receiving this right is commonly known as the *life tenant*. A life estate can be granted or reserved by deed or created by will, trust, or other written instrument; no consideration is necessary. When a life tenant dies, the life estate terminates. The party receiving the property when a life estate terminates is the *remainderman*.

The creation of a life estate in favor of someone other than the transferor's spouse results in a change in ownership, unless the creation of the life estate otherwise qualifies for another exclusion.[87] A change in ownership does not include a transfer by an instrument whose terms reserve a life estate in the transferor.[88]

The termination of a life estate upon the death of a life tenant is a change in ownership, unless the transfer to the remainderman is otherwise excluded. When a life estate terminates upon the death of a life tenant, the grantor of the remainder interest is considered to be the transferor and not the life tenant. The transfer from the grantor to the remainderman is a change in ownership, unless the remainderman is the transferor, the transferor's spouse, or another exclusion applies.

Example 4-1

> X records a deed that transfers property to cousin B, for B's life, with remainder to nephew C.
>
> X is the transferor of the property to B, the life tenant. The transfer of the property is a change in ownership.

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[85] Section 60.

[86] Sections 61(c) and 62(e); *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334; *Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480. The Supreme Court, in the case of *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, held that the transfer of a life estate and remainder interests pursuant to a revocable trust becoming irrevocable was a change in ownership. The court did not find it necessary to determine whether the creation of a life estate alone was substantially equivalent to the value of the fee interest.

[87] Rule 462.060(a).

[88] Section 62(e).

Upon the death of the life tenant B, the life estate terminates, and the property transfers to C, the remainderman. When a life estate terminates on the death of a life tenant and the remainderman interest becomes possessory, the transfer is between the grantor of the remainder interest and the remainderman, rather than between the life tenant and the remainderman. Thus, the termination of the life estate is also a change in ownership because no exclusion exists for a transfer to a nephew.

TRANSFER BY LIFE TENANT

When a life tenant transfers his or her life estate interest *during his or her lifetime*, this results in a change in ownership, unless an exclusion applies.[89] In this situation, the transferor is considered to be the life tenant, not the original grantor of the life estate. If the life tenant transfers the life estate to a third party, the term of the life estate does not change and is still based on the person's lifetime indicated in the document that created the life estate.

Example 4-2

X grants to friend Z a life estate in a property, with a remainder interest to nephew C. During Z's life, Z transfers her life estate to cousin D.

The creation of the life estate is a change in ownership. Z's transfer of her life estate to D is another change in ownership. Because Z is still alive, Z is the transferor of the life estate to D, not X.

Upon Z's death, the life estate terminates and the property transfers to C. Because the termination of the life estate occurred due to Z's death, X is the transferor. Thus, the termination of the life estate is a change in ownership because no exclusion exists for a transfer from X to nephew C.

Example 4-3

B, an owner of property, dies testate. In her will she leaves a residence to her sister, D, for her life with the remainder interest to her nephew, J, her sister's son. Eight years later, D transfers her life estate to her son, J, by quitclaim deed.

A change in ownership occurred upon B's death because no exclusion exists for a sibling transfer. If the vesting of J's interest had occurred as the result of D's death, there would be another change in ownership. However, because D transferred the life estate interest to her son while she was alive, the transfer of the life estate interest is excluded from change in ownership as a parent-child transfer.

ESTATES FOR YEARS

An estate for years differs from a life estate in that it has a specified duration. The creation or transfer of an estate for a period of less than 35 years is not a change in ownership because the

[89] Section 62(e); Rule 462.060(a).

transferor is not deemed to have transferred a beneficial ownership interest substantially equivalent to a fee interest in the property. Therefore, for property tax purposes, the creation of an estate for years of 35 years or longer is considered to be the substantial equivalent of a fee interest. The creation of an estate for 35 years or longer is a change in ownership at the time of the creation, unless such estate is reserved in the transferor or transferor's spouse[90] or another exclusion from change in ownership applies.

A subsequent transfer of the estate for years by the transferor or the transferor's spouse to a third party is also a change in ownership.

The termination of an estate for any period is a change in ownership, unless the property reverts back to the transferor or transferor's spouse,[91] or another exclusion applies. The termination is a change in ownership even if it terminates before the end of the stated period.

Example 4-4

X transfers property to B for a term of 40 years, after which the property is to go to C.

Upon the transfer to B, there is a change in ownership because the estate for years is for more than 35 years, unless an exclusion applies. Upon the expiration of B's 40-year term, there is another change in ownership when the property is transferred to C, unless an exclusion applies upon the transfer from X to C.

[90] Rule 462.060(b).
[91] Section 62(e).

CHAPTER 5: LEASES

A *lease* is a contractual agreement under which an owner transfers the rights to possession and use of a property for valuable consideration for a definite term, including renewal options. At the end of a lease term, the owner has the absolute right to retake, control, and use the property. This is called a *reversionary right*. For real property, a lease gives rise to the legal relationship of landlord and tenant, or lessor and lessee.

When a property owner leases real property, there is a transfer of a present beneficial use of the property to the lessee. However, not all leases result in transfers of present beneficial ownership interests that are substantially equivalent to the value of a fee interest. The Legislature has determined that whether a change in ownership occurs upon the creation or transfer of a lease or property subject to a lease depends on the duration of the lease.

A change in ownership of the leased property occurs in the following situations:

- Creation of a lease for a term of 35 years or longer.
- Termination of a lease which had an original term of 35 years or longer.
- Transfer, sublease, or assignment by a lessee of a leasehold interest with a remaining term of 35 years or longer.
- Transfer by the lessor of a lessor's interest in taxable real property subject to a lease with a remaining term of less than 35 years.[92]

An exception to this is a transfer of mineral property leases or property subject to mineral leases, which is discussed at the end of this chapter under Mineral Properties.

The counterpart to the above rules is that the following transfers of a lessee's interest or a lessor's interest in leased property are *not* a change in ownership:

- Creation of a leasehold interest in a real property for a term of less than 35 years.
- Transfer, sublease, or assignment by a lessee of a leasehold interest with a remaining term of less than 35 years (regardless of the original term of the lease).
- Termination of a leasehold interest which had an original term of less than 35 years.
- Transfer by a lessor of his or her interest in real property subject to a lease, with a remaining term of 35 years or longer, whether to the lessee or another party.[93]

When a lease has been created, the term must be established to determine whether a change in ownership has occurred. Once a long-term lease has been created, to determine whether there is a change in ownership upon the subsequent transfer of a lessor's or lessee's interest, the remaining leasehold period must be established. If the remaining term of a lease is 35 years or longer, a transfer by a lessee of the leasehold interest (for example, an assignment of the lease to another

[92] Section 61(c).
[93] Rule 462.100(b).

tenant) results in a change in ownership (this is because the lessee is considered to have the beneficial ownership of the property).

If the remaining term of a lease is 35 years or longer, a transfer by a lessor of his or her interest does not result in a change in ownership (this is because the lessee, and not the lessor, is considered to have the beneficial ownership of the property). For example, the sale of the underlying fee interest in the property subject to a 40-year lease does not result in a change in ownership.

If there is a transfer of a lessor's interest in taxable real property subject to multiple leases, one or more of which has a remaining term of less than 35 years, and one or more of which has a remaining term of 35 years or longer, there is a change in ownership *only* of that portion of the property subject to the lease(s) with a remaining term of less than 35 years.[94]

TERM OF LEASE

For change in ownership purposes, the term of a lease is measured by adding the length of the original term and any written renewal options.[95] Written renewal options are options given to the lessee and stated in a lease contract that authorizes the lessee to either renew or extend the stated lease term. Such options are included as part of the total lease term whether or not they are exercised.

In determining the term of a lease that commenced prior to March 1, 1975, a county assessor should consider the entire term of each lease, including the portion of the term that was in effect prior to the enactment of Proposition 13. Section 61(c) and Rule 462.100 do not exclude periods prior to March 1, 1975 from the calculation of lease terms.

Example 5-1

> X leases a property from Y for an original term of 25 years. The written lease also provides that X has two 10-year options to extend the lease term.
>
> The X-Y lease is considered to have a term of 45 years, whether or not X ultimately exercises either or both of the options. Thus, the creation of the lease would subject the property to a change in ownership.

HOMEOWNERS' EXEMPTION PRESUMPTION

For leased land on which homes eligible for the homeowners' exemption[96] are located, it is conclusively presumed that all leases include written renewal options for at least 35 years, whether or not such renewal options in fact exist.[97] Thus, the transfer of a lessor's interest in

[94] Rule 462.100(a)(2)(B).
[95] Rule 462.100(d).
[96] Section 218.
[97] Section 62(g); Rule 462.100(e). Where the law raises a conclusive presumption, evidence cannot be received to the contrary. A conclusive presumption is not a rule of evidence but a substantive law so fixed by the legislative body as to admit no controverting proof (31 Cal.Jur.3rd 104).

leased land on which a home eligible for the homeowners' exemption is located does not result in a change in ownership of the leased land.

Example 5-2

> X leased a lot from the W Company for a term of 25 years and built a house. After the house was completed, X moved into the house and filed for the homeowners' exemption. Ten years later, W Company sold the lot to B Company.
>
> Since X owns the house and occupies it as his primary residence, the lease term is presumed to have a renewal option of at least 35 years. Thus, the transfer of the lot from W Company to B Company did not result in a change in ownership because the lease term is presumed to be greater than 35 years.

If the homeowner lessee creates, transfers to another, or terminates the land lease in which the term is 35 years or longer, there is a change in ownership requiring reappraisal of the land subject to that lease. If there is a transfer of a home on leased land and if that home is eligible for the homeowners' exemption, the conclusive presumption applies with the result that the land lease is presumed to be for a term of 35 years. Thus, a change in ownership of the land as well as the home occurs upon the new lessee's purchase of the home and assignment of the lease.

AMENDMENT OR EXTENSION OF LEASE TERM

The addition to or extension of a lease term which was originally 35 years or longer, at a time when it has a remaining term of less than 35 years, is not a change in ownership. That long-term lease was already reassessed for a change in ownership. The mere extension of time is not a substantial modification of the original lease such that the original lease is deemed terminated and a new lease entered into. However, if in addition to the extension of its term back to a term of 35 years or longer, such a lease was modified so substantially or extensively in its terms, it would be deemed terminated, resulting in a change in ownership. Then amendment or modification would result in the creation of a new lease with a period of 35 years or longer, causing a second change in ownership under section 61(c).

TERMINATION OF LEASES

A change in ownership occurs upon the termination of a lease if the original term, including written renewal options, is 35 years or longer. During the leasehold period, there is no change in ownership when the remaining lease term falls below the 35-year mark if the lessor does not transfer the interest. Prior to the termination of such lease, when the remaining lease term falls below the 35-year mark, the primary ownership of the property shifts from the lessee to the lessor; however, there is no change in ownership because there has been no transfer of the property. Thus, absent a transfer of either the lessor's or lessee's interests, the real property subject to such a lease will undergo a change in ownership when the property reverts back to the lessor when the lease expires or is otherwise terminated.

Example 5-3

A lease with a 40-year term commences January 1, 1970 and runs to its termination date on January 1, 2010 with neither the lessor nor the lessee transferring their interests.

The lease termination in 2010 is a change in ownership, and the property is subject to reassessment.

Example 5-4

A lease with a 40-year term commences January 1, 1970. In 2005, the lessor transfers the real property, subject to the lease.

A change in ownership occurs since the remaining term of the lease is less than 35 years. Because the new lessor-lessee relationship was established when the remaining term was less than 35 years, the primary ownership at that time is held by the new lessor. Since the lessor's interest was already reassessed when it acquired the primary ownership in 2005, the property will not undergo another change in ownership upon the termination of the lease in 2010.

MERGER OF LEASEHOLD AND LEASED FEE INTERESTS

Rule 462.100(b)(2)(A) provides that a transfer of the lessor's interest subject to a lease with a remaining term of 35 years or more "whether to the lessee or another party" does not result in a change in ownership. Thus, if there were 40 years remaining on a lease and the lessee were to purchase the lessor's underlying fee interest, the merger of the leasehold and fee interests would not result in a change in ownership. In such an instance, even though a merger of interests constitutes a "termination" of the leasehold under general property law principles,[98] the merger of the two interests would not be considered a termination of a leasehold interest causing a change in ownership. However, if the lessee purchases the underlying fee interest from the lessor while the remaining term of the lease is less than 35 years, the transfer of the fee interest to the lessee would result in a change in ownership.[99]

REAPPRAISAL OF LEASED PROPERTY

When a change in ownership of property subject to a lease has occurred, the entire property subject to the lease (both the lessee's present interest and the lessor's reversionary interest) is reappraised.[100]

[98] Civil Code section 1933.
[99] Rule 462.100(a)(2)(A).
[100] Rule 462.100(c).

Example 5-5

A shopping center has large anchor stores, all with leases longer than 35 years; and smaller retail stores, all with leases for 20 years or less.

At the commencement and termination of each anchor store lease, there is a change in ownership of that portion of the property leased by the anchor store; there is no change in ownership at the commencement or termination of the smaller retail store leases.

If the entire shopping center is sold, there would not be a change in ownership of the property leased by the anchor stores with 35 years or more remaining on their leases, but there would be a change in ownership of all property subject to lease terms of less than 35 remaining years, including all the smaller retail stores.

SUBLEASES

Subleases are analyzed in the same manner as leases. A sublessee is considered to be the primary owner for property tax purposes when a sublease is for a term of 35 years or longer.

Example 5-6

X leases a property for 50 years, including written renewal options, to B. This results in a change in ownership, with B becoming the present beneficial owner.

After 12 years (while there is 38 years remaining on the lease), lessee B subleases the property to C for 38 years. This results in a change in ownership because B, the present beneficial owner, has entered into a sublease for a term of more than 35 years, thereby transferring the present beneficial ownership interest of the property to sublessee C.

GOVERNMENT LESSEE

When a private owner leases its property to a tax-exempt governmental entity, the private owner's interest remains subject to assessment and taxation. The leasing of taxable real property for a term of 35 years or longer does not create or transfer ownership of the property such that the government entity would be deemed to be the fee "owner" for tax exemption purposes. However, the leasing of taxable real property for a term of 35 years or longer to a tax-exempt governmental entity does result in a change in ownership of the entire property.[101] The property is assessed to the private owner-lessor, who is deemed to be the owner of both the leasehold and reversionary interests for property tax purposes.[102]

An exception to this would be a lease-purchase agreement. If the governmental entity held the exclusive right to occupy and use the facility and the lease provided for automatic vesting of title in the governmental entity at the expiration of the lease if all rental payments were made, the true

[101] Section 61(c).
[102] *City of Desert Hot Springs v. County of Riverside* (1979) 91 Cal.App.3d 441.

owner of the property may be the governmental entity, even though legal title resides in the lessor.[103] The determination of beneficial ownership is a question of fact which depends upon the terms of each agreement. If the county assessor concludes that the property is beneficially owned by the governmental entity, the property is treated as government-owned for purposes of the constitutional exemption extended by section 3 of article XIII of the California Constitution.

MINERAL PROPERTIES

Transfers of mineral property leases or properties subject to such leases are not subject to the provisions of section 61(c) which places the primary economic ownership in the lessee if the term of the lease is 35 years or longer. Rather, section 61(a) governs the transfer of mineral rights exclusively and states that a change in ownership includes:

> The creation, renewal, sublease, assignment or other transfer of the right to produce or extract oil, gas, or other minerals, regardless of the period during which the right may be exercised….

Thus, regardless of the term of a mineral property lease, the creation or transfer of that lease is a change in ownership. Ownership changes of mineral properties must be studied carefully in order to determine the percentage of the property interest transferred or conveyed.[104]

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[103] *Mayhew Tech Center, Phase II v. County of Sacramento* (1992) 4 CalApp.4th 497.
[104] See Assessors' Handbook Section 560, *Assessment of Mining Properties.*

CHAPTER 6: LEGAL ENTITIES

OVERVIEW

A *legal entity* is any business organization that is legally permitted to enter into a contract, including a contract for the purchase, sale, or lease of real property. Legal entity interests may be owned individually, owned by another legal entity, or held in trust. Some of the most common legal entities holding title to real property in California and discussed in this chapter include:

- Corporations
- Partnerships
- Limited liability companies
- Joint ventures
- Massachusetts business trusts
- Real estate investment trusts

In this handbook, the use of the term *entity* refers to any such legal entity, unless otherwise qualified. Another type of entity, a *cooperative housing corporation*, is discussed at the end of this chapter because for change in ownership purposes it is not treated as a legal entity.

OWNERSHIP OF LEGAL ENTITIES

CORPORATIONS

A *corporation* is an entity distinct from its owners, called shareholders or stockholders. The significant primary characteristics of a corporation are transferable shares of stock, a perpetual existence, and limited liability, including shareholder limited responsibility for corporate debt, shareholder insulation from judgments against the corporation, and shareholder amnesty from criminal actions of the corporation.[105]

For change in ownership purposes, ownership in a corporation is determined by the percentage of ownership or control of a corporation's voting stock.

Nonprofit Corporations

In California, a nonprofit corporation is generally organized as either a nonprofit public benefit corporation[106] or a nonprofit mutual benefit corporation.[107] Generally, the same change in ownership laws that apply to legal entities also govern transfers to, from, or between nonprofit corporations even though nonprofit corporations do not have "owners" in the traditional sense.

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[105] The term *corporation* generally refers to corporations organized under and governed by California Corporations Code sections 100-2319, or organized under and governed by similar statutes of other states. These corporations are sometimes referred to in this chapter as *business corporations* when distinguishing them from nonprofit corporations.
[106] California Corporations Code sections 5110 et seq.
[107] California Corporations Code sections 7110 et seq.

A *nonprofit public benefit corporation* is a nonprofit corporation organized under California Corporations Code sections 5100 through 6910. Typically, they are organized primarily or exclusively for charitable purposes. For California nonprofit public benefit corporations, the persons considered to hold the voting rights of the corporation are the members or, in the absence of members, the board of directors.

A *nonprofit mutual benefit corporation* is a nonprofit corporation that is formed under California Corporations Code sections 7100 et seq. principally for the mutual benefit of its members or for the mutual benefit of all those engaging in a particular type of business or activity. Generally, nonprofit mutual benefit corporations may not make distributions of property except upon dissolution.[108] If these entities grant rights to corporate property to its members consistent with beneficial ownership of that property, such as current rights to possess, enjoy, and exclude others, a change in ownership would result on a transfer of such membership. However, if a club grants a membership that allows the mere use of club property or the ability to vote for members of the board of directors, and the right to receive a distribution of property upon dissolution, there would be no change in ownership upon a transfer of such membership since such a membership would carry rights similar to the rights that stockholders have in a general business corporation.

PARTNERSHIPS

A *partnership* is an unincorporated entity consisting of more than one individual, trust, or other entity. Under California law, a general partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit."[109] The test to determine whether or not a partnership exists is based on the intention of the parties to carry on or conduct themselves as partners. A partnership agreement may be written or oral. A partnership may be deemed to own real property even if title to the property is held in the name of the partners as individuals, with or without reference to the partnership.[110] A partnership agreement or a partnership income tax return may provide evidence to establish the existence of a partnership.

In a *general partnership*, all partners have unlimited legal responsibility for the debts and liabilities of the partnership.

A *limited partnership* is a business organization with one or more general partners who manage the business and assume legal debts and obligations, and one or more limited partners who do not participate in day-to-day operations and are liable only to the extent of their investments.

In a *family limited partnership,* a form of limited partnership, the parents are typically the general partners and the children hold limited partnership interests; they may or may not have voting rights or capital and profits interests. Family limited partnerships are commonly used for managing and transferring assets, including real and personal property, between generations.

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[108] California Corporations Code section 7411.
[109] California Corporations Code section 16202(a).
[110] Rule 462.180(e).

For change in ownership purposes, general partnerships, limited partnerships, and family limited partnerships are treated similarly. Thus, a partner's classification as a limited or general partner is disregarded. An ownership interest in a partnership is represented by a partner's total interests in the partnership capital and profits.[111] The partnership agreement of some validly formed partnerships may provide that certain partners have no right to share in partnership capital or profits. In most cases, no partnership ownership interests are attributed to such partners for change in ownership purposes.

LIMITED LIABILITY COMPANIES

A *limited liability company* (LLC)[112] is a hybrid business entity having characteristics of both a corporation and a partnership. The owners have limited liability for the actions and debts of the company as well as increased flexibility in organization and management, compared to corporations.

The owners of LLCs are referred to as members. For change in ownership purposes, an ownership interest in an LLC is based on a member's total interest in the LLC capital and profits.

A *single member limited liability company* is treated as a separate legal entity for property tax purposes. Even though a single member LLC may be disregarded for federal tax reporting purposes and its profits and losses reported on the individual member's tax return, its affairs are governed by all of the formalities imposed on all other legal entities.

An LLC's articles of organization and its operating agreement determine who the members are, the extent of the interests they own, the activities it conducts, and the terms of its future dissolution. An LLC acquires its separate existence as a legal entity once its articles of organization are filed and its operating agreement executed. How its federal or state income taxes are reported on various returns has no bearing on the legal recognition of a properly formed LLC (single member or otherwise).

JOINT VENTURE

A *joint venture* is an agreement between individuals or legal entities to work together on a specific project for mutual benefit. A joint venture should be treated as a separate legal entity similar to a partnership when it acts like a partnership and the co-owners share profits and losses like a partnership. If this is not the case, the parties to the joint venture should be treated as tenants in common.

A joint venture can be classified as a partnership for property tax purposes as long as the minimum requirements of a partnership are evidenced: two or more persons who act as co-owners of a business for profit. This means that certain indicia of ownership must exist, such as, the contribution of capital to an enterprise, the rendition of services, the power of management or control of business, and agreement to share in business losses, in order to treat a

[111] Rule 462.180(d)(1)(B).
[112] Beverly-Killea Limited Liability Company Act; California Corporations Code sections 17000 et seq.

joint venture as a partnership for property tax purposes. If one of these elements is missing, the parties to the joint venture should be treated as tenants in common.

In establishing whether a joint venture should be treated as a tenancy in common or as a partnership, the agreement is the controlling factor between the parties. The county assessor should consider the specific terms of their agreement and determine whether it supports the parties' contentions regarding their operational status (as a tenancy in common or a partnership).

MASSACHUSETTS BUSINESS TRUSTS

Generally, a trust is not considered an entity distinct from its present beneficial owners. (See Chapter 3 for a discussion of trusts.) Some trusts, commonly known as *Massachusetts business trusts*, are set up to operate as business organizations and issue transferable ownership certificates (similar to shares of stock in a corporation) that entitle the owners to share in the business income.

Rule 462.160(e) provides that the term *trust* does not include such Massachusetts business trusts or similar trusts which are taxable as separate legal entities for property tax purposes. The statutes and rules that address legal entities in general, section 64 and Rule 462.180, are applicable to such entities.

REAL ESTATE INVESTMENT TRUSTS

Real estate investment trusts, known as REITs, are pooled investment vehicles that invest in different types of real estate or real estate related assets, including shopping centers, office buildings, hotels, and mortgages secured by real estate[113] As with other corporations, REITs can be publicly or privately held. Public REITs may be listed on public stock exchanges like shares of common stock in other firms. Interests in REITs are considered ownership interests for purposes of the change in ownership as applicable to transactions involving legal entities.

CHANGE IN OWNERSHIP OF LEGAL ENTITIES

In general, there are two types of transfers involving legal entities that may trigger a change in ownership of real property. The first type is a transfer of real property between an individual and an entity or between entities. The second type is a transfer of an interest in an entity.

REAL PROPERTY TRANSFERS

In general, a transfer of any interest in real property between a corporation, partnership, LLC, or other entity and a shareholder, partner, or any other person (including another entity) is a change in ownership, unless the ownership interests are identical before and after the transfer. (For more details on this exclusion, see proportional ownership interest transfer exclusion below.)[114]

[113] U.S. Securities and Exchange Commission.
[114] Section 61(j); Rule 462.180(a).

TRANSFER OF INTEREST IN AN ENTITY

Generally, purchases or transfers of corporate voting stock, partnership ownership interests, LLC membership interests, or ownership interests in other legal entities are not changes in ownership of the real property owned by the entity.[115] There are three exceptions to this general rule:

1. A transfer of an ownership interest in a legal entity that results in a *change in control* of that entity is a change in ownership of the real property owned by the entity.[116]

2. A transfer of an ownership interest in a legal entity by an *original co-owner* that results in a cumulative transfer of more than 50 percent of all the interests held by original co-owners having been transferred is a change in ownership.[117]

3. A transfer of shares in a *cooperative housing corporation* is a change in ownership, as discussed at the end of this chapter.[118]

Change in Control

Control of a corporation exists when one entity or person has direct or indirect ownership or control of more than 50 percent of the voting stock of the corporation. *Control* of a partnership or LLC exists when one entity or person directly or indirectly owns more than 50 percent of the capital and profits interests. A transfer of an interest in a legal entity that results in a change in control of that entity is a change in ownership of the real property owned by the entity.

A person or entity obtains *direct control* of an entity:

1. When it acquires ownership or control of more than 50 percent of the voting stock of a corporation;

2. When it acquires more than 50 percent of the total interest in any partnership or LLC capital and profits; or

3. When it acquires more than 50 percent of the total ownership interest in any other entity.[119]

Example 6-1

Z owns 60 percent of the voting stock of Corporation X. B acquires Z's 60 percent interest, thereby obtaining direct control of Corporation X.

There is a change in ownership of all real property owned by Corporation X.

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[115] Section 64(a).
[116] Section 64(c)(1).
[117] Section 64(d).
[118] Section 61(i).
[119] Rule 462.180(d)(1).

Example 6-2

Two brothers, M and B, created a partnership. Subsequently, the partnership purchased real property. B owns 51 percent and M owns 49 percent of the partnership. The partnership had a continuing clause so that the partnership did not terminate if either B or M died. Upon B's death, his will gave 2 percent interest to M and 49 percent interest to his son D.

Because M obtained control of the partnership, there is a change in ownership of all real property owned by the partnership upon B's date of death.

A person or entity may obtain *indirect control* of an entity by acquiring direct control of another entity that, in turn, directly or indirectly controls such entity.[120]

Example 6-3

D owns 60 percent of the single class of voting stock of Corporation X. Corporation X, in turn, owns 100 percent of the single class of voting stock of Corporation Y. B acquires D's 60 percent interest in Corporation X, thus obtaining direct control of Corporation X and indirect control of Corporation Y.

There is a change in ownership of all real property held by Corporation X, which B now directly controls, and Corporation Y, which B now indirectly controls through his ownership of Corporation X's voting stock.

Original Co-owner Interest Transfers

On or after March 1, 1975, if real property or legal entity interests are transferred to an entity in a proportional transfer where the ownership interests are identical before and after so that the transfer is excluded under section 62(a)(2) or Rule 462.180(d)(4), the persons holding the ownership interests in the transferee entity immediately after the transfer are deemed *original co-owners* for purposes of determining whether a change in ownership occurs upon subsequent transfers of the ownership interests in the transferee legal entity.[121] If an excluded transaction to a legal entity is made by a trust, the present beneficiaries of the trust are considered the original co-owners.

A subsequent transfer of any original co-owner's interest in a legal entity is not a change in ownership until cumulatively more than 50 percent of the total ownership interests in the entity has been transferred in one or more transactions.[122] Only the real property previously excluded from change in ownership is reassessed as of the date cumulatively more than 50 percent of the co-owners' interests have transferred. Thus, any property acquired by the entity and reassessed upon the acquisition would not be subject to another reassessment, since the co-owners are not original co-owners with respect to that acquired property.

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[120] Rule 462.180(d)(2).
[121] Section 64(d). Original co-owner status is created only if the excluded transfer occurs on or after March 1, 1975.
[122] Section 64(d).

If, however, cumulatively more than 50 percent ownership interests held by an original co-owner has been transferred and, as a result of the transaction, a person or legal entity has also acquired control of the entity, *all* real property owned by the entity as of the date of change in control, has undergone a change in ownership rather than just the property previously excluded.

Original co-owner status terminates when the property excluded from reassessment under section 62(a)(2) is reappraised or the property interest is transferred out of the entity, regardless of whether an exclusion applies.

COUNTING AND CUMULATION OF ORIGINAL CO-OWNER INTERESTS

Once a person or legal entity is deemed to be an original co-owner, subsequent transfers by or between any of the original co-owners will be *counted and cumulated* for purposes of determining, under section 64(d), when cumulatively more than 50 percent of the original co-owner interests in the entity have been transferred, although there are a few exceptions.

The following list includes the most common types of transfers of original co-owners' interest that are counted for purposes of determining whether a change in ownership has occurred:[123]

- Transfers between parents (original co-owners) and their children.
- Transfers from grandparents (original co-owners) to their grandchildren.
- Transfers between original co-owners, partner A (original co-owner), and existing partner B (original co-owner).
- Transfers of original co-owner interests held by a trust when a revocable trust becomes irrevocable or when the present beneficiary of an irrevocable trust changes.

Once an original co-owner's interest is counted and cumulated, the holder of the interest after the transfer is not an original co-owner with respect to the counted and cumulated interests.

The following list identifies the types of transfers of original co-owners' interest that are **NOT** counted for purposes of determining whether a change in ownership has occurred:[124]

- Transfers between spouses excluded under section 63.
- Transfers between registered domestic partners excluded under section 62(p).
- Transfers into or out of qualifying trusts excluded under section 62(d).
- Proportional transfers excluded under section 62(a)(2), Rule 462.180(b)(2), and Rule 462.180(d)(4).
- Transfers of an original co-owner interest that have already been counted.

[123] Section 64(d).
[124] Rule 462.180(d)(2).

An original co-owner's interest that is transferred but not counted and cumulated is still considered to be an interest of an original co-owner and may be counted and cumulated in a future transfer.

Example 6-4

K and B are equal tenants in common in Greenacre. K and B transfer Greenacre to Corporation Y and in exchange K and B each receive 50 percent of Corporation Y's single class of voting stock.

There is no change in ownership because the transfer is a proportional ownership interest transfer.[125] However, K and B become original co-owners.[126] If K transfers 30 percent of Corporation Y voting stock to C (K's child), and B thereafter transfers 25 percent of Corporation Y voting stock to D (B's grandchild), there is a change in ownership of Greenacre as a result of B's transfer to D, since more than 50 percent of original co-owner interests have transferred. The parent-child and grandparent-grandchild exclusions are not applicable to these transfers because they are transfers of stock and not transfers of real property interests. However, if the same transfers were made by K and B to their respective spouses, no change in ownerships would occur.[127]

Example 6-5

W, X, Y, and Z are equal tenants in common in Blueacre. W, X, Y, and Z transferred Blueacre to a partnership in a transaction that was excluded from change in ownership under section 62(a)(2). As a result of the excluded transaction, W, X, Y, and Z became original co-owners. In 2004, partner W transferred his 25 percent partnership interest to the partnership, resulting in the remaining partners each owning a 33.33 percent interest. In 2006, partner X transferred his 33.33 percent partnership interest to the two remaining partners.

The transfer of W's 25 percent interest in the partnership was not to a spouse, a registered domestic partner, or an excluded trust. Consequently, the transfer should be counted and cumulated. Once an original co-owner interest has been transferred and counted and cumulated, it ceases to be an original co-owner interest. Thus, only 25 percent of X's 33.33 percent interest is considered an original co-owner interest. As a result, no change in ownership occurred in 2006 because only 50 percent of original co-owner interests had cumulatively been transferred.

Generally, original co-owner status terminates when the original co-owner interest has been counted, once the property excluded from reassessment under section 62(a)(2) is reappraised, or the property is transferred out of the legal entity.

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[125] Section 62(a)(2).
[126] Section 64(d).
[127] Rule 462.180(d)(2), Example 8.

MERGERS OF LEGAL ENTITIES

Typically, the merging of two corporations or other entities results in a change in ownership of property owned by the merged (disappearing) entity, unless an exclusion applies. However, if, as a result of the merger, the surviving entity also undergoes a change in control, real property owned by that entity would also be reassessed.

There is no change in ownership when a *statutory merger or conversion* of a partnership into a limited liability company or other partnership (or a limited liability company into a partnership) occurs when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer, and the owners of the converting or disappearing entity maintain the same ownership interest of the converted or surviving entity that they held in the converting or disappearing entity.[128]

Thus, in the case of such a statutory merger or conversion, property is transferred to the surviving entity by operation of law and the owners of the surviving entity are the same as the owners of the disappearing entity. Pursuant to Rule 462.180(d)(4), there is no change in ownership of the real property. Furthermore, the owners of the surviving entity are not original co-owners with respect to the property received from the disappearing entity, except to the extent to which they were original co-owners of the disappearing entity.[129]

Example 6-6

> A limited partnership (LP), which owns Blackacre and in which K and B hold equal partnership interests, merges with a limited liability company (LLC), in which K and B hold equal membership interests, by statutory merger.[130]
>
> There is no change in ownership of Blackacre upon the statutory merger.[131] Section 62(a)(2) does not apply pursuant to Rule 462.180(d)(4). However, if K and B were original co-owners in LP, they remain original co-owners in LLC.

ACQUISITION BY MAJORITY PARTNER

If a majority partner in a partnership (who owns more than 50 percent of the partnership ownership interests) acquires all of the remaining partnership ownership interests or otherwise becomes the sole partner (for example, upon the withdrawal from the partnership of all other partners), the transfer of the minority interests to the majority partner is not a change in ownership of the partnership's real property. This specific exclusion applies to transfers

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[128] Rule 462.180(d)(4).

[129] Rule 462.180(d)(4); Corporations Code sections 15611 et seq. (California Revised Limited Partnership Act); California Corporations Code sections 16100 et seq. (Revised Uniform Partnership Act of 1994); and California Corporations Code sections 17000 et seq. (Beverly-Killea Limited Liability Company Act).

[130] Under the California Revised Limited Partnership Act (California Corporations Code section 15678.1 et seq.) and the Beverly-Killea Limited Liability Company Act (California Corporations Code section 17000 et seq.

[131] California Corporations Code section 17554.

occurring on or after January 1, 1996.[132] The transfer of minority interests to a majority partner that occurred prior to this date resulted in a change in ownership.

Example 6-7

Two brothers, T and J, created a partnership which purchased real property. T owns 60 percent and J owns 40 percent of the partnership. Upon J's death, his will gave his 40 percent interest in the partnership to T.

Because T already had control of the partnership, there is no change in ownership upon T's acquisition of the minority interest. The subsequent transfer of the real property from the partnership to T is a proportional transfer because ownership interests are the same before and after the transfer.

LEGAL ENTITY INTERESTS HELD BY TRUST

The change in ownership laws governing interests in legal entities also apply to such interests when held by a trust.

Irrevocable Trusts

The transfer of an ownership interest in a legal entity holding an interest in real property into a trust in which the trustor-transferor is the sole present beneficiary or to a trust in which the trustor retains the reversion as defined in Rule 462.160(b)(1)(B) is excluded from change in ownership. However, a change in ownership of real property held by the legal entity does occur if any of the following sections apply, because the change in ownership laws governing interests in legal entities also apply when such interests are held in trust:[133]

- Section 61(j), non-proportional transfer.
- Section 64(c)(1), change in control.
- Section 64(d), transfer of more than 50 percent of original co-owner interests.

Example 6-8

The HW Partnership acquired real property (no original co-owners). Subsequently, H and W, husband and wife who are equal partners in HW Partnership, transfer 70 percent of their partnership interests to HW Irrevocable Trust and name their four children as the present beneficiaries of the trust with equal shares. Because the trust is irrevocable, under section 64(a) the transfer of the partnership interests to the trust is excluded from change in ownership because no person or entity obtains a majority ownership interest in the partnership.[134]

However, assume that H and W transfer 70 percent of their partnership interests to the irrevocable trust and only one daughter is the present beneficiary of the trust. Under

[132] Section 64(c)(2).
[133] Rule 462.160(b)(1)(C).
[134] Rule 462.160, Example 4.

section 64(c), the transfer of the partnership interest to the trust is considered a change in control of the partnership because the daughter obtained a majority ownership interest in the partnership. All the real property held by the partnership would undergo a change in ownership. The parent-child exclusion is not applicable because the daughter obtained partnership interests, not real property interests.

Revocable Trusts

The transfer by the trustor of real property, or an ownership interest in a legal entity holding an interest in real property, to a trust that is revocable by the trustor is excluded from change in ownership.[135] However, a change in ownership will occur when the trust becomes irrevocable unless the trustor-transferor remains or becomes the sole present beneficiary or unless otherwise excluded from change in ownership (interspousal or registered domestic partner exclusion).[136]

Example 6-9

A, who is an original co-owner in a partnership, transfers his 80 percent partnership interest to his revocable trust. The transfer is not counted or cumulated for purposes of section 64(d). Subsequently, A dies, the trust becomes irrevocable, and A's son becomes the sole beneficiary.

More than 50 percent of an original co-owner interest has been transferred, and a change in control of the partnership occurred upon the date the trust became irrevocable and when the son acquired the majority interest. Because of the change in control, there is a change in ownership of all partnership real property, and there are no more original co-owners.

However, if instead of A's son, A's four children became the present beneficiaries of the trust, there is no reassessment because no one has acquired control of the partnership. If there had been a prior exclusion of A's interest under section 62(a)(2), then the 80 percent transfer would exceed the 50 percent original co-owner cumulative limit, and the property previously excluded would be reassessed. There would be no more original co-owners.

CHANGE IN OWNERSHIP EXCLUSIONS INVOLVING LEGAL ENTITIES

PROPORTIONAL OWNERSHIP INTEREST TRANSFER EXCLUSION

Any transfer of real property between an individual or individuals and an entity, or between legal entities, that results solely in a change in the method of holding title to the real property, and in which the proportional ownership interests of the transferors and transferees in each and every piece of real property transferred remain the same after the transfer, is excluded from a change in ownership.[137] This is known as the *proportional ownership interest transfer exclusion*.[138]

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[135] Section 62(d).
[136] Rule 462.160(c)(2).
[137] Section 62(a)(2). Reorganizations of affiliated corporations are governed by section 64(b).
[138] Section 62(a)(1).

Example 6-10

D and B, equal co-tenants, transfer their real property to Corporation X and each take back 50 percent of the single class of voting stock. No change in ownership occurs, since the proportional ownership interests remain the same before and after the transfer.

However, if D and B each take back 49 percent of the voting stock and C receives 2 percent of the voting stock, there will be a change in ownership of the entire property since the proportional ownership interests did not remain the same before and after the transfer.[139]

Example 6-11

Corporation X owns Blackacre and Whiteacre (both are of equal value). D and B each own 50 percent of the single class of voting stock of Corporation X. D and B are indirect owners of the real property owned by Corporation X. Corporation X transfers Whiteacre to D and Blackacre to B.

There is a change in ownership of 100 percent of both Blackacre and Whiteacre because the transfers are disproportionate. B owned 50 percent of Blackacre before the transfer and 100 percent after the transfer. Similarly, D owned 50 percent of Whiteacre before the transfer and 100 percent after the transfer. Thus, both Blackacre and Whiteacre were reassessed.

However, if Corporation X transfers Whiteacre and Blackacre to both D and B as joint tenants or as equal tenants in common, there is no change in ownership because the transfers are proportional to their ownership of the corporations' voting stock.[140]

In addition, transfers of stock, partnership or LLC interests, or any other interests in a legal entity, between legal entities or by an individual to a legal entity, or vice versa, which results solely in a change in the method of holding title and in which the proportional ownership interests of the transferors and transferees, in each and every piece of property represented by the interests transferred, remain the same after the transfer, do not constitute changes in ownership.[141]

Example 6-12

A owns 60 percent and B owns 40 percent of the voting stock in a corporation, and they transfer those interests to a newly formed LLC in which A receives 60 percent and B receives 40 percent of the LLC capital and profits interests.

The transfers are excluded from change in ownership since the proportional ownership interests of A and B in the real property owned by the corporation remain the same before and after the transfer. However, if A received 59 percent, B received 39 percent, and C received 2 percent of the LLC capital and profits interests, a change in control under

[139] Rule 462.180(b)(2), Example 2.
[140] Rule 462.180(b)(2), Example 4.
[141] Rule 462.180(d)(4).

section 64(c) results, and all of the real property owned by the corporation would be reassessed.

Example 6-13

Using example 6-12, A instead withdraws from the corporation and receives a 60 percent tenancy in common interest in the property in exchange.

The withdrawal is excluded from change in ownership because the proportional ownership interests of A and B in the real property remain the same. B would obtain control of the corporation, but there would not be a change in ownership because the transfer was proportional. B, however, would become an original co-owner as to its corporation stock.

If A transferred his tenancy in common interest in the property to a newly formed LLC in exchange for 100 percent of the capital and profits interests in the LLC, the transfer would be excluded from change in ownership as a proportional transfer. A would become an original co-owner in the LLC, and the LLC would be a tenant in common with the corporation.

INTERSPOUSAL AND REGISTERED DOMESTIC PARTNER EXCLUSIONS

A change in ownership does not include any transfer of legal entity interests solely between spouses[142] or registered domestic partners.[143] Thus, if a spouse or registered domestic partner acquires control of an entity due to the transfer of entity ownership interests from his or her respective spouse or registered domestic partner, a change in control does not occur.[144] (See Chapter 11 for a discussion of interspousal and registered domestic partner exclusions.)

Example 6-14

The single class of voting stock of Corporation X is owned 50 percent by H, 25 percent by his wife W, and 25 percent by his brother B. H acquires W's 25 percent interest, thereby acquiring 75 percent ownership of the Corporation X stock.

Even though H obtained more than 50 percent interest in Corporation X, the change in control is excluded from reassessment under the interspousal exclusion.

For purposes of change in ownership, a spouse's or registered domestic partner's ownership interest in an entity is not attributable to the other party. Furthermore, when entity interests are held as community property, each spouse or registered domestic partner owns one-half of the community property interest. (See Chapter 11 for a discussion of community property.)

Example 6-15

X owns a 48 percent interest in the capital and profits of an LLC as community property with B, her registered domestic partner. B purchases a 10 percent membership interest in the

[142] Section 63.
[143] Section 62(p).
[144] Rule 462.220(a), (b), and (c).

capital and profits of the LLC from C, and this newly acquired 10 percent interest is also held as community property. Together, X and B own 58 percent of the LLC membership interests as community property.

Since the community property interests of X and B are considered for property tax purposes as one-half owned by each X and B, each are considered to own one-half of 58 percent (29 percent) of the LLC membership interests. Since neither has acquired more than 50 percent of the LLC membership interests, there is no change in control of the LLC, and, therefore, no change in ownership of property owned by the LLC.

Example 6-16

H owns 45 percent of the voting stock of Corporation N as his separate property, H and his wife W own 6 percent as their community property, and X owns 49 percent. H and W each own 3 percent of the community property interest, so H owns 48 percent of the voting stock of Corporation N. H and W purchase a 5 percent interest from X as their community property, so each will own an additional 2.5 percent interest.

This is a change in ownership of all the real property owned by Corporation N, since H has 50.5 percent of the voting stock, and has gained control of the corporation.

Transfers of real property and ownership interests in legal entities between registered domestic partners or spouses may be excluded from change in ownership under sections 62(p) and 63. However, a transfer of real property between a person and a legal entity that is wholly owned by that person's spouse or registered domestic partner is not a transfer to a spouse or partner, but to a legal entity. Neither is it a transfer of legal entity interests between spouses or partners. Such a transaction does not qualify for either the interspousal or registered domestic partner exclusion.

A legal entity, even one wholly owned by a spouse or registered domestic partner, is not a spouse. Thus, a transfer to a legal entity owned by a spouse or registered domestic partner is not the same as a transfer to the spouse or registered domestic partner. If the ownership interests are not the same before and after the transfer, the property will be subject to change in ownership.

Example 6-17

A transfer of separately owned property from a husband to a partnership of which the husband owns 95 percent and his wife owns 5 percent is not eligible for the interspousal exclusion. Since the ownership interests are not the same before and after the transfer, the property is subject to a 100 percent change in ownership.

Example 6-18

A transfer from two registered domestic partners to a corporation, a legal entity wholly owned by one of the registered domestic partners, is not eligible for the registered domestic partnership exclusion.

AFFILIATED GROUP EXCLUSIONS

The following two types of reorganizations are not a change in ownership:

- A corporate reorganization where all of the corporations involved are members of an affiliated group (and that qualifies as a reorganization under section 368 of the Internal Revenue Code and is accepted as a nontaxable event by California statutes).
- Any transfer of real property or entity interests among members of an affiliated group.[145]

Affiliated group means one or more chains of corporations connected through stock ownership with a common parent corporation if both of the following conditions are met:

- The voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by a corporation related by voting stock ownership to a common parent; and
- The common parent corporation directly owns 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations.[146]

For the reorganization exclusion, the taxpayer must furnish proof that the transfer meets the requirements of section 64(b). By its express language, this exclusion is limited to corporations and, therefore, does not apply to other entities such as LLCs or partnerships.

If real property is transferred between corporations that are not part of the same affiliated group,[147] only the property transferred undergoes a change in ownership.[148]

PARENT-CHILD AND GRANDPARENT-GRANDCHILD EXCLUSION

The parent-child and grandparent-grandchild exclusions apply only to transfers of real property; transfers of interests in legal entities that hold real property do not qualify.[149] Thus, if property is held in a legal entity (for example, a family limited partnership), the property must first be transferred by the legal entity to the individual partners prior to the parent-child or grandparent-grandchild transfer in order to qualify for the exclusion. (See Chapter 7 for a discussion of the applicability of the step transaction doctrine to such transfers. See Chapter 12 for a discussion of the parent-child and grandparent-grandchild exclusions.)

COOPERATIVE HOUSING CORPORATIONS

A legal entity to which the legal entity change in ownership laws do not apply is a cooperative housing corporation. A *cooperative housing corporation* is defined as "a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right

[145] Section 64(b)(2); Rule 462.180(b)(1); Public Law 92-181; a reorganization of farm credit institutions pursuant to Federal Farm Credit Act of 1971 is not a change in ownership.
[146] Section 64(b)(1) and (b)(2).
[147] Section 64(d).
[148] Rule 462.180(a).
[149] Section 63.1(c)(8).

to possess a portion of the real property."[150] The transfer of shares in the corporation also transfers the exclusive right of occupancy to the portion of the real property that corresponds to those shares.

A cooperative housing corporation is formed primarily so multiple shareholders can collectively own improved real property in which each shareholder has the right of exclusive occupancy to a portion of the property. Examples include:

- A cooperative apartment building where share ownership confers the right to exclusively occupy a particular apartment unit.
- A vacation home where share ownership gives the owner the right to exclusively occupy a cabin along with pro rata ownership of the common areas.

For change in ownership purposes, ownership of shares in a cooperative housing corporation is considered to be substantially equivalent to a fee interest in the real property. A transfer of a stock share in a cooperative housing corporation results in a change in ownership of the particular unit transferred, unless an exclusion applies.[151]

Following a change in ownership, a new base year value is established equal to the fair market value of the real property interest transferred, not the value of the stock.[152] (See Chapter 8 for further information on cooperative housing corporations.)

[150] Section 61(i); Rule 462.180(d)(3).
[151] Section 61(i), Rule 462.180(d)(3).
[152] Section 61(i); see section 62(i) for an exclusion.

CHAPTER 7: STEP TRANSACTION DOCTRINE

The *step transaction doctrine* is a corollary of the general tax principle that the incidence of taxation depends upon the substance of a transaction rather than its form. Thus, the step transaction doctrine is applied when a series of transfers are used to transfer real property circumventing the change in ownership laws.[153] The general principle is that whether a transaction is a change in ownership depends upon the substance of a transaction rather than its form.[154] That is, the doctrine focuses on *what really occurred*, after all the steps in a transaction are completed, rather than what happened upon the completion of each step in a transaction.

When the step transaction doctrine applies, the substance of the transaction is viewed as a transfer from the owner(s) of the property prior to the first transfer to the resulting owner(s) after the last transfer. If the step transaction doctrine applies, and such theoretical direct transfer would have resulted in a change in ownership, a county assessor may collapse the steps, treating the entire series of steps as having occurred in one single direct step. As a result, the property would be subject to reassessment, unless an exclusion applies.

In *Shuwa Investments Corp. v. County of Los Angeles*,[155] the California Court of Appeal set forth three tests for determining the application of the step transaction doctrine for property tax purposes:[156]

- *End result test*. Under the end result test, if it appears that a series of transfers were really component parts of a single transaction intended from the beginning to be taken for purposes of reaching the end result, the step transaction doctrine may apply and the intermediate steps may be disregarded.
- *Interdependence test*. Under the interdependence test, if the steps or transfers taken were so interdependent that the legal relations created by one transaction or transfer would have been fruitless (that is, "fruitless" apart from the parties' intention to qualify for an exclusion) without completing the entire series of steps, then the step transaction doctrine may apply and the intermediate steps may be disregarded.
- *Binding commitment test*. Under the binding commitment test, if the structure of the transactions establishes that there is an agreement that once the first step or transfer is taken, the parties are obligated to complete the remainder of the steps, the step transaction doctrine may apply and the intermediate steps may be disregarded.

The determination as to whether the step transaction doctrine should be applied is based upon all of the surrounding facts, including but not limited to, the timing of the transfers. The same set of

[153] *Shuwa Investments Corp. v. County of Los Angeles* (1991) 1 Cal.App.4th 1635, 1648-1649.
[154] *Shuwa, supra,* at p. 1648.
[155] (1991) 1 Cal.App.4th 1635.
[156] *Shuwa, supra.,* at pp. 1650-1653.

facts may meet the criteria for more than one of the three tests set forth above. However, only one test needs to be satisfied for the step transaction doctrine to apply.[157]

In addition, the existence of a business purpose for any of the transfers does not prevent the step transaction doctrine from being applied in a particular situation; however, it may be a factor, along with all other facts and circumstances, that should be considered when analyzing the entire transaction to determine whether or not the step transaction doctrine should be applied.[158]

Example 7-1

X and B are 50/50 partners in partnership PS that owns ten parcels of land. The ten parcels are separate appraisal units.

Step 1: X and B dissolve PS and distribute all ten parcels to themselves as equal tenants in common.

Step 2: X transfers his undivided co-tenancy interest in parcels 1-5 to B, and B transfers his undivided co-tenancy interest in parcels 6-10 to X. X ends up with sole ownership of parcels 6-10 and B ends up with sole ownership of parcels 1-5.

If each step were respected, Step 1 would be excluded as a proportional transfer.[159] Step 2 would result in a 50 percent reassessment of each parcel.

However, if only a single step were taken, such that upon dissolution of PS X received parcels 6-10 in liquidation and B received parcels 1-5 in liquidation, a 100 percent change in ownership of all ten parcels would occur because a disproportionate transfer between a legal entity and an individual is a change in ownership of the entire interests transferred.[160]

Thus, the series of steps and the surrounding circumstances should be examined to determine whether each step should be respected for property tax purposes, or whether the two steps should be considered component parts of the same transaction, the original intent, and ultimate result of which were for each partner to acquire 100 percent ownership in five separate parcels.

Conversely, the doctrine does not allow a taxpayer to invent steps that never existed. A transaction is to be given its tax effect in accord with what actually occurred and not in accord with what might have occurred.[161] Thus, a transfer from a parent to a family partnership whose partners are the parent and the parent's adult children is a non-proportional transfer (ownership interests are not the same before and after the transfer) and results in a change in ownership, even though the transfer would have been excluded had parents first transferred the property to their children and then transferred the property to the family partnership.

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[157] *McMillin-BCED/Miramar Ranch North v. County of San Diego* (1995) 31 Cal.App.4th 545, 556.
[158] *McMillin-BCED/Miramar Ranch North , supra,* at pp. 558-559.
[159] Section 62(a)(2).
[160] Section 61(j).
[161] *Penner v. Santa Barbara* (1995) 37 Cal. App. 4th 1672.

APPLICATION TO PARENT-CHILD AND GRANDPARENT-GRANDCHILD EXCLUSIONS

The parent-child and grandparent-grandchild exclusions apply only to transfers of real property; transfers of interests in legal entities that hold real property do not qualify.[162] Thus, if property is held in a legal entity (for example, a family limited partnership), the property must first be transferred by the legal entity to the individual owners prior to the parent-child or grandparent-grandchild transfer in order to qualify for the exclusion. (See Chapter 12 for a discussion of the parent-child and grandparent-grandchild exclusions.)

[162] Section 63.1(c)(8).

CHAPTER 8: COMMON INTEREST DEVELOPMENTS

In a *common interest development*, each owner is entitled to occupy a particular unit, and certain areas are owned in common by all owners or by a private owners' association. Common interest developments include planned developments, condominiums, community apartments, and stock cooperatives.[163]

In community apartment projects,[164] planned developments,[165] and condominiums,[166] ownership of the real property is direct. In stock cooperatives and cooperative housing corporations, membership in the corporation (by ownership of stock or membership interests) is coupled with the exclusive right to possess a portion of the property.[167] For property tax purposes, a *cooperative housing corporation* is a common interest development in which membership in the corporation (by stock ownership) is coupled with the exclusive right to possess a portion of the real property. Other types of real property held in common interest form include shopping centers and industrial parks.

A *time-share* entitles the purchaser to use a specified or unspecified unit of real property for a specified period of time. A time-share purchase that includes a fee interest in real property is known as a *time-share estate*; other time-share interests are known as *time-share uses.*

REAPPRAISAL OF INTERESTS

When an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred is reappraised.[168] Where separate property interests, such as units or lots in common interest developments, are transferred along with interests in commonly owned areas, then only the unit or lot transferred and the share in the common area reserved as an appurtenance of such unit or lot is reappraised. Any increased taxes are imposed only on the owner of the reappraised unit.[169] An *appurtenance* is defined as:

> That which belongs to something else; an adjunct; an appendage. Something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land....

A share of a common area is only reappraised on the sale of a separately owned interest when there is evidence that the common area or a share is an appurtenance reserved to the separately owned interest and is *substantially equal to the value of the fee*.[170]

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[163] Civil Code section 1351(c).
[164] Civil Code section 1351(d).
[165] Civil Code section 1351(k).
[166] Civil Code section 1351(f).
[167] Section 61(i).
[168] Section 65.1(a).
[169] Section 65.1(b).
[170] Section 60.

In common interest developments, owners of individual units and lots may be separately assessed if a request is made. Separate assessments are governed by the following provisions:

- Planned developments—Section 2188.5
- Condominiums—Sections 2188.3 and 2188.6
- Community apartment projects or housing cooperatives—Section 2188.7
- Time-share estates and projects—Sections 2188.8 and 2188.9

Separate assessment of undivided areas is governed by section 2801, et seq.

COOPERATIVE HOUSING CORPORATIONS

The transfer of stock in a cooperative housing corporation is a change in ownership, unless the corporation meets certain financing criteria and the stock is transferred to the corporation or persons who qualify for housing cost assistance based on income. In order to qualify for this exclusion, the transfer must meet all of the following conditions:[171]

- The cooperative was financed under a single mortgage, and that mortgage was insured under or the cooperative was purchased, financed, or assisted by funds from certain National Housing Acts or was financed by a direct loan from the California Housing Finance Agency;
- The applicable government insurer or lender approved the regulatory and occupancy agreements; and
- The transfer is to a person or family that qualifies for the purchase by reason of limited income.

CONDOMINIUM CONVERSIONS

Conversion of an apartment building, housing cooperative, or community apartment to condominium ownership is not an automatic change in ownership. Once the conversion is completed, however, and each unit is sold for the first time, the transfers from the former owner(s) to the purchasers of the condominium units may be excluded from change in ownership, depending on the circumstances. (See Chapter 13 for a discussion of partitions and condominium conversions.)

Example 8-1

The Mayflower is a 24-unit apartment complex, owned by co-owners as tenants in common. Each co-owner possesses the exclusive right to occupy an identified apartment unit. The apartment complex has been separately assessed since 1984. Now, the co-owners file a condominium plan with the county to convert the residential complex to condominiums. The owners will record a subdivision map dividing the complex into condominium units and

[171] Section 62(i); see discussion of cooperative housing corporations in Chapter 6.

common areas. Deeds will be recorded granting each resident ownership of that resident's respective unit.

The transfer of the individual units is not subject to change in ownership.[172]

If the property is a typical apartment building and the renters purchase their units from the lessor, then whether there is a change in ownership is determined by the length of the lease term remaining at the time of purchase. The transfer of a lessor's interest in real property subject to a lease with a remaining term, including renewal options, of 35 years or longer is excluded from change in ownership. There is a change in ownership where the remaining term, including renewal options, is less than 35 years.[173]

If the property is a stock cooperative, there is a change in ownership when the owner sells the stock representing individual units,[174] unless the property and the purchaser meet the exclusion criteria set forth in section 62(i).

If the project is a community apartment where each tenant owns an undivided interest in the entire project, there is no change in ownership if the proportional interests of the owners remain the same before and after the transfer.[175] This is usually accomplished when the persons purchase the units they occupy.

TIME-SHARES

A *time-share* entitles the purchaser to use a specified or unspecified unit of real property for a particular period of time. There are two categories of time-share interests: time-share estates and time-share uses.

Time-share interest is defined to mean and include either of the following:[176]

> (1) A "time-share estate," which is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof.
>
> (2) A "time-share use," which is the right to occupy a time-share property, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a time-share property.

Each time-share estate is, for property tax purposes, a separate estate or interest in real property.[177] The valuation of time-shares must be limited to the value of the real property

[172] Section 62(a)(1).
[173] Section 61(c)(2).
[174] Section 61(i).
[175] Section 62(a).
[176] Business and Professions Code section 11212(x).
[177] Business and Professions Code section 11213.

interests, whether fee or leasehold, and exclude the value of any services, personal property, and other rights not related to real property.[178]

TIME-SHARE ESTATE

A *time-share estate* consists of the right to use a time-share unit and an undivided fractional ownership of the underlying fee interest in the real property. The duration of the time-share interest may be into perpetuity, as in a fee simple co-ownership of a time-share unit, or it may be for a limited term, as in a life estate or an estate for years in a time-share unit. The time-share estate purchaser receives all the rights inherent in undivided co-ownership of real estate, such as the right to sell, lease, or bequeath his or her interest. Fee time-shares may be termed *undivided interest time-shares* or *interval ownership time-shares* (for example, a tenancy for years plus a vested remainder as tenant in common with other owners of a time-share unit).

Generally, transfer of a time-share estate is a change in ownership that requires the reappraisal of the interest transferred, unless another exclusion applies[179] (for examples, the 5 percent/$10,000 exclusion,[180] interspousal exclusion,[181] or parent-child[182] exclusion).

TIME-SHARE USE

Purchasers of *time-share uses* receive only those rights specifically granted to them by the developer of the time-share project, which usually means the right to occupy a unit and the related time-share premises. The duration of this right may range from 15 years or fewer to as long as 99 years; the time-share developer remains the fee owner of the real estate. Time-share uses may be referred to as *leasehold interest time-shares*, *vacation licenses*, *club memberships,* or *rights to use*.

If a contract gives exclusive possession of the premises as against all others, it is considered a lease.[183] As with other leases, the transfer of a time-share use having an original term, including renewal options, of 35 years or longer is usually a change in ownership that requires the reappraisal of the interest transferred.[184]

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[178] Section 998(a).
[179] Section 65.1(b).
[180] Section 65.1(a).
[181] Section 63.
[182] Section 63.1.
[183] *Cal-Am Corporation v. Department of Real Estate* (1980) 104 Cal.App.3d 453, 457.
[184] Section 61(c).

CHAPTER 9: MANUFACTURED HOMES AND MOBILEHOME PARKS

Homes subject to local property taxation under the Manufactured Home Property Tax Law[185] are referred to as manufactured homes. For property tax purposes, the term *manufactured home* includes a manufactured home as defined in Health and Safety Code section 18007 or a mobilehome as defined in Health and Safety Code section 18008.[186] The Manufactured Home Property Tax Law does not pertain to commercial coaches, factory-built housing, recreational vehicles, or park trailers. It also does not apply to manufactured homes that have been affixed to land on a permanent foundation system and are taxed as real property[187] or to manufactured homes that are subject to the vehicle license fee.[188]

CHANGE IN OWNERSHIP OF MANUFACTURED HOMES

When a manufactured home that is subject to local property taxation experiences a change in ownership, the home is reassessed.[189] Most of the same change in ownership provisions apply to manufactured homes as to traditional structures.[190] Base year values are determined for manufactured homes on the dates they change ownership or upon completion of new construction.[191] Additionally, base year values are annually adjusted by an inflationary rate that cannot exceed 2 percent. Annually, the value to be enrolled is (1) the lesser of the base year value compounded annually by an inflation factor that cannot exceed 2 percent, or (2) the full cash value as of the lien date.

A manufactured home that is locally assessed may qualify as a principal place of residence for purposes of the parent-child or grandparent-grandchild exclusions[192] and the over 55/disabled persons transfer of base year value exclusion.[193] (See Chapters 12 and 14, respectively, for a discussion of these exclusions.)

CHANGE IN OWNERSHIP OF MOBILEHOME PARKS

Certain transfers of mobilehome parks are excluded from change in ownership if the park is ultimately purchased by at least 51 percent of the tenants renting the individual spaces of the park.[194] Qualifying conversion to resident ownership under these exclusions permits the residents of the park to retain the base year value of the previous park owner, rather than causing a reassessment of the park to current market value. In some instances, prior to the transfer to the

[185] Section 5800 et seq.
[186] Section 5801(a).
[187] Section 5801(b)(1).
[188] See Assessors' Handbook Section 511, *Assessment of Manufactured Homes and Parks*.
[189] Section 5801(b)(1).
[190] Section 5814.
[191] Section 5802.
[192] Section 63.1.
[193] Section 69.5.
[194] Sections 62.1 and 62.2.

residents directly or to an entity owned by the residents, there is an interim transfer of the park to a non-resident-owned entity. This entity helps facilitate the purchase and conversion to a resident-owned park.

There are three change in ownership exclusions with respect to transfers of mobilehome parks:[195]

1. Transfers to resident-owned entities
2. Transfers of rental spaces to the residents
3. Transfers to non-resident-owned entities

TRANSFERS TO RESIDENT-OWNED ENTITIES

Section 62.1(a)(1) excludes from change in ownership a transfer on or after January 1, 1985 of a manufactured home park to an entity formed by the tenants of the park. A transfer of a manufactured home park to an entity formed by the tenants of the park on or after January 1, 1989 is excluded if the tenants who were renting at least 51 percent of the spaces in the park prior to the transfer participate in the transaction through the cumulative ownership of at least 51 percent of the voting stock, or other ownership or membership interests, of the entity which acquires the park.

If, on or after January 1, 1998, a park is acquired by an entity that did not *initially* attain the required resident participation level of 51 percent, the exclusion is still available. In such instances, the entity has one year after the date of the transfer to attain the required 51 percent participation level. However, if the participation level of at least 51 percent is not attained within the one-year period, the county assessor is required to reappraise the park, as of the date of the transfer, and levy escape assessments following the transfer.

Additionally, during the one-year period, transfers of ownership interests from the resident-owned entity to the individual space owners are excluded from reassessment. However, any transfer of ownership interests from the resident-owned entity to individual space owners <u>after</u> the one-year period are not excluded from change in ownership, even if the transfer is to an individual who was renting a space in the park prior to the transfer of the park to the resident-owned entity. Such transfers are subject to a change in ownership of a pro rata portion of the real property of the park.

TRANSFERS OF RENTAL SPACES TO THE RESIDENTS

Section 62.1(a)(2) provides an exclusion from change in ownership for the transfer, on or after January 1, 1985, of rental spaces in a park to the residents of the rental spaces, provided that:

- At least 51 percent of the rental spaces are purchased by the individual tenants renting their spaces prior to purchase;
- The rental park has been in operation for five years or more; and

[195] Sections 62.1 and 62.2.

- The individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization[196] to operate and maintain the park.

In determining the required participation level for a park, section 62.1 requires that 51 percent of the rental spaces, or the tenants of 51 percent of the rental spaces, meaning *all of the rental spaces in the park*, must be purchased by the individual tenants renting their spaces prior to the purchase, or must participate as owners.

To qualify for this exclusion, it is not necessary that all of the transfers of rental spaces to the individual residents occur on the same day. The required 51 percent participation level may be accumulated, but must occur within the one-year period that the residents have to form the resident organization. However, even after the one-year period, as long as the 51 percent requirement has been met, the change in ownership exclusion applies to any purchase of a space by that group of tenants who were renting spaces in the park during this one-year period.

If all the conditions[197] are not satisfied, the county assessor is required to reappraise the properties, as of the date of the transfers, and levy escape assessments for the spaces that were transferred.

TRANSFERS TO NON-RESIDENT-OWNED ENTITIES

Section 62.2 allows an exclusion from change in ownership for certain transfers of a manufactured home park to an entity which is not formed by the residents (for example, nonprofit corporation, stock cooperative corporation, tenant-in-common ownership group, or a governmental entity). The exclusion is available for a temporary *transition* period to facilitate the ultimate transfer of the park to permanent resident ownership under one of the provisions of section 62.1.

For parks transferred between January 1, 1989 and January 1, 1993, the transition period was 18 months.[198] In general, for parks transferred after 1993, the transition period within which the section 62.2 requirements must be complied with is 36 months.[199]

A transfer to either a resident-owned entity[200] or a transfer to at least 51 percent of the tenants[201] must occur within the applicable transition period or the exclusion is relinquished. This means, at least 51 percent of the park rental spaces must be transferred to the individual tenants of those spaces, or the tenants of 51 percent of the spaces must participate as owners, within the specified time.

If the county assessor is notified in writing at the time the transferee files the change in ownership statement that the transferee intends to qualify under section 62.2, the park will not be

[196] Health and Safety Code section 50781(l).
[197] Section 62.1; Health and Safety Code section 50781.
[198] Section 62.2(a)(1).
[199] Section 62.2(a)(2).
[200] Section 62.1(a)(1).
[201] Section 62.1(a)(2).

reappraised pending satisfaction of all relevant requirements. If all the requirements of section 62.2 are not met, the county assessor is required to reappraise the park, as of the date of the transfer, and levy escape and supplemental assessments.

CHANGE IN OWNERSHIP OF SPACES

Generally, once a transfer of a manufactured home park has been excluded from change in ownership pursuant to one of the provisions of section 62.1, subsequent transfers of individual ownership interests are not excluded from change in ownership and are subject to reappraisal. With respect to transfers excluded by section 62.1(a)(2), since the individual residents then own their lots or spaces, subsequent transfers are treated as changes in ownership just as any other transfer of an interest in a planned unit development, condominium, or subdivision.

With respect to transfers excluded by section 62.1(a)(1), there is an exception to the general rule that transfers of interests in legal entities do not ordinarily constitute changes in ownership of the real property owned by the legal entity.[202] Section 62.1(b)(1) provides:

> If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to paragraph (1) of subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity which acquired the park in accordance with paragraph (1) of subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by Section 62, 63, or 63.1.

Commonly, a park is acquired by a nonprofit corporation formed by the former tenants. Subsequent purchasers of the manufactured homes also pay an established price for a share in the corporation, where each share gives its holder the right to occupy a specific space in the park. A share in the corporation usually may be transferred only in combination with the purchase of a manufactured home. The purchase price for a share may represent consideration for both the manufactured home and the fractional interest in the corporation.

PRO RATA PORTION

Once a park has been converted to a resident-owned entity, a subsequent transfer of ownership interest results in a change in ownership of the manufactured home and of a pro rata portion of the real property of the park. A *pro rata portion of the real property* is defined to mean the total real property of the park, multiplied by the fractional interest in the park that is conveyed by the transferred share of stock or other ownership interest.[203] In simplistic terms, if there are 100 shares of outstanding stock, issued or unissued, a transfer of one share gives rise to a reassessment of a 1/100th interest of the real property of the park.

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[202] Section 64.
[203] Section 62.1(b)(2).

The Legislature intended that transfers of ownership interests in such parks be treated the same as transfers of other forms of "share" ownership (for example, condominiums or stock cooperatives) and with stick-built homes. Thus, while each share in the corporation may be said to afford its holder the right, for example, to participate in the governance of the corporation and a management of the park, such rights are merely incidental to that which the share conveys to its holder in substance: (1) the outright ownership of a particular mobilehome, and (2) the exclusive right to occupy a particular space within the park.

As with any property type, location within a park can make a difference in the value of the space being transferred. If the purchase price was negotiated in the open market at arm's length, then the county assessor should enroll the entire amount in the combined assessments of the manufactured home and the underlying interest in the park. The most reasonable way of allocating the value between the two assessments would be to apply the land residual approach to extract from the purchase price the value of the manufactured home, using one of the recognized value guides,[204] and then assign the remainder of the purchase price to the interest in the park. The value of the manufactured home cannot include any value attributable to the particular site where the manufactured home is located. This method of allocation will ensure that the market value attributable to the location of the space being transferred is recognized and allocated to the interest in the park and not the manufactured home.

Any pro rata portion(s) of real property which changed ownership pursuant to section 62.1(b) may be separately assessed.[205] Initially, a written request must be made by the governing board of the park.[206] However, whenever a portion of the real property of a park becomes subject to separate assessment, it shall continue to be subject to separate assessment in subsequent fiscal years, and once a request for separate assessment is made, it is binding on all the future owners of the voting stock or other ownership or membership interests in the entity which owns the park.

TRANSFERS OF MANUFACTURED HOME PARK SPACES IN ENTITIES FORMED PRIOR TO 1985

Any transfer on or after January 1, 1989 of ownership interests in a park is a change in ownership of a pro rata portion of the real property of the park if the transfer of the mobilehome park has been excluded from a change in ownership pursuant to section 62.1(a)(1).[207] Section 62.1(a)(1),[208] by its terms, applies only to transfers of parks on or after January 1, 1985. As such, only transfers of parks after that date qualify for the exclusion and trigger the pro rata change in ownership requirement.

Accordingly, for parks that transferred to entities prior to 1985, the provisions of section 62.1 providing for pro rata changes in ownership do not apply. Since such an owner is by definition a

[204] Section 5803.
[205] Sections 62.1(b)(3) and 2188.10.
[206] Section 2188.10.
[207] Section 62.1(b)(1).
[208] Enacted January 1, 1985.

legal entity, the statutory provisions applicable to transfers of interests in legal entities[209] generally would govern.

With certain exceptions, the purchase or transfer of ownership interests in legal entities are not deemed to constitute a transfer of the real property of the legal entity.[210] Therefore, unless one of the enumerated exceptions described in section 64(c) or (d) occurs (such as one person or entity obtaining a majority interest in the park entity), the transfers of interests in the park entity would ordinarily not constitute changes in ownership or precipitate reassessments of the real properties of the entity.

However, there may be instances, analyzed on a case-by-case basis, where the transfer of an ownership interest in such legal entity is accompanied by the transfer of a present interest in real property, including the beneficial use thereof, the present value of which is substantially equal to the value of the fee interest.[211] This could occur, for example, where there is transferred a specific right to occupy a specific parcel of real property, coupled with the right to sell or otherwise transfer that occupancy right. Such a transfer would meet the definition of change in ownership set forth in section 60.

[209] Section 64.
[210] Section 64(a).
[211] Section 60.

CHAPTER 10: MISCELLANEOUS ISSUES

This chapter presents a brief overview of less common change in ownership issues.

EMPLOYEE BENEFIT PLANS

Section 66 excludes from change in ownership the following:

> (a) The creation, vesting, transfer, distribution or termination of a participant's or beneficiary's interest in an employee benefit plan.
>
> (b) Any contribution of real property to an employee benefit plan.
>
> (c) Any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock of the employer corporation.

Rule 462.240(d) further explains that a change in ownership does not include:

> Any contribution of real property to an employee benefit plan, any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock in the employer corporation, or the creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan....[212]

The terms *employer*, *employee benefit plan*, *participant*, and *beneficiary* are as defined under federal law in the Employee Retirement Income Security Act of 1974.[213]

An *employee benefit plan* is an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan. Both types of plans require that such plan be established or maintained by an employer and/or by an employee organization.

Example 10-1

> A corporation transferred real property that it owned into an employee retirement plan. The corporation was wholly owned by two individuals, each having a 50 percent interest in the corporation. The two shareholders were the only beneficiaries of the retirement plan and held equal interests in it. The transfer would be excluded from reappraisal.[214]

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[212] The term *any contribution* as used in section 66(b) and this section means only those contributions of real property made to an employee benefit plan by an employer, a group of employees, or both, without any consideration.
[213] Section 66.
[214] Section 66.

The distribution of separate parcels of real property from an employee benefit plan to its participants is excluded from change in ownership as long as the value of the parcels or property interests distributed to each of the plan participants represents the present value of the interests each held in the benefit plan. Since there is no proportionality of ownership interest requirement,[215] the same percentage or ownership interests in each and every piece of the property before and after distribution is not required.

Section 66(a) only requires that any such distribution from the benefit plan must constitute the participant's or beneficiary's interests in the benefit plan. Therefore, to be eligible for the exclusion, the benefit plan must distribute to a participant property or assets representing no more than the present value of that participant's interest in the plan. For example, if ten parcels distributed to X represent the present value of his interests in the benefit plan, and three parcels distributed to B represent the present value of his interests in the plan, then the transfers would qualify for the section 66 exclusion.

INDIVIDUAL RETIREMENT ACCOUNTS

Individual retirement accounts (IRAs) were designed by Congress to stimulate savings by employees not covered by qualified plans of their employers. IRAs are established and maintained by individual employees. Accordingly, an IRA is not an employee benefit plan for purposes of section 66. Commonly IRAs are trust or custodian accounts. For property tax purposes, a transfer to or from an IRA may be excluded from change in ownership if the ownership interests remain the same before and after the transfer.[216] If the employee is both the custodian or trustee and beneficiary of the IRA, a transfer of real property from the IRA to the employee would be excluded from change in ownership.

FORECLOSURE

Foreclosure is a procedure by which the beneficiary of a deed of trust or other promissory note elects to sell the property if the buyer defaults on the terms of the note. Common foreclosure actions include the following:

- A deed of trust may be foreclosed by the trustee's sale of the property.
- A mortgage or deed of trust may be foreclosed by judicial action.
- The trustor under a deed of trust (the property owner who is obligated on the loan) may transfer title to the property to the lender in lieu of the lender undertaking the foreclosure action.

The date of change of ownership depends on the specific circumstances of the foreclosure action.

- If a property is sold at a trustee's sale, a change in ownership occurs on the date the right of possession vests in a new purchaser[217] who is a third party (including a lender or the

[215] Section 66.
[216] Rule 462.160(b)(5) and (d)(6).
[217] Rule 462.120(b).

seller of a seller-financed property). However, if the purchaser at the trustee's sale is the foreclosed-upon owner, there is no change in ownership because beneficial ownership has not changed hands during the foreclosure process, even though legal title to the property may have changed.

- If the foreclosure involves a redemption period (most commonly, judicial foreclosure actions), the change in ownership occurs after the period of redemption has passed and the property has not been redeemed, or upon redemption when title vests in the original debtor's successor in interest.[218]
- If a property owner transfers title to the lender in lieu of a foreclosure action, the transfer is a change in ownership, and the date of the transfer is the date of change of ownership.[219]

AIR RIGHTS

Civil Code section 659 defines *land* as:

> …the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of airspace granted, by law.

Air rights are classified as land.[220] Accordingly, since air rights which are located above the land surface that establishes their legal description are part of land, and thus real property, they are subject to change in ownership provisions as all other real property. Similarly, transferable development rights are taxable real property interests which, when conveyed, result in a change in ownership requiring reappraisal of the development rights.[221]

In *Mitsui Fudosan v. Los Angeles County*, the court concluded that transferable development rights (TDRs) "are appropriately viewed as one of the fractional interests in the complex bundle of rights arising from the ownership of land"[222] in view of the fact that the "donors" of the TDRs received valuable consideration and covenants restricting development of the donor parcels were recorded. Therefore, a transfer of TDRs was a change in ownership of the TDRs, resulting in their reappraisal, while the assessed value of the donor parcels should be reduced commensurately.

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[218] Section 62.11; Rule 462.120(a)(1) and (a)(2).
[219] Rules 462.120(c) and 462.260(a)(1).
[220] Rule 124(b)(1).
[221] *Mitsui Fudosan v. Los Angeles* County (1991) 219 Cal.App.3d 525.
[222] *Mitsui Fudosan* at p.528.

ADVERSE POSSESSION

Adverse possession is a method of acquiring title to another's property without the true owner's consent.[223] To establish title by adverse possession, the occupying party must prove that it has satisfied each of the following requirements:[224]

1. Possession was held either under a claim of right or color of title.
2. Actual open, notorious occupation of the premises in such a manner as to constitute reasonable notice to the recorded owner occurred.
3. Occupation was both exclusive and hostile to the title of the true owner.
4. Possession was uninterrupted and continued for at least five years.
5. All taxes levied against the property during such five-year period were paid by the occupying party.

A claimant to a property may have his or her name inserted with that of the recorded assessee.[225] To do so, the claimant must provide the county assessor with one of the following documents:[226]

- A certified copy of a deed, judgment, or other instrument that creates or legally verifies the claimant's ownership interest in the property.
- A certified copy of a document creating the claimant's security interest in the property.
- The claimant's declaration, under penalty of perjury, that he or she currently has possession of the property and intends to be assessed for the property in order to perfect a claim of adverse possession.

For a change in ownership to occur, there must be a transfer of a present beneficial interest. The California courts have held that an adverse possessor may establish fee title by proving the five requirements mentioned above. In *Cannon v. Stockman*,[227] the California Supreme Court stated:

> For when fee is once acquired by a five years' adverse possession it continues in the possessor till conveyed in the manner prescribed for the conveyance of titles acquired in other modes, or till lost by another adverse possession of five years. So, upon the same principle, if a fee has once vested by a five years' adverse possession, the mere fact that the party, who has thus acquired a title already perfect, afterward asserts title also under some other title subsequently acquired, would not defeat the good title already vested under the statute of limitations.

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[223] Code of Civil Procedures sections 324 and 325.
[224] *Cannon v. Stockman* (1869) 36 Cal. 535, 541.
[225] Section 610(a).
[226] Section 610(b).
[227] *Cannon v. Stockman* (1869) 36 Cal. 535, 541.

Thus, the possessor acquires the fee title upon completion of the five-year period and consequently a change in ownership occurs.

TAXABLE POSSESSORY INTERESTS

A *taxable possessory interest* is defined as an interest in real property that exists as a result of possession, exclusive use, or a right to possession or exclusive use of land and/or improvements unaccompanied by ownership of a fee simple or life estate in nontaxable, publicly owned real property.[228] The possession must be:

- Independent—The use is independent when the private party's authority and control is separate from the public owner, and use of the property or improvements by a private party or parties is more than a mere agency.
- Durable—A possessory interest is durable when there is a reasonable certainty that the use and enjoyment of the property will continue for a determinable period of time.
- Exclusive—Exclusive use of a property gives the private party the right to take legal action against anyone who interferes with the enjoyment of the beneficial use conferred by the agreement. This does not mean that there cannot be concurrent use of the property by more than one possessory interest owner (for example, two persons who are making qualitatively different uses of the same property each have an exclusive possessory interest).

Thus, a taxable possessory interest exists when any person or entity has a durable, exclusive, independent right to use tax-exempt, government-owned property for private benefit. A possessory interest may be created by contract, lease, concession agreement, permit, license, or simple occupation. Assessees are liable for payment of any property tax levied against such interests.[229]

CHANGE IN OWNERSHIP OF TAXABLE POSSESSORY INTERESTS

The legal provisions that relate to a change in ownership of a taxable possessory interest are contained in sections 61 and 62 and Property Tax Rule 462.080. The following table summarizes the taxable possessory interest change in ownership provisions.

[228] Section 107; Rule 20(a).
[229] See Assessors' Handbook Section 510, *Assessment of Taxable Possessory Interests.*

TABLE 10-1

CONSTITUTES A CHANGE IN OWNERSHIP	EXCLUDED FROM A CHANGE IN OWNERSHIP
The creation, renewal, extension, or assignment of a taxable possessory interest for any term, with the following exceptions.	A renewal or extension does not include the granting of an option to renew or extend an existing agreement pursuant to which the term of possession of the existing agreement would, upon the exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto. [Section 61(b)(1); Rule 462.080(a)]
	A renewal or extension during the reasonably anticipated term of possession used by the county assessor to establish the existing base year value of the interest does not constitute a change in ownership until the end of that reasonably anticipated term of possession. [Section 61(b)(2); Rule 462.080(b)(2)]
	The creation of an interest by reservation in an instrument that deeds the interest to a tax exempt government entity, regardless of whether the interest created is an estate for years or an estate for life. [Rule 462.080(b)(1)]
The sublease of a taxable possessory interest for a contract term (including any renewal options) that exceeds half the length of the remaining term (including any renewal options) of the master taxable possessory interest. [Section 61(d)(1)(A)]	The sublease of a taxable possessory interest for a term (including renewal options) that does not exceed half the length of the remaining contract term of the master taxable possessory interest (including renewal options). [Rule 462.080(b)(3)]
The termination of a sublease of a taxable possessory interest with an original contract term (including any renewal options) that exceeds half the length of the remaining contract term (including any renewal options) of the master taxable possessory interest when the sublease was entered into. [Section 61(d)(1)(B)]	The termination of a sublease of a taxable possessory interest with an original contract term (including renewal options) that did not exceed half the length of the remaining contract term of the master taxable possessory interest (including renewal options) when the sublease was entered into. [Rule 462.080(b)(4)]
The transfer of a sublessee's interest in a taxable possessory interest with a remaining contract term (including any renewal options) that exceeds half the remaining contract term of the master taxable possessory interest. [Section 61(d)(1)(C)]	The transfer of a sublessee's interest in a taxable possessory interest, with a remaining term (including any renewal options) that does not exceed half of the remaining contract term of the master taxable possessory interest. [Rule 462.080(b)(5)]

CONSTITUTES A CHANGE IN OWNERSHIP	EXCLUDED FROM A CHANGE IN OWNERSHIP
The transfer of a taxable possessory interest subject to a sublease with a remaining contract term (including any renewal options) that does not exceed half the contract term of the master taxable possessory interest. [Section 61(d)(2)]	The transfer of a taxable possessory interest subject to a sublease with a remaining contract term (including any renewal options) that exceeds half the length of the remaining contract term of the master taxable possessory interest (including any renewal options). [Section 62(o); Rule 462.080(b)(6)]

SUBLEASES OF TAXABLE POSSESSORY INTERESTS

Most of the above provisions pertain to the change in ownership implications of a sublease of a taxable possessory interest. The sublease provisions regarding taxable possessory interests are similar to those contained elsewhere in statute that pertain to changes in ownership concerning leasehold interests in privately owned real property. The guiding principle behind them is that a change in ownership occurs when the primary economic interest in a property is transferred. In the case of privately owned property held in fee simple, this is deemed to occur with the creation of a leasehold interest of 35 years or longer. In the case of a taxable possessory interest, this is deemed to occur with the creation of subleasehold interest in the taxable possessory interest that is greater than half the remaining term of the taxable possessory interest itself.[230]

For example, for privately owned real property held in fee, a change in ownership occurs when a lease of 35 years or longer is created; but a change in ownership does not occur when there is a transfer of an underlying fee interest that is subject to a leasehold interest with a remaining term of 35 years or longer. In the first case, the primary economic interest in the property transfers; in the second, it does not.

Similarly, a change in ownership occurs when a sublease of a taxable possessory interest is created that has a contract term that is greater than half the remaining term of the taxable possessory interest; but a change in ownership does not occur when there is a transfer of the taxable possessory interest subject to a subleasehold interest with a remaining term greater than half the remaining term of the taxable possessory interest.

When a change in ownership of a taxable possessory interest occurs because of a sublease transaction, and the sublease involves a portion rather than all of the taxable possessory interest, only the subleased portion of the taxable possessory interest changes ownership, not the entire taxable possessory interest. That is, only a portion of the existing taxable possessory interest should receive a new base year value. In this case, establishing the new assessed value of the subject taxable possessory interest involves removing the portion of its base year value that corresponds to the newly subleased portion and adding the value of the newly subleased portion that results from the change in ownership.

[230] Section 61(d)(1).

SALE AND LEASEBACK TRANSACTIONS

Generally, a sale of real property and a lease back to the seller constitutes a change in ownership requiring reappraisal of the entire property sold. If a leaseback is for a term of 35 years or more, a second change in ownership occurs. Section 62(e) excludes from change in ownership only transfers that involve a true retention by the transferor of a present interest in the property and a conveyance to the transferee of only a future interest. In the case of a sale and leaseback, the purchaser receives title to the property, and the right to a possession. The fact that the parties agree that the purchaser will lease the property to the seller in no way diminishes the purchaser's ownership interest any more than would a lease not preceded by a sale. Rather, the leasing of the property to the seller is merely the exercising of the right to possession, a present beneficial use, in exchange for the payment of rent. The facts of each situation will determine whether a sale and leaseback agreement is a financing arrangement or a true sale.[231]

Even though a sale is conditioned upon a leaseback, contains a prescription against a resale without the lessee's approval, and contains prohibitions preventing the purchaser from using the property or raising the rent, the transfer should result in a reappraisal. These contractual limitations do not qualify as enforceable restrictions that are governmentally imposed and required to be taken into account by section 402.1.[232]

EASEMENT

An easement is a right of use over the real property of another. The two traditional easements are an easement appurtenant and an easement in gross. Easements can be terminated by certain legal procedures; however, they are generally permanent in nature and run with the land. Easements may be created by express grant, by necessity, or by prescription.

An *easement appurtenant* exists when the easement is legally connected to adjoining property. The parcel benefiting from the easement is known as the dominant estate and the parcel burdened is the servient estate. A common example of an appurtenant easement is a grant of a permanent, irrevocable right of way allowing the owner of a land-locked parcel to cross a specific portion of another owner's parcel to get to a public street. Another example is a parking lot easement that allocates a specific number of parking spaces in a shopping center parking lot to a restaurant parcel. An *easement in gross* exists where there is no dominant estate, only a servient estate. For example, a power line right-of-way easement granted to a utility company is an easement in gross. There is no adjoining parcel of land that is legally related to the easement.

Most easements are not separately recognized for property tax purposes. An exception occurs when the language contained in the grant of the easement effectively transfers an interest "substantially equivalent to the value of the fee," thus giving rise to a change in ownership under section 60. In this case, the easement should be appraised and assessed to the grantee, and the property subject to the easement should be reappraised in a manner that recognizes the effect of the easement.

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[231] *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 162.
[232] *Carlson v. Assessment Appeals Board No. 1* (1985) 167 Cal.App.3d 1004.

CHAPTER 11: INTERSPOUSAL AND REGISTERED DOMESTIC PARTNER EXCLUSIONS

Transfers of real property or legal entity interests between spouses or registered domestic partners are excluded from change in ownership pursuant to section 63 for married persons and section 62(p) for registered domestic partners. No exclusion claim form is required to be filed.

ELIGIBLE RELATIONSHIPS

MARRIAGES

The interspousal exclusion only applies to purchases or transfers between persons who have entered into a marital relationship recognized under California law, which for marriages entered into in California, requires the issuance of a license and solemnization. For a marriage of persons of the opposite sex, California will recognize an out-of-state marriage, including a common law marriage, as long as the marriage was valid in the jurisdiction in which it was contracted.[233] A common law marriage cannot be established in California, but a common law marriage validly entered into in another jurisdiction will be recognized as valid in California.

For marriages of persons of the same sex, marriages entered into in California after 5:00 p.m. on June 16, 2008 and before November 5, 2008 are recognized as valid on an ongoing basis.[234] However, no same-sex marriages entered into in California before or after this time period are valid or recognized.[235] Regarding same-sex marriages validly entered into outside of California, these marriages were not barred from being recognized in California during this time period.[236]

Same-sex marriages performed during this period are recognized for all purposes, including the designation of "marriage." Senate Bill 54[237] amended Family Code section 308 to apply to same-sex marriages performed outside of California. Family Code section 308(c) clarifies that persons who enter into a valid same-sex marriage in another jurisdiction after November 4, 2008, have all the rights and responsibilities of married persons, except that their relationship may not be designated as a *marriage*. Regarding the treatment of non-California same-sex marriages during the period between the November 5, 2008 and January 1, 2010 (the effective date of Senate Bill 54), recognition is arguably compelled from the beginning of the recognition period. The rationale is that the California Supreme Court[238] struck section 308.5 from the Family Code ("Only marriage between a man and a woman is valid or recognized in California"), leaving only section 308, which requires respect of otherwise valid non-California marriages ("A marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state").

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[233] Family Code section 308.
[234] *Strauss v. Horton*(2009) 46 Cal.4th 364.
[235] *In re Marriage Cases* (2008) 43 Cal. 4th 757, 857 (before June 16, 2009 at 5:00 p.m.); *Strauss v. Horton,* (2009) 46 Cal.4th 364 (after November 5, 2009))
[236] *In re Marriage Cases* (2008) 43 Cal.4th 757, 857.
[237] Stats. 2009, ch. 625.
[238] *In re Marriage Cases* (2008) 43 Cal.4th 757.

As used in this handbook, *marriage* refers to any relationship recognized as such under California law, regardless of where it was entered. Similarly, *married individuals*, *married persons*, and *spouses* refer to the persons who entered into a marriage as that term is used in this handbook.

REGISTERED DOMESTIC PARTNERSHIPS

The registered domestic partner exclusion only applies to purchases or transfers between persons who are registered domestic partners with the California Secretary of State.[239] Persons who are registered with local governments or other jurisdictions will not qualify for this exclusion.

In California, two persons may enter into a registered domestic partnership when both persons file a Declaration of Domestic Partnership[240] with the California Secretary of State. To enter into a registered domestic partnership, the persons must meet the following criteria:

1. Both share a common residence, regardless of how title or the right to possession to the residence is held.
2. Neither is married to another person or is a member of another registered domestic partnership that has not been terminated, dissolved, or annulled.
3. The two are not related by blood in a way that would prevent them from being married to each other.
4. Both are over the age of 18 and capable of consenting to the partnership.
5. Either of the following:
   - Both are the same sex; or
   - Both are the opposite sex and at least one of them is over the age of 62 and meets the federal requirements for either old age insurance benefits or for aged individuals.

Due to this filing requirement, the establishment of a registered domestic partnership can be verified with the Secretary of State. The date of registration of the partnership with the Secretary of State is treated as the date of the commencement of the partnership for issues relating to property ownership, community property rights, and obligations resulting from the dissolution of the partnership.[241]

For various reasons, it is common for an unmarried couple to register their relationship with a city, county, or employer in California; however, unless the couple is registered with the California Secretary of State as domestic partners, they are not considered registered domestic partners for property tax purposes.[242]

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[239] Section 62(p)(1).
[240] Form NP/SF DP-1.
[241] Family Code section 297.5(k)(1).
[242] Section 62(p).

COMMUNITY AND SEPARATE PROPERTY

Married individuals and registered domestic partners may take title to real property together as joint tenants, tenants in common, community property, or community property with right of survivorship. Married individuals and registered domestic partners may also take title to property as separate property in their own names as the sole owner. (See Chapter 2 for a discussion of forms of property ownership.)

COMMUNITY PROPERTY

Community property is property owned by spouses or by registered domestic partners, with each person having an undivided one-half interest in the property by reason of their marital or domestic partnership status.[243] Only married persons and registered domestic partners may own community property interests in real property, or take title to property as community property. Each member of the community is presumed to own one-half of all community property. The general rule is that all property acquired during marriage or during a registered domestic partnership is presumed to be community property if community assets were used to purchase or construct improvements on it, regardless of the manner in which title to the property is held, unless specific conditions are met or the parties otherwise agree. The community property rule includes both real property and legal entity interests such as voting shares in a corporation or membership interests in a limited liability company (LLC).

Example 11-1

> H and W are married and jointly own a parcel of land. If the land is held as community property, for property tax purposes, H and W are considered to each own a 50 percent interest.

For all registered domestic partners, even those who were registered with the state prior to January 1, 2005, community property interests are determined by including property interests acquired from the date of registration with the Secretary of State, even though the law did not provide for the extension of community property rights until January 1, 2005.

Community property interests do not automatically pass to the surviving spouse or registered domestic partner upon death. Rather, that person's community property interest will pass to whomever that person so designates in his or her estate planning document. *Community property with right of survivorship* is a form of community property whereby upon the death of one spouse or registered domestic partner it passes automatically by operation of law to the other party without probate, as in a joint tenancy.

SEPARATE PROPERTY

Any property owned by a married person or a registered domestic partner that is not considered to be community property is separate property. *Separate property* of a married person or a registered domestic partner includes all property owned by that person before marrying or

[243] Family Code sections 297.5(k) and 760.

entering into a registered domestic partnership, acquired during the marriage or registered domestic partnership by gift or inheritance, and any rents, profits, or other proceeds of such property.[244]

NO ATTRIBUTION BETWEEN MEMBERS OF THE COMMUNITY

When property is held as community property, each person is treated as owning 50 percent of the property or the legal entity interests. The marriage or registered domestic partnership is not considered the owner of community assets as a single unit or owner. Thus, for property tax purposes, there is no attribution of ownership from one spouse or registered domestic partner to the other.

Example 11-2

One married couple owns a 50 percent membership interest in an LLC, and the other 50 percent membership interest is owned by registered domestic partners. Each couple's interest is community property. For property tax purposes, each spouse is considered to be the owner of a separate 25 percent membership interest in the LLC. Likewise, each registered domestic partner is considered to be the owner of a separate 25 percent membership interest in the LLC.

The spouse or registered domestic partner is not considered to own the additional 25 percent owned by his spouse or registered domestic partner by virtue of their relationship.

INTERSPOUSAL EXCLUSION

Article XIII A, section 2, subdivision (g) of the California Constitution provides that a change in ownership does not include the purchase or transfer of real property between spouses since March 1, 1975. This constitutional provision is codified in section 63, which provides examples of transfers between spouses that do not constitute a change in ownership. The specified examples are:

(a) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.[245]

(b) Transfers to a spouse that take effect upon the death of a spouse.

(c) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(d) The creation, transfer, or termination, solely between spouses, of any co-owner's interest.

[244] Family Code section 770(a).
[245] See also section 62(d).

> (e) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.[246]

Rule 462.220 expands on these examples and additionally provides that interspousal transfers of legal entity interests do not result in a change in ownership of real property owned by the legal entity.[247]

Thus, all voluntary transfers made between spouses during marriage, involuntary transfers taking effect upon the death of a spouse, or transfers related to a marital separation or dissolution, do not result in changes in ownership.

REGISTERED DOMESTIC PARTNER EXCLUSION

Effective January 1, 2006, registered domestic partners receive the same exclusions from change in ownership and reassessment for transfers between registered domestic partners that spouses receive under the interspousal exclusion.[248] Specifically, section 62(p)(1) provides that the following are excluded from change in ownership:

- Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.[249]
- Transfers that take effect upon the death of a registered domestic partner.
- Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or decree of dissolution of a registered domestic partnership or legal separation.
- The creation, transfer, or termination, solely between registered domestic partners, of any co-owner's interest.
- The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in such entity, in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation.[250]

If there was a reassessment for a transfer between registered domestic partners that occurred between January 1, 2000 and January 1, 2006 that resulted in a change in ownership, retrospective relief was available. This means that a reassessment that occurred between these dates may have been eligible for a reversal on a prospective basis beginning with the lien date of

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[246] Section 63(a)-(e).
[247] Rule 462.220(a), (b) and (c).
[248] Section 62(p).
[249] See also section 62(d).
[250] Section 62(p)(1)(A) through (1)(E).

the assessment year[251] in which a claim was filed with the county assessor where the transferred property was located.[252] However, claims for such relief must have been made to the county assessor on or before June 30, 2009.

While section 62(p) creates an exclusion for registered domestic partners of identical scope to the interspousal exclusion, it does not make registered domestic partners spouses under California law. The interspousal exclusion provides that the terms *purchase* and *change in ownership* do not include the purchase or transfer of real property between spouses.[253] Since the term *spouse* within the meaning of the California Constitution does not include a registered domestic partner, a transfer of real property between registered domestic partners will not qualify for the interspousal exclusion under section 63. Instead, such a transfer qualifies under section 62(p), subject to the timing limitations discussed above.

TRANSFERS UPON DEATH

For spouses, transfers of real property or legal entity interests that take effect upon the death of a spouse are excluded from the definition of change in ownership.[254] Such transfers include transfers by will, intestate succession, and trust.

For registered domestic partners, transfers of real property or legal entity interests that take effect upon the death of a registered partner are excluded from the definition of change in ownership if the date of death occurs on or after January 1, 2006.[255] This exclusion is applied to all transfers resulting from the death of a registered domestic partner, including transfers by will, intestate succession, or trust. Additionally, the inheritance of property via intestate succession from one's registered domestic partner is excluded from change in ownership if the date of death occurred on or after November 13, 2003.[256]

TRANSFERS INVOLVING LEGAL ENTITIES

Transfers of legal entity interests and transfers of property between individuals and legal entities are different transactions and, thus, are treated differently by the interspousal and registered domestic partner exclusions. These two exclusions apply to one type of transaction, but not the other.

TRANSFER OF INTERESTS IN A LEGAL ENTITY

The interspousal and registered domestic partner exclusions apply to transfers of legal entity interests.[257] Thus, where a legal entity owns real property in California, if the interspousal or

[251] Section 118; the period beginning with a lien date and ending immediately prior to the succeeding lien date.
[252] Section 62(p)(2).
[253] California Constitution, article XIII A, section 2(g).
[254] Section 63(b).
[255] Section 62(p)(1)(B).
[256] Rule 462.240(k).
[257] Rule 462.220(a).

registered domestic partner exclusion applies to the transfer of the legal entity interest, real property owned by such entity will not undergo a change in ownership as a result of the transfer.

Transfers of legal entity ownership interests that result in one spouse or registered domestic partner obtaining control[258] do not result in a change in ownership.[259] The interspousal and partner-to-partner transfers are not counted or cumulated for determining whether a transfer of more than 50 percent of original co-owner interests under section 64(d) has occurred.

Example 11-3

> Spouses H and W each own a 30 percent ownership interest in a partnership. W transfers her interest to H; H now owns a 60 percent ownership interest.
>
> There is no change in ownership even though H has obtained control of the partnership.[260]

In addition, between spouses or registered domestic partners, transfers of legal entity ownership interests by original co-owners which would otherwise be cumulated or counted for purposes of section 64(d) do not cause a change in ownership.[261] (See Chapter 6 for a discussion regarding cumulated or counted interests.)

Example 11-4

> Registered domestic partners V and W are original co-owners of a partnership; each own a 50 percent partnership interest. In 2008 they each transfer a 20 percent interest to X and to B, leaving V and W each with a 30 percent partnership interest. W thereafter transfers a 15 percent interest to V. Although cumulatively more than 50 percent of the original co-owner interests have actually been transferred, there is no change in ownership because only 40 percent are counted and cumulated.

TRANSFER OF REAL PROPERTY

Transfers of real property and ownership interests in legal entities between registered domestic partners or spouses may be excluded from change in ownership under sections 62(p) and 63. However, a transfer of real property between a person and a legal entity that is wholly owned by that person's spouse or registered domestic partner is not a transfer to a spouse or partner, but to a legal entity. Neither is it a transfer of legal entity interests between spouses or partners. Such a transaction does not qualify for either the interspousal or registered domestic partner exclusion. A legal entity, even one wholly owned by a spouse or registered domestic partner, is not a spouse. Thus, a transfer to a legal entity owned by a spouse or registered domestic partner is not the same as a transfer to the spouse or registered domestic partner. If the ownership interests are not the same before and after the transfer, the property will be subject to change in ownership.

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[258] Section 64(c)(1).
[259] Rule 462.220(b).
[260] Rule 462.220(b), Example 1.
[261] Rule 462.220(c).

Example 11-5

A transfer of separately owned property from a husband to a partnership of which the husband owns 95 percent and his wife owns 5 percent is not eligible for the interspousal exclusion. Since the ownership interests are not the same before and after the transfer, the property is subject to a 100 percent change in ownership.

Example 11-6

A transfer from two registered domestic partners to a corporation, wholly owned by one of the registered domestic partners is not eligible for the registered domestic partnership exclusion.

PROPERTY SETTLEMENT AND POST-SETTLEMENT AGREEMENT TRANSFERS

Transfers of real property or legal entity interests pursuant to legal separation or a decree of dissolution of a marriage or a registered domestic partnership are excluded from change in ownership if the transfer is made to the other party in connection with a property settlement agreement or decree of dissolution or a legal separation.[262] Only transfers between the spouses or registered domestic partners that occur before the property rights are finally settled are excluded under these provisions.

Any transfers made in connection with a property settlement agreement, including post-dissolution transfers which are based on the terms of the settlement agreement, and post-dissolution transfers resulting from finalizing the former spouses' or registered domestic partners' property rights under the settlement agreement or decree of dissolution, are excluded from reappraisal because they are directly related to the terms of the settlement agreement or decree of dissolution. [263]

If, however, the parties intended to permanently settle their property rights and a decree of dissolution has become final, then any subsequent transfers are considered to be between unmarried or unregistered parties and are therefore not eligible for interspousal or registered domestic partner exclusions.[264]

Example 11-7

Upon divorce, H and W entered into a property settlement agreement which provided for W to transfer her interest in all real properties owned by the community to H in exchange for the H's payment of $1 million. Two years after the divorce is finalized, H and W agree to transfer the title to one of H's properties to W in lieu of paying W the $1 million.

Since a transfer in lieu of payment was not part of the settlement agreement, the transfer of the property results in a change in ownership as a transfer between co-owners.

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[262] Sections 63(c) and (e) and 62(p)(1)(C) and (E).
[263] Section 63(c).
[264] Section 63(c) and (e); Section 62(p)(1)(C).

Example 11-8

Upon divorce, H and W entered into a property settlement agreement which provided for H and W to co-own the property with W having the right to live in the property until their last child reaches age 18. If the agreement allows either H or W to buy the other's interest, then no change in ownership will occur if either H or W exercises that option.

However, if the agreement does not specify that one is entitled to buy the other's interest, the transfer will be a reassessment of 50 percent interest if a former spouse buys out the other's interest.

CHAPTER 12: PARENT-CHILD AND GRANDPARENT-GRANDCHILD EXCLUSIONS

OVERVIEW

On November 4, 1986, the voters approved Proposition 58, which, in part, added subdivision (h) to section 2 of article XIII A of the California Constitution. Subdivision (h) provides that the terms *purchased* and *change in ownership* exclude the purchase or transfer of:

1. A principal residence between parents and their children; and
2. The first $1 million of the full cash value of all real property other than a principal residence between parents and children.

Section 63.1 was added to the Revenue and Taxation Code to implement the parent-child exclusion provisions of Proposition 58. The parent-child exclusion applies to changes in ownership that occur on or after November 6, 1986.[265]

On March 26, 1996, the voters approved Proposition 193, which amended subdivision (h) to allow transfers from grandparents to grandchildren to be excluded from change in ownership if certain members of the intervening parent generation are deceased. Section 63.1 was subsequently amended to reflect these new provisions. The grandparent-grandchild exclusion applies to changes in ownership that occur on or after March 27, 1996.[266]

ELIGIBLE TRANSFERORS AND TRANSFEREES

Only a transfer between an eligible transferor and an eligible transferee qualifies for an exclusion under section 63.1.[267] An *eligible transferor* is a grandparent, parent, or child of an eligible transferee.[268] An *eligible transferee* is a parent, child, or grandchild of an eligible transferor.[269]

Article XIII A, section 2, subdivision (h) of the California Constitution delegates to the Legislature the task of defining the terms *parent*, *child*, *grandparent*, and *grandchild*. The terms *parent* and *grandparent* are not specifically defined by statute. Rather, the eligible relationships are defined with respect to *children* and *grandchildren*.

CHILDREN

Section 63.1(c) defines *children* as any of the following:

1. Any child born of the parent or parents, except a child who has been adopted by the age of 18 by another person or persons.

[265] Section 63.1(h)(1).
[266] Section 63.1 (h)(2).
[267] Section 63.1(a).
[268] Section 63.1(c)(6).
[269] Section 63.1(c)(7).

2. Any stepchild or spouse of that stepchild while the relationship of stepparent and stepchild exists, which means until the marriage on which the relationship is based is terminated by divorce or, if terminated by death, until the remarriage of the surviving stepparent. As of January 1, 2005, a registered domestic partner is a parent to a partner's child.

3. Any son-in-law or daughter-in-law of the parent(s) while the in-law relationship exists, which means until the marriage on which the relationship is based is terminated by divorce, or, if terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law. As of January 1, 2005, an in-law child includes a registered domestic partner.

4. Any child statutorily adopted by the parent(s) by the age of 18.

5. Any foster child of a state-licensed foster parent if that child was not, because of a legal barrier, adopted by the foster parent before the child aged out of the foster care system.

An *adopted* child is a child who was formally adopted pursuant to procedures in the Family Code before reaching the age of 18. This does not include a child who is treated as a child for probate purposes under the doctrine of equitable adoption.[270]

GRANDCHILD

Grandchild is defined as any child of the child of the grandparent or grandparents.[271]

For transfers made between March 27, 1996 and January 1, 2006, the grandparent-grandchild exclusion was only available if *all* of the parents of the grandchild or grandchildren, who were the children of the grandparents, were deceased as of the date of transfer.[272] As of January 1, 2005, an in-law child includes a registered domestic partner. Conversely, a registered domestic partner is a parent to a partner's child.

For transfers made on or after January 1, 2006, however, a son-in-law or daughter-in-law of the grandparent who is a stepparent to that grandchild need not be deceased as of the date of transfer.[273] In addition, these stepparents still remain eligible for the parent-child exclusion as they are parents of the stepchildren and in-law children of the grandparents.[274]

For a transfer to qualify for the grandparent-grandchild exclusion, both parents of the grandchild must be deceased or no longer qualify as a child of the grandparents at the time of the transfer (with the exception mentioned above where only a stepparent is living). As a consequence, even

[270] Established through case law, the doctrine of equitable adoption allows a person who was accepted and treated as a natural child, and to whom adoption was promised or contemplated but never performed, to share in the inheritance of the foster parents' property. *Estate of Ford*, 32 Cal.4th 160.
[271] Section 63.1(c)(4).
[272] Section 63.1(a)(3)(A).
[273] Section 63.1(a)(3)(A).
[274] Section 63.1(c)(3)(B) and (3)(C).

if a living parent disclaims any interest in the grandparent's property, the transfer of real property between a grandparent and a grandchild will not qualify for the exclusion.

A *disclaimer* is a writing which declines, refuses, renounces, or disclaims any interest that would otherwise be taken by a beneficiary.[275] A properly executed and filed disclaimer results in the interest disclaimed descending and being distributed as though the disclaimant had predeceased the creator of the interest. However, being treated as deceased and being deceased are not the same. Accordingly, for purposes of the grandparent-grandchild exclusion, the parent must actually be deceased prior to the transfer in order for the transfer of real property from the grandparent to the grandchild to qualify for exclusion.

Registered Domestic Partnerships

Transfers of real property on or after January 1, 2005 between parents and their child and that child's registered domestic partner are eligible for the parent-child exclusion. Effective January 1, 2005, Family Code section 297.5(a) provides that registered domestic partners have the same rights, protections, and benefits and are subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. This section goes on to state in subdivision (j) that it does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative.

Thus, registered domestic partners are not eligible for any property tax exclusion based on an aspect of a spousal or marital relationship for which the terms *spouse* and *marriage* are defined by constitutional provision or by statute adopted by initiative. However, since the definition of *child* in section 63.1 was enacted by the Legislature and not by a ballot initiative or constitutional provision, Family Code section 297.5 controls the definition of *children* in terms of the rights of registered domestic partners. Thus, beginning January 1, 2005, any relationship between parents and children established by a registered domestic partnership is accorded the same treatment as if established by marriage for purposes of the parent-child exclusion.

Moreover, since Family Code section 297.5(d) recognizes that registered domestic partners have the same rights and obligations as spouses with respect to a child of either of them, the parent-child exclusion should also apply to transfers from a registered domestic partner to a child of that person's partner.

ELIGIBLE PURCHASES AND TRANSFERS

The parent-child or grandparent-grandchild exclusion provides that a change in ownership does not include the transfer of a principal residence and the first $1 million of full cash value of other real property.[276] (See below for a discussion of the principal residence and $1 million limit rules.)

[275] Probate Code section 265.
[276] Section 63.1(a)(1) and (a)(2).

A qualifying parent-child transfer can be either direction—from the parent to the child or from the child to the parent.[277]

The grandparent-grandchild exclusion provides that a change in ownership does not include a transfer ***from*** a grandparent ***to*** a grandchild as long as all of the parents of that grandchild or those grandchildren who qualify as the children of the grandparents are deceased as of the date of transfer (with the exception of a living stepparent as discussed above).[278] A transfer from a grandchild to a grandparent is not eligible for the exclusion.

PURCHASE OR TRANSFER

These exclusions apply to both voluntary purchases or transfers and involuntary transfers resulting from a court order or judicial decree[279] or by operation of law. Thus, most transfers of real property between eligible transferors and transferees that occur after the respective operative dates can qualify for the exclusions.

ACQUISITION BY INHERITANCE

An inheritance of real property can qualify for the parent-child or grandparent-grandchild exclusion. The transfer can occur by will or intestate succession. The transferor must be the parent or child (for the parent-child exclusion) or the grandparent (for the grandparent-grandchild exclusion) as an individual and may not be from a legal entity owned by such person.

TRUSTS

Transfers of real property through the medium of a trust are eligible for the parent-child and grandparent-grandchild exclusions.[280] Since, for property tax purposes, we look through a trust to the present beneficial owner, transfers via trust are treated as occurring between individuals, and not between an individual and the trust as an entity.[281] Thus, if the requirements of section 63.1 are otherwise satisfied, transfers to and from a trust are eligible for either exclusion. (See Chapter 3 for a discussion of trusts.)

Example 12-1

> X transfers his principal residence into a revocable living trust. When X dies, the trust terminates and the successor trustee of the trust distributes the property to X's daughter, B, who is the beneficiary.
>
> The initial transfer into X's revocable living trust is excluded from change in ownership.[282] Upon X's death, the trust becomes irrevocable and beneficial ownership vests in B. The change in present beneficial ownership is treated as a transfer from X to B and is excluded from change in ownership under the parent-child exclusion if a timely claim is filed and all

[277] Section 63.1(c)(1).
[278] Section 63.1(c)(2).
[279] Section 63.1(g).
[280] Section 63.1(c)(9).
[281] An exception is a business trust which is treated as a legal entity for property tax purposes.
[282] Section 62(d).

other requirements have been satisfied.[283] The distribution of the property to B upon termination of the trust is merely a change in the method of holding title because B's interest became possessory upon X's death.

Example 12-2

X creates an inter vivos revocable trust that becomes irrevocable upon X's death. Upon X's death, a life estate is granted to girlfriend, G, with remainder interest to X's child, C.

The creation of a life estate in G is a change in ownership since no exclusion applies. The termination of G's life estate upon her death is another change in ownership to which the parent-child exclusion may be applied. Where a life estate terminates as a result of the death of the life tenant, the transfer to the remainderman is from the transferor of the remainder interest, not from the life tenant. This is because the statutory language in sections 61(g), 61(h), and 62(d) identify the grantor of a life estate as the *transferor* of the remainder or reversionary interest. Assuming the parent-child claim is timely filed, the property will not be reassessed upon the termination of the life estate and the property will retain G's base year value.

ESTATE DISTRIBUTIONS – PRO RATA AND NON-PRO RATA

It is common for a trust to provide that the assets of an estate are to be distributed to the beneficiaries on a share-and-share-alike basis, meaning that each beneficiary is to receive an equal share in each and every property owned by the decedent. The application of a parent-child or grandparent-grandchild exclusion to the distribution of real property depends on whether trust limits the trustee's powers to distribute the estate property. Probate Code section 16246 provides that a trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in value.

If a trust limits the trustee's powers and requires the trustee to distribute the trust property on a share-and-share-alike basis, a distribution of real property is considered to be a direct transfer from the trustor to the beneficiaries. For example, if trust assets must be distributed to four children on a share-and-share-alike basis and the real property is distributed to the four children as joint tenants, this transaction would be 100 percent excluded as a parent-child transfer because the percentage of interests transferred equals each child's proportional interest in the estate.

On the other hand, if a trust provides for distributions on a share-and-share-alike basis and the trustee's statutory authority to make non-pro rata distributions is not limited, the trustee may either give the beneficiaries equal ownership in each trust asset (*pro rata*) or may allocate specific assets to individual beneficiaries (*non-pro rata*), the value of which do not exceed each beneficiaries' equal percentage interest in the trust property.

[283] Rule 462.160(d)(5).

Example 12-3

X transfers her home with a fair market value of $500,000 and securities valued at $500,000 to her trust for the benefit of her children B and C, to be distributed on a share-and-share-alike basis.

The trustee's authority to make non-pro rata distributions is not limited by the trust. The trustee could make a pro rata distribution by giving B and C each a 50 percent interest in the home and $250,000 in securities. Alternatively, the trustee could make a non-pro rata distribution by giving B the home and C the securities. The home could qualify for exclusion under either allocation.

Beneficiary-to-Beneficiary Transfer

If the trustee does not have the authority to make a non-pro rata distribution, or a particular non-pro rata distribution is in excess of the recipient beneficiary's share of the trust property, the excess is considered to be a transfer between the beneficiaries rather than from the trustor to a beneficiary. Additionally, if real property is distributed to all of the beneficiaries, any subsequent transfer between the beneficiaries is a change in ownership, unless an exclusion applies.

Example 12-4

M's trust directed that the trust property be distributed equally to each of her three children—X, Y, and Z. The trustee transferred M's principal residence to X, Y, and Z as tenants in common. X and Y subsequently transferred their interests to Z.

The initial transfer of the principal residence to the three children qualifies for the parent-child exclusion. However, the subsequent transfers by X and Y to Z results in a two-thirds reassessment of the property.

Example 12-5

X dies, leaving an estate valued at $1,500,000 to be equally shared by her two children, A and B ($750,000 to be distributed to each child). Child A receives real property with an equity value of $810,000 and $280,000 of other assets, for a total of $1,090,000. Child B receives the balance of the estate.

The entire trust assets determine what each child's share should be. In this situation, the value of $1,500,000 is split equally between two children so that each should get $750,000 of assets each. To determine if a reassessment is necessary, the market value of the real property is compared to that child's share of the estate, disregarding the distribution of any other assets. The excess value received by the child is then compared to the value of the property. The value of the real property exceeded Child A's share by $60,000. The difference between $810,000 and $750,000 is $60,000. Dividing $60,000 by $810,000 equals .074074. Thus, the property was subject to a 7.4 percent change in ownership.

Equalizing Trust Distributions

Equalization issues may arise when a single property is the primary trust asset and that asset is distributed to one beneficiary. If the trustee has the authority to make a non-pro rata distribution and thus allocate specific assets to an individual beneficiary and the value of the property does not exceed that beneficiary's share of the trust estate, the transfer is considered to be made from the trustor to the beneficiary and eligible for the parent-child exclusion. The value of the property is the market value on the date of the parent-child transfer (typically date of death), less any encumbrances on the property.

Furthermore, unless prohibited by the trust, a trustee who makes a non-pro rata distribution may encumber the property with a loan prior to distributing the property to one beneficiary. The trustee may then distribute the loan proceeds to the other beneficiaries to equalize the value of the distributions to all of the beneficiaries. However, the trustee must be the party encumbering the property and the trustee may not encumber the property with a loan from the beneficiary who will receive the property. The trustee may obtain a loan secured by the property from a third-party lender, such as a bank, or a beneficiary who will not receive the property as part of the trust distribution.

Example 12-6

X transfers her unencumbered principal residence to her trust, to be distributed on a share-and-share-alike basis to B and C upon X's death. The trustee is authorized to make non-pro rata distributions.

As of X's date of death, the real property is the only asset and has a fair market value of $500,000. If the trustee decides to distribute the entire residence to B, the trustee may first borrow $250,000 from a third party, secured by the residence, and may distribute the loan proceeds to C. The trustee may then distribute the residence, encumbered by the $250,000 deed of trust, to B; B would have to repay the loan. The encumbrance would equalize the non-pro rata distribution.

If B and C are the children of X, the transfer of the principal residence to B qualifies for the parent-child exclusion if all other requirements are satisfied.

Example 12-7

D transfers his real property to his trust to be distributed on a share-and-share-alike basis to children B and C upon D's death. The trustee is authorized to make non-pro rata distributions. Upon D's death, the only asset is the real property with a fair market value of $500,000. The trustee distributes property to B; B gets a $250,000 loan and pays C from loan proceeds or pays C $250,000 from personal funds.

The transfer of the real property to B qualifies for the parent-child exclusion as to B's 50 percent interest in the trust assets. The other 50 percent is a change in ownership as a sibling transfer.

Will Distributions

Whether a change in ownership occurs when a child receives a 100 percent interest in real property from a parent's estate when the estate is distributed according to a will on a share-and-share-alike basis depends on whether the will gives the executor a clear grant of broad discretion to distribute property in kind on a pro rata or non-pro rata basis. The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument.[284]

Therefore, if it is determined that the will clearly grants the executor broad discretion in distributing property in kind on a pro rata or non-pro rata basis, the change in ownership consequences are identical to those described for trusts above. The key to a share-and-share-alike distribution to children is that no change in ownership occurs upon distribution by the executor, unless a beneficiary receives property or assets valued in excess of the value of his or her share. The value of each share as of the date of death[285] is the determining factor. If one sibling receives more value than the others, the result is a transfer from the other siblings to the one with the excess value.

TRANSFERS INTO AND OUT OF LEGAL ENTITIES

Both the parent-child and the grandparent-grandchild exclusions apply only to a transfer of real property. *Real property* means real property as defined in section 104 and does not include any legal entity interest.[286] Thus, unlike the interspousal and registered domestic partner exclusions, a transfer of a legal entity ownership interest cannot qualify for either the parent-child or the grandparent-grandchild exclusion.

To qualify for either of these exclusions, if property is held in a legal entity such as a family limited partnership, the property must first be proportionally transferred from the legal entity to the individual partners prior to making the parent-child or grandparent-grandchild transfer.

Step Transaction Doctrine

The step transaction doctrine allows a county assessor to disregard, for taxation purposes, a series of real property transfers when the facts suggest the transfer might have been accomplished in fewer steps and the additional steps circumvent the intent of the change in ownership statutes.[287] In multiple-transaction situations involving parent-child or grandparent-grandchild transfers, if the transfer of the real property out of the legal entity is for the purpose of qualifying for the exclusion under section 63.1, the step transaction doctrine does not apply pursuant to the statement of legislative intent.

In enacting section 63.1, the Legislature stated its intent that the step transaction doctrine should not be applied to collapse steps involving parent-child transfers, including transfers involving legal entities. In an uncodified note to section 63.1, the Legislature wrote, in part, that:[288]

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[284] Probate Coded section 21102.
[285] See date of change in ownership exception for *Larson v. Duca.*
[286] Section 63.1(c)(8).
[287] *Shuwa Investments Corp. v. County of Los Angeles* (1991) 1 Cal.App.4th 1635, 1648-1649.
[288] Addressed in Section 2 of Chapter 48 of the Statutes of 1987.

> …it is the intent of the Legislature that the provisions of Section 63.1 of the Revenue and Taxation Code shall be liberally construed in order to carry out the intent of Proposition 58 on the November 4, 1986, general election ballot to exclude from change in ownership purchases or transfers between parents and their children described therein.

The legislative purpose goes on to specify that the step transaction doctrine should not apply to following types of transfers:

> …Specifically, transfers of real property from a corporation, partnership, trust, or other legal entity to an eligible transferor or transferors, where the latter are the sole beneficial owner or owners of the property, shall be fully recognized and shall not be ignored or given less than full recognition under a substance-over-form or step-transaction doctrine, where the sole purpose of the transfer is to permit an immediate retransfer from an eligible transferor or transferors to an eligible transferee or transferees which qualifies for the exclusion from change in ownership provided by Section 63.1. Further, transfers of real property between eligible transferors and eligible transferees shall also be fully recognized when the transfers are immediately followed by a transfer from the eligible transferee or eligible transferees to a corporation, partnership, trust, or other legal entity where the transferee or transferees are the sole owner or owners of the entity or are the sole beneficial owner or owners of the property, if the transfer between eligible transferors and eligible transferees satisfies the requirements of Section 63.1.

Thus, the step transaction doctrine should not be applied where transactions are consistent with this statement of legislative intent. Furthermore, effective for transfers on or after January 1, 2007, the above-quoted intent expressed by the Legislature also applies to grandparent-grandchild transfers.[289] (See Chapter 7 for a more detailed discussion of the step transaction doctrine.)

Example 12-8

H and W (husband and wife) own 50 percent of LLC X interests, and their son S owns 50 percent. H and W want to gift additional interest to their son. H, W, and S deed out of LLC X to H and W for 50 percent and S for 50 percent as tenants in common. H and W deed a 25 percent interest to S, and file a completed parent-child exclusion claim form. H, W, and S amend their LLC operating agreement to reflect the change in percentages, and deed back to LLC X.

There is no change in ownership since both transfers are proportional, and the step transaction doctrine does not apply. When H, W, and S deed back to LLC X, H, W, and S become original co-owners. Any subsequent transfer of original co-owner interest inside the LLC X will be cumulated and counted. The 25 percent interest transfer outside of the LLC

[289] Statutes of 2007, Chapter 224 (Senate Bill 1607).

was a transfer of a tenancy in common interest and not a transfer of an interest in the LLC. Thus, it was not counted or cumulated as an original co-owner interest transfer.

On the flip side, the substance-over-form argument does not apply where the intermediary steps were not actually taken. A transfer from a parent to a family partnership whose partners are the parent and the parent's adult children is a non-proportional transfer (ownership interests are not the same before and after the transfer) and results in a change in ownership to which the parent-child exclusion does not apply.[290]

DATE OF CHANGE IN OWNERSHIP

The parent-child and grandparent-grandchild exclusions apply to transfers that occur on or after the effective date of the respective exclusions. In general, the date of change in ownership is governed by the provisions of Rule 462.260. The change in ownership date for property that is sold is rebuttably presumed to be the recording date if a deed or other document evidencing the transfer is recorded. The date of any transfer under a will, trust, or intestate succession is the date of the decedent's death.

The parent-child exclusion applies to changes in ownership that occur on or after November 6, 1986.[291] For parent-child transfers, there is an exception for certain situations where the date of death occurred before November 5, 1986 (see Application of *Larson v. Duca* following). The grandparent-grandchild exclusion applies to changes in ownership that occur on or after March 27, 1996.[292]

APPLICATION OF *LARSON V. DUCA*

An exception exists where the date of death occurred prior to November 5, 1986 and a decree of distribution is filed after this date. In *Larson v. Duca*,[293] the Court of Appeal held that although the decedent died prior to the effective date of Proposition 58, the change in ownership in the real property from the decedent to her son did not occur on the date of her death, but instead resulted from the decree of distribution of the probate court issued after the effective date of Proposition 58.

The holding in *Larson v. Duca* is limited to the situation where a decedent died before November 5, 1986 and the estate is probated and thereafter distributed to the decedent's child through a decree of distribution issued after November 5, 1986. Under such circumstances, the date of the decree of distribution is considered to be the date of the transfer of the property from the parent to the child.

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[290] *Penner v. Santa Barbara* (1995) 37 Cal.App.4th 1672.
[291] Section 63.1(h)(1).
[292] Section 63.1 (h)(2).
[293] 213 Cal.App.3d 324 (1989).

After this decision was published, section 63.1(c)(1) was amended to specifically provide that the date of death is the date of transfer if the decedent died on or after November 6, 1986.[294]

PRINCIPAL RESIDENCE

A change in ownership does not include the purchase or transfer, between parents and their children, of real property that is the principal residence of an eligible transferor, providing that a claim is filed.[295] As of January 1, 2008, a *principal residence* is defined as the residence that is *eligible for* either the homeowners' exemption or the disabled veterans' exemption as a result of the transferor's ownership and occupation of the residence.[296] Previously, the homeowners' exemption or the disabled veterans' exemption had to be granted in the name of the transferor.

A principal residence is a person's true, fixed, and permanent home and the principal establishment to which the owner, whenever absent, intends to return. If the homeowners' or disabled veterans' exemption was not granted in the name of the transferor, then proof that the real property was the principal residence of the transferor must be provided. Proof of residency may include, but is not limited to, vehicle registration, voter registration, bank accounts, or income tax records.

Any portion of a property that does not qualify as the principal residence (for example, the other unit of a duplex) can qualify for exclusion under the $1 million limit.

PARENT-CHILD EXCLUSION

The parent-child exclusion can be used to transfer (and receive) an unlimited number of principal residences. Additionally, there is no dollar amount exclusion limit on principal residence transfers. The only requirement is that the residence be the principal residence of the transferor as of the date of the transfer.

Example 12-9

> Parent P sells her principal residence to her child D and purchases a smaller home that becomes P's new principal residence. Thereafter, P sells this second principal residence to her child S and then purchases a condominium which becomes P's principal place of residence.
>
> Both sales may qualify as transfers of a principal residence.

GRANDPARENT-GRANDCHILD EXCLUSION

In the event a grandchild did not receive a principal residence from his or her deceased parent that was excludable under the parent-child exclusion, the grandchild may receive a principal residence under the grandparent-grandchild exclusion regardless of its value (it will not be subject to the $1 million exclusion limit).[297] However, if a grandchild had previously received an

[294] Statutes of 1992, Chapter 1180, section 2 (Senate Bill 1639).
[295] Section 63.1(a)(1).
[296] Section 63.1(b)(1).
[297] Section 63.1(a)(3)(B).

excludable principal residence from his or her deceased parent, the transfer of any dwelling from the grandparent, including the grandparent's principal residence, is considered other real property which is subject to the deceased parent's $1 million limitation.[298] If the deceased parent had already used his or her $1 million exclusion, then the grandparent-grandchild exclusion is not available.

Example 12-10

Grandfather G sells his principal residence with an adjusted base year value of $1.5 million to his grandchild C (whose parents have died).

If C never received a principal residence from her parents, the sale qualifies for the grandparent-grandchild exclusion. If C had previously received an excludable principal residence from her parents but had not received any other property from her parents, $1 million of the adjusted base year value would qualify for the grandparent-grandchild exclusion and counts against her deceased parent's $1 million limit. Accordingly, there would be a change in ownership with respect to one-third ($500,000) of the principal residence C purchased from G.

Example 12-11

Grandmother G had a daughter D. Upon D's death in 1990, her child C inherited a principal residence and an income property that had an adjusted base year value of $700,000. D was unmarried when she died. Upon Grandmother G's death in 2004, C inherited Grandmother's house which had an adjusted base year value of $600,000.

The house C received from the grandmother must be considered as other property because C received a principal residence from her parents. Since C also received income property from D, the remainder of D's $1 million exclusion ($300,000) can be applied under the grandparent-grandchild exclusion. Accordingly, there would be a change in ownership with respect to 50 percent of the principal residence C inherited from G.

REASONABLE SIZE REQUIREMENT

Only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for a residence is considered to be part of the principal residence eligible for the parent-child or grandparent-child exclusion.[299] Whether the size is reasonable is a question of fact to be determined by a county assessor. Any excess land above the reasonable amount would be considered other real property of an eligible transferor and, therefore, subject to the $1 million limit.

[298] Section 63.1(a)(3)(B).
[299] Section 63.1(b)(1).

$1 MILLION LIMIT

For the parent-child exclusion, a change in ownership does not include transfers of the first $1 million of full cash value of non-principal residence real property for which exclusion claims are filed.[300] (See below for a discussion of filing requirements.) Section 110.1 provides that *full cash value* means the fair market value as of the 1975 lien date or the date of change in ownership, whichever occurs last, plus inflationary factoring. In other words, the value that is counted toward the $1 million limit is the adjusted base year value just prior to the date of transfer.

For purposes of the parent-child exclusion, the $1 million exclusion applies separately to each eligible transferor of real property owned by that transferor. The grandparent-grandchild exclusion may be claimed only to the extent that a deceased parent's $1 million exclusion has not been used.

For a transfer of property subject to Proposition 13, the full cash value is the adjusted base year value immediately prior to the transfer to an eligible transferee.[301] Where the transferred property is restricted by a Williamson Land Conservation Act or Mills Act historical property contract or is located in a Timberland Production Zone, the excluded value is the adjusted base year value, not the restricted value. For properties that have a current market value enrolled due to a decline in value (Proposition 8 value), the value counted toward the $1 million limit is the adjusted base year value, not the current market value.

The transfer of real property outside California and transfers for which the exclusion is not claimed are not counted toward the $1 million exclusion limit.

Example 12-12

> Parents jointly own, as community property, one parcel of investment real estate with an assessed value of $3 million.
>
> Each parent can transfer up to $1 million in value of real property they own to a child or children. If the entire parcel is transferred to one child, $2 million would be excluded from reassessment under the parent-child exclusion and one-third ($1 million) of the property would be reappraised.

JOINT TENANCIES AND THE $1 MILLION EXCLUSION

The $1 million exclusion cannot be used to exclude the transfer of a property in which the eligible transferor's interest was received through a transfer that was excluded from change in ownership under sections 65(b) or 62(f), unless the eligible transferor was an original transferor.[302] (See Chapter 2 for a discussion of original transferor.)

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[300] Section 63.1(a)(2).
[301] Rule 460(b)(1) and (b)(2).
[302] Section 63.1(b)(2).

Example 12-13

M is the mother of D and S. D owned real property outright and then added M and S, her brother, to title as joint tenants.

When D added M and S as joint tenants, there was no change in ownership[303] because D remained on title as a joint tenant. Thus, D became an original transferor and M and S became other than original transferors.[304]

Subsequently, M transferred her one-third interest to S. The interest M transferred to S does not qualify for the parent-child exclusion because when M's interest was excluded from reassessment under the joint tenancy rules, M was an other than original transferor.

MULTIPLE PROPERTIES

If parent-child or grandparent-grandchild claims are filed for multiple properties and the total assessed values exceed $1 million, the properties that transferred first (as determined by transfer date) receive the $1 million exclusion. If the transfer date is the same for all properties (for example, upon a date of death), the transferees must decide which properties are to receive the $1 million exclusion.

Example 12-14

X owns a vacation cabin, an apartment building, and other commercial property. X transfers to his daughter B a commercial building with an adjusted base year value of $400,000. B failed to file a claim for the exclusion.

Years later, when X transfers to his son C the vacation cabin with an adjusted base year value of $250,000 and the apartment building with an adjusted base year value of $750,000, X's entire $1 million exclusion amount is still available to C because B did not file a claim for the exclusion.

ALLOCATION OF THE $1 MILLION EXCLUSION

When the adjusted base year value of the real property exceeds the $1 million limit, the exclusion must be allocated between the land and improvements on a pro rata basis.[305]

Example 12-15

X inherits an investment property (not a principal residence) from her parents. The property had an adjusted base year value of $1.2 million, allocated as follows:

Land = $300,000
Improvements = $900,000

[303] Sections 62(f) or 65(b).
[304] Section 65(b).
[305] Section 63.1(d)(2).

X files a parent-child exclusion claim form with the county assessor. Since the $1 million exclusion must be allocated on a pro rata basis, the ratio of land and improvements to total adjusted base year value is calculated as follows:

	Adjusted Base Year Value	Ratio
Land	$300,000	300,000/1,200,000 = 25%
Improvements	$900,000	900,000/1,200,000 = 75%
Total	$1,200,000	

Applying the applicable exclusion percentages, the $1 million exclusion is allocated as follows:

	Excludable Value	Non-Excludable Value	Total
Land (25% excluded)	1,000,000 x 25% = $250,000	$50,000	$300,000
Improvements (75% excluded)	1,000,000 x 75% = $750,000	$150,000	$900,000
Total	$1,000,000	$200,000	$1,200,000

FILING REQUIREMENTS

No parent-child or grandparent-grandchild exclusion from change in ownership may be allowed until the appropriate claim form[306] is filed with the county assessor of the county in which the property is located.[307]

Both the transferor and transferee, or the executors of their estates or their legal representatives, must provide written certification under penalty of perjury as to the parent-child or grandparent-grandchild relationship and certain information about the property and any previous transfers.[308] If there is more than one transferor, each transferor must provide certification.[309] Conversely, if there is more than one transferee, only one of the transferees needs to certify and sign if the certifying/signing transferee has actual knowledge that all of the transferees are eligible transferees.[310]

Inclusion of the transferor and transferee signatures on the claim form is the standardized method approved by the Board for a county assessor to obtain such written certifications. The lack of the transferor's signature on the claim form does not preclude a county assessor from determining whether there is sufficient independent evidence to satisfy the declarations required by statute.

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[306] Form BOE-58-AH, *Claim for Reassessment Exclusion for Transfer Between Parent and Child;* and form BOE-58-G, *Claim for Reassessment Exclusion for Transfer From Grandparent to Grandchild*.
[307] Section 63.1(d).
[308] Section 63.1(d)(1)(A).
[309] Section 63.1(d)(1)(A), (B) and (C).
[310] Section 63.1(d)(1)(D).

If, for example, there are other forms or writings (deeds, court documents, etc.) signed under oath or penalty of perjury which support the declarations being made, then such documentation could satisfy the requirement of written certification by the transferor. The weighing of such evidence, of course, and the ultimate conclusion to which it leads are questions of fact entirely within the purview of a county assessor, with review rights by a county assessment appeals board.

The claim form is not a public document and is not subject to public inspection. However, it may be inspected by the transferee and transferor and their respective spouses, the legal representative of the transferee and the transferor, and the executor or administrator of the transferee's or transferor's estate.[311]

RETROACTIVE RELIEF

To receive the exclusion effective as of the date of transfer of real property, a claim for the parent-child or grandparent-grandchild exclusion must be filed within three years of the date of the transfer, or before the property has been transferred to a third party, whichever is earlier.[312]

A third party is a person who is not a transferor or transferee in the transfer for which the claim is being filed. Thus, a transfer to a parent or child of the transferor is not considered a transfer to a third party.[313] In the situation where a parent transfers property to a child, or a grandparent to a grandchild, and the child then transfers the property into a trust *prior* to filing a claim for the section 63.1 exclusion, the transfer to the trust is not a third party transfer as long as the child is a present beneficiary of the trust (for example, the child transfers the property to the child's revocable living trust). Therefore, a change in ownership would not result.

By contrast, a third party transfer does occur when a child transfers real property received from a parent to a legal entity (other than a trust in which the child is a present beneficiary) *prior* to filing a claim for the section 63.1 exclusion, even if the legal entity is wholly owned by the child. A change in ownership would result because a legal entity has a separate and distinct identity. The filing requirements for claiming the section 63.1 exclusion cannot be met if a claim has not been filed prior to the transfer into the legal entity, even assuming that the transfer to the legal entity would have been excluded from change in ownership under section 62(a)(2) because proportional interests were maintained.

If the property has been transferred to a third party or the three-year statute of limitations has passed, a claim form will be considered timely if it is filed no later than six months after the date of mailing of a notice of supplemental or escape assessment.[314]

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[311] Section 63.1(i).
[312] Section 63.1(e)(1)(A) and (1)(B).
[313] Section 63.1(e)(4).
[314] Section 63.1(e)(1)(C).

Example 12-16

A parent died on August 15, 2000. The successor trustee sold the property to a third party on September 25, 2001. The supplemental assessment notice for the date of death was mailed on February 1, 2002. The children filed a parent-child claim on June 15, 2002.

The claim is still considered timely because it was filed before the end of the six-month deadline.

PROSPECTIVE RELIEF

If both the three-year and the six-month limitation periods (discussed above) have expired and the property has not been transferred to a third party, a claim may be filed at any time; however, only prospective relief may be granted.[315]

For prospective relief, the transferee will receive relief beginning with the lien date of the assessment year in which the claim is filed.[316] For example, if a claim for prospective relief is filed on May 1, 2007, the claimant would receive relief for the January 1, 2007 lien date for the 2007-08 fiscal year. If a claim is filed after the roll is closed (July 1), the roll should be corrected and tax bills cancelled or payments refunded, as applicable.

[315] Section 63.1(e)(2).
[316] Section 63.1(e)(2)(A).

CHAPTER 13: PARTITION AND DE MINIMIS EXCLUSIONS

PARTITION

A *partition* is any division of real property giving separate title to those who previously held undivided interests as co-owners, such as in a joint tenancy or a tenancy in common. (See Chapter 2 for a discussion of joint tenancies and tenancies in common.)

SECTION 62(A)(1) EXCLUSION

A partition may result in a transfer of property that is excluded from change in ownership under section 62(a)(1).[317] These provisions are applicable only to transfers of interests held in tenancy in common or in joint tenancy and do not apply to transfers involving legal entities. Exclusions for transfers of real property between co-owners involving other forms of co-ownership (community property and legal entities) are specifically covered in other code sections.

Under section 62(a)(1), a real property transfer is excluded from change in ownership if the transfer results solely in a change in the method of holding title to the property transferred without a change in the proportional interests of the co-owners. The general rule is that if a partition has resulted in a change in proportional ownership interests, the property will be reassessed to the extent of the disproportionate transfer, as measured by market value.

APPRAISAL UNIT

The concept of *appraisal unit* is central to a determination of whether proportional interests in a property remain the same after a partition for purposes of applying the rule in section 62(a)(1).[318] An *appraisal unit* is defined as that which persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately.[319]

A single farm consisting of ten parcels would be a single appraisal unit. The partition of that single farm to two equal co-owners would not result in a change in ownership if each co-owner's interest in the partitioned property were of equal value afterward.

However, the partition of jointly held interests in two separate and distinct properties (two appraisal units) would require the comparison of the proportional interests held before and after the transfer in each separate property. In other words, there will be a change in ownership of each separate property of the interest transferred.

PARTITIONS—VALUATION

In determining whether the same proportional ownership interest exists after a partition, it is necessary to establish and compare the fair market values of the separate properties post-partition. For example, if a two-acre parcel (single appraisal unit) is being partitioned into

[317] See also Rule 462.020(b)(1).
[318] For a complete discussion of the concept of appraisal unit, see Assessors' Handbook Section 501, *Basic Appraisal*, January 2002, page 10.
[319] Section 51(d).

two separate one-acre parcels, the value of each individual parcel must be determined and the two values compared.

Example 13-1

A, B, C, and D own a four-acre parcel of land that is a single appraisal unit as joint tenants. They split the parcel into two lots: a one-acre parcel and a three-acre parcel. A takes title to the one-acre parcel and B, C, and D take title to the three-acre parcel.

These transfers can be excluded from reassessment as long as A's parcel is equivalent in value to 25 percent of the whole before the parcel split.

Example 13-2

X and B are equal tenants in common in a farm consisting of ten parcels, a single appraisal unit. The adjusted base year value of the appraisal unit is $300,000 (each owner has one-half interest valued at $150,000). The farm has a current fair market value of $1 million. X and B partition the farm and grant to X sole ownership of six parcels and to B sole ownership of the remaining four parcels.

The interests held by each owner must be appraised to determine if X or B acquired more than their respective proportional interests. If X's partitioned six parcels have a current fair market value of $600,000, and B's partitioned four parcels have a current fair market value of $400,000, there has been a change in ownership of a 10 percent interest (X now holds 60 percent and B now holds 40 percent ownership interest, whereas prior to the partition each owned 50 percent).

Since X owns more than he did prior to the partition, X's base year value must be increased. He owned 50 percent and now owns 60 percent. His original 50 percent interest had an adjusted base year value of $150,000, which remains intact. However, added to that would be the 10 percent interest he acquired, calculated at 10 percent of the current fair market value of the entire farm. His new base year value would be $250,000 [$150,000 + $100,000 (10 percent of partition date fair market value of $l,000,000)].

Since B now owns less than he did prior to the partition, B's base year value must be reduced. B's new base year value would be $120,000 (40 percent of $300,000 adjusted base year value of the appraisal unit).

Example 13-3

X and B are equal tenants in common in two residential vacant lots. Each lot is the same size and each has a $5,000 adjusted base year value and a fair market value of $10,000. X and B partition their tenancies, resulting in X owning one lot and B owning the other.

If each lot is a separate appraisal unit, this transfer would cause a change in ownership of the 50 percent transferred for each lot. The reasoning is that X and B began with each owning one-half of each lot (an undivided one-half interest in each appraisal unit) and after, each

owned 100 percent of one lot. Therefore, one-half of each lot must be reassessed. The new base year value of each lot would be $7,500 [$2,500 (one-half of the original adjusted base year value) + $5,000 (one-half of partition date fair market value of $10,000)].

For the section 62(a)(1) exclusion to apply, X and B would need to each receive one-half of each lot by way of a lot split, thereby receiving one-half of each appraisal unit.

In some cases, the partition of property is legally challenged and the partition may take more than one assessment year to be fully executed. The section 62(a)(1) exclusion from change in ownership may still apply even though the partition takes more than one assessment year to fully execute.

PARTITIONS—CONVERSION TO CONDOMINIUMS

A partition is the method used when co-owners of an apartment building wish to convert their units to condominiums.[320] In this case, the timing of the partition will determine whether there has been a change in ownership requiring a reappraisal.

A condominium project, like a normal subdivision, is assessed as a single parcel to the record owner for the year in which the subdivision tract map is filed. Unlike a normal subdivision, however, separate assessment of individual units in the ensuing years is not automatic, but occurs only after the conveyance of at least one condominium unit. If no units are ever sold, the entire condominium project will continue to be assessed as a single parcel. Thus, a condominium is treated as a single appraisal unit before the first individual unit is sold.[321]

If the partition occurs before the condominium conversion, the entire apartment complex would be regarded as one appraisal unit. In that case, if after the partition the interests of each co-owner are in proportion to the interest held prior to the partition, no reappraisal occurs.

Example 13-4

Four persons purchased a parcel of property as tenants in common with each owning a 25 percent undivided interest. A four-unit apartment complex was constructed on the property. While the complex has been approved for condominiums, no separate parcels have been created. The owners now intend to transfer one unit to each person. Each unit is identical and worth $100,000 for a total value of $400,000.

The transfer of each would be excluded as a partition since the ownership interests remain the same before and after the transfer.

On the other hand, if the condominium conversion and the sale of at least one unit precede the partition of the entire complex, then each condominium would be regarded as a separate appraisal unit and each person would be considered a partial owner of each condominium unit. A

[320] Such conversions would be subject to the limitations contained in sections 2188.3, 2188.6, and 2823.
[321] *County of Los Angeles v. Hartford Acc. & Indem. Co.* (1970) 3 Cal.App.3d 809.

comparison of the proportional interests held before and after the transfer of each condominium unit would be required.

Example 13-5

A and B purchased a parcel of property as tenants in common with each owning a 50 percent undivided interest. A three-unit building was constructed on the property. The building was approved for conversion to condominiums. One unit was sold to a third party, and separate parcels were created. A and B now intend to each take title of a separate condominium. Each condominium is worth $100,000 for a total value of $200,000.

Because each condominium is a separate appraisal unit and A and B own 50 percent of each unit as tenants in common, this transfer would result in a 50 percent change in ownership of each condominium.

5 PERCENT/$10,000 (DE MINIMIS) EXCLUSION

A transfer of an interest with a fair market value of less than 5 percent of the fair market value of the total property and a total market value transferred of less than $10,000 during a single assessment year[322] (whether accomplished through one or more transfers) is excluded from change in ownership.[323] Section 65.1(a) states, in part, that:

> …when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred shall be reappraised. A purchase or change in ownership of an interest with a market value of less than 5 percent of the value of the total property shall not be reappraised if the market value of the interest transferred is less than ten thousand dollars ($10,000), provided, however, that transfers during any one assessment year shall be cumulated for the purpose of determining the percentage interests and value transferred.

If the percentage or the fair market value of property transferred in a single assessment year exceeds either of the 5 percent or the $10,000 threshold, the percentage of the property previously excluded under section 65.1 must be reappraised (unless the transfer is otherwise excluded from change in ownership, such as an interspousal transfer).[324] The 5 percent/$10,000 limit applies to the property, not to each transferor or transferee.

Example 13-6

During an assessment year, the value of the accumulated interests transferred equals 3 percent of the fair market value of the total property and the dollar value of these interests is $12,000.

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[322] Section 118.
[323] Section 65.1(a).
[324] Rule 462.020(b)(2).

There will be a reappraisal of all the transferred interests because their total value exceeds $10,000.[325]

Example 13-7

B transfers a 2 percent interest in real property, with a market value of $3,000 to C on March 4. B transfers another 2 percent in real property with a value of $3,000 to D on July 14. B transfers a third 2 percent real property interest with a value of $3,000 to E on November 20.

Even though cumulatively less than $10,000 in fair market value was transferred, cumulatively more than 5 percent of interests were transferred. The county assessor should go back and reassess the 2 percent on March 4, the 2 percent on July 14, and 2 percent on November 20. In other words, the county assessor should not reassess 6 percent on November 20 when the cumulative total exceeded the applicable limit.

Example 13-8

In 2007 two spouses each transferred a 2 percent interest, and each interest had a market value of $6,000.

There will be a reappraisal of the interests that transferred because cumulatively more than $10,000 of interest ($12,000) transferred.

[325] Rule 462.020, Example 2.

CHAPTER 14: BASE YEAR VALUE TRANSFER – OVER 55 OR SEVERELY AND PERMANENTLY DISABLED PERSONS

OVERVIEW

Propositions 60, 90, and 110 amended section 2(a) of article XIII A of the California Constitution to allow persons who are over the age of 55 or severely and permanently disabled to sell a principal place of residence (original property) and transfer the base year value of that property to a qualifying principal residence (replacement dwelling). These base year value transfer provisions are commonly referred to as the Proposition 60/90/110 exclusion.

Proposition 60, effective November 6, 1986, allows homeowners over age 55 to transfer a base year value if both the original property and the replacement dwelling are located in the same county.

Proposition 90, effective November 9, 1988, extends the relief allowed by Proposition 60 to replacement dwellings located in a different county, if that county has adopted an ordinance participating in the program. Currently, the following eight counties have adopted ordinances implementing these provisions:

Alameda	Los Angeles	San Diego	Santa Clara
El Dorado	Orange	San Mateo	Ventura

Proposition 110, effective June 6, 1990, extends the relief allowed by Propositions 60 and 90 to severely and permanently disabled persons as long as the move is related to the disability.

These three propositions are implemented by section 69.5 which allows an eligible claimant to transfer the base year value of an original property to a replacement dwelling if the following conditions are satisfied:

- The claimant or claimant's spouse is age 55 or over or severely and permanently disabled.
- The original property is sold and reassessed to current market value.
- The replacement dwelling is purchased or newly constructed within two years of the sale.
- The replacement dwelling is located in the same county as the original property or in a county accepting base year value transfers from other counties.
- The replacement dwelling is of equal or lesser value than the original property.
- A claim is filed with the assessor of the county where the replacement dwelling is located.

ELIGIBLE CLAIMANT

A claimant is any person claiming the relief under section 69.5. A *person* means any individual and does not include a partnership, association, corporation, company, or other legal entity or

organization of any kind.[326] If a legal entity wholly owns an original property or acquires a replacement dwelling, the base year value transfer under section 69.5 is unavailable.

However, if title of either the original property or the replacement dwelling is held in a trust and the claimant is the present beneficial owner of the trust property, then the base year value transfer is available. (See Chapter 3 for a discussion of trusts.)

Example 14-1

> M, who is over 55, transferred her current principal residence to a revocable living trust. M's daughter P is the trustee. M would like to sell her current residence and transfer the base year value to a qualified replacement dwelling which she would also like to hold in the trust.
>
> Assuming that all other conditions are met, M is an eligible claimant because she is the present beneficial owner of the trust property, and she is considered the owner of both her current residence and her replacement dwelling. P, as trustee and holder of legal title, may sell the original property and purchase a replacement dwelling in the name of the trust, and file a claim on behalf of M, who is an eligible claimant.

A claimant must be an owner <u>and</u> a resident of *both* the original property and the replacement dwelling.[327]

If a *spouse* of a person claiming the property tax relief is a record owner of a replacement dwelling, that spouse is also considered to be a claimant.[328] However, since a registered domestic partner is not considered a spouse, the registered domestic partner of a claimant who is a record owner of either the original property or the replacement dwelling is not considered a claimant merely by virtue of this relationship, and remains eligible to make a claim in his or her name.

AGE/DISABILITY

Either the claimant, or the claimant's spouse who resides with the claimant, must be at least 55 years of age or severely and permanently disabled on the date of sale of the original property.[329]

Example 14-2

> At the time of the sale of an original property, the property owner and his spouse are 54 years of age. After the property owner turns 55, he and his spouse purchase a replacement dwelling.
>
> The property owner will not qualify since neither he nor his spouse were age 55 when the original property was sold. However, the property owner would qualify if the replacement dwelling was purchased at age 54, but the original property was not sold until the property owner reached age 55.

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[326] Section 69.5(g)(11); *Grotenhuis v. County of Santa Barbara* (2010) 182 Cal.App.4th 1158.
[327] Section 69.5(b)(1) [original property] and (b)(4) [replacement dwelling].
[328] Section 69.5(g)(9).
[329] Section 69.5(g)(9).

A *severely and permanently disabled person* is described in section 74.3(b) as:

> …any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, that results in a functional limitation as to employment or substantially limits one or more major life activities of that person, and that has been diagnosed as permanently affecting the person's ability to function, including, but not limited to, any disability or impairment that affects sight, speech, hearing, or the use of any limbs.

A person with a mental disability does not qualify on the basis of disability unless the mental disability manifests itself in a physical impairment within the meaning of section 74.3(b), which specifies physical disability or impairment. He or she may qualify on the basis of age, however, regardless of the existence of a non-qualifying disability. If a claimant is qualifying on the basis of disability, the move must be disability related.

ONE-TIME BENEFIT

In general, each claimant is eligible to transfer his or her base year value only once.[330] If a claimant makes a transfer under section 69.5 and his or her spouse is a record owner of the replacement dwelling, the spouse will also be deemed a claimant and considered to have received relief under this section. As a consequence, the spouse would also be prevented from making a future claim.[331]

There is one exception to this general rule of a one-time benefit. If a claimant or his or her spouse becomes severely and permanently disabled after having already used the one-time benefit on the basis of age (being 55 or over), the claimant or the claimant's spouse is eligible for a second base year value transfer for severely and permanently disabled persons.[332]

Example 14-3

> Husband H (age 57) and his wife W (age 50) sold their original property and purchased a replacement dwelling. The couple transferred their base year value. Four years later, W becomes severely arthritic and cannot climb the stairs to the bedrooms on the second floor, qualifying her as severely and permanently disabled. They sell the replacement dwelling and purchase another home to accommodate W's disability.
>
> Since the disability arose after the date of the over age 55 claim for base year value transfer, H or W can transfer the base year value a second time on the basis of the disability. W does not have to be over 55 to qualify for the relief based on her disability.

This exception is not available for the reverse situation. That is, if a person received a base year value transfer because of a disability and subsequently applies to transfer the base year value a second time after attaining the age of 55, the second claim would not qualify for relief.

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[330] Section 69.5(b)(7).
[331] Section 69.5(g)(9) and (b)(7).
[332] Section 69.5(b)(7).

REGISTERED DOMESTIC PARTNERS

Registered domestic partners are not married persons, and, therefore, each partner is an individual claimant under section 69.5. Because of this, an unqualified registered domestic partner cannot make a claim based on the eligibility of his or her registered domestic partner who is qualified to make a claim. For example, a registered domestic partner, who is not yet aged 55, may not make a claim based on the fact that his or her registered domestic partner is over age 55.

However, if two registered domestic partners purchase a replacement dwelling and one partner uses the base year value transfer, the other partner is not considered a claimant and is eligible to transfer the base year value another time.

Example 14-4

B and C, registered domestic partners both over the age of 55, sell their principal place of residence and purchase another residence. B files to transfer the base year value under section 69.5. Only B is considered the claimant.

Subsequently, B and C sell the replacement dwelling (which is their new original property) and buy another replacement dwelling. C may file a claim for transfer of the base year value of the second replacement dwelling since he was not considered a claimant because of B's claim.

TIMING

A replacement dwelling must be purchased or newly constructed within *two years* (before or after) of the sale of the original property.[333] If a replacement dwelling is, in part, purchased and, in part, newly constructed, the completion of new construction must occur within two years of the sale of the original property, regardless of when the land is purchased.

Example 14-5

T purchases a vacant lot in 2000. T sells his original residence in October 2007, and begins construction of a replacement dwelling on his vacant lot at the same time. T completes the construction of his replacement dwelling in June 2009, and it becomes his principal residence.

Assuming all other conditions are met, T is eligible to transfer his base year value.

Because this two-year period is part of the California Constitution, there are no exceptions or time extensions under any circumstances. In other words, no extensions can be granted for the two-year period, even if the delays are due to unforeseen circumstances beyond the claimant's control.

[333] Section 69.5(b)(5).

ELIGIBLE PROPERTY

An *original property* and a *replacement dwelling* are defined as:[334]

- A building, structure, or other shelter constituting a place of abode, whether real property or personal property that is owned and occupied by a claimant as his or her principal place of residence.
- Any land owned by the claimant on which the building, structure, or other shelter is situated.

An eligible property includes the land owned by the claimant of a reasonable size on which the dwelling is situated. *Reasonable size* includes **all** land if any nonresidential uses of the property are only incidental to the use of the property as a residential site. Land also includes:

- A leasehold interest under section 61(c).
- A land purchase contract.
- An ownership interest in a resident-owned mobilehome park that is assessed pursuant to section 62.1(b).

Purposes that are incidental to the use of the property as a residential site must be minor in nature. For example, boarding a horse, selling dairy or produce, or operating a home-based business out of a part of the house would be considered incidental to the use of the property as a residence. A farm or ranch operation, on the other hand, is not minor in nature because the farm or ranch is the primary use of the property and the home is incidental. Because of the potential for a variety of uses of property for nonresidential purposes, county assessors will need to exercise judgment in determining the types and extent of uses they determine to be incidental.

Example 14-6

X sold a home located on a 7,500 square foot lot and replaced it with a home located on a 20-acre parcel. As long as the 20-acre parcel was used only for purposes incidental to the use as a residential site, the base year value of the original property could be transferred to the entire 20-acre parcel as a qualified replacement dwelling.

The converse would also be true. If Y sold a home on a 20-acre parcel and purchased a home located on a 7,500 square foot lot, the 20-acre parcel and the home could qualify as the original property, assuming any nonresidential uses of the 20-acre parcel were merely incidental to the use as a residential site.

Example 14-7

T purchases a lot with a replacement dwelling in 2000 that needs some fixing up. After selling his original residence in October 2007, he begins to renovate the replacement dwelling before moving into the dwelling in June 2009.

[334] Section 69.5(g)(3) and (g)(4).

T is not eligible to transfer his base year value, since he purchased the replacement dwelling more than two years before the time he sold his original residence.

Many types of residential property, not just single-family homes, can qualify as original properties or replacement dwellings An eligible property includes a unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development.[335] Additionally, a manufactured home may also qualify as an eligible property (see further discussion of manufactured homes later in this chapter).[336]

RESTRICTED PROPERTY

Land that is enforceably restricted by a Williamson Act contract (open-space lands) is assessed under article XIII, section 8, of the California Constitution, and sections 421 et seq. These special valuation provisions do not apply, however, to a residence or land of reasonable size that is used as a site for the residence.[337] Instead, a residence and its underlying land are assessed under article XIII A (Proposition 13) and, thus, are eligible for the base year value transfer under section 69.5.

Similarly, property restricted to timberland use is excluded from the provisions of article XIII A and instead is valued under the Timber Yield Tax Law. However, property not subject to valuation under the Timber Yield Tax Law within a timberland production zone (TPZ), such as a residence or land of reasonable size that is used as a site for the residence, is to be valued according to the provisions of Proposition 13.[338] Thus, if TPZ property is sold that includes a residence, the residence and its underlying land is eligible for the base year value transfer under section 69.5.

A historical property that is enforceably restricted by a Mills Act contract is annually valued under sections 439 et seq. Annually, the restricted value is compared to the adjusted base year value and the current market value because section 439.2(d) provides that the restricted valuation cannot exceed a valuation under either section 110 or 110.1. When a Mills Act property is sold, a county assessor is required to reappraise an enforceably restricted historical property at its current fair market value and establish a new base year value. Thus, a residential property enforceably restricted by a Mills Act contract may qualify as either an original property or a replacement dwelling.

SALE AND PURCHASE REQUIREMENTS

To qualify for a base year value transfer, an original property must be sold and a replacement dwelling must be purchased or newly constructed.[339] *Sale* is defined as any change in ownership

[335] Section 69.5(c)(1).
[336] Section 69.5(c)(2).
[337] Section 428.
[338] Section 435(c).
[339] Section 69.5(b)(5).

of the original property for consideration.[340] Similarly, *purchase* is also defined as a change in ownership for consideration.[341]

Change in ownership means that the transaction results in a reappraisable event and is not excluded under sections 62 through 68.

Consideration is something of value that is exchanged for the property. Consideration is not limited to the payment of cash; it could include the exchange of other property, the assumption of a debt, the cancellation of an outstanding debt, or the creation of a debt. Further, nothing requires that the consideration be equivalent to the fair market value of the property transferred. While the transfer of property for nominal value may be questioned, the term purchase could include a transfer for some substantial consideration even though the value of that consideration may be less than the full cash value of the property received.

Example 14-8

J and S each solely own their own residence. After they marry, S sells her solely owned property and purchases J's property. S files a claim to transfer her old base year value to her newly acquired property.

S's purchase of J's property is not a change in ownership because it is a transfer between spouses which is excluded from reappraisal.[342] Since a transfer between spouses is automatically excluded from change in ownership as a matter of law, a claimant cannot choose between sections 63 and 69.5. Because S's purchase did not result in a change in ownership, she may not transfer her old base year value to her newly acquired property.

In addition, the sale of the original property must be a transaction constituting a change in ownership that results in either:

1. A reappraisal at its current full cash value in accordance with sections 110.1 or 5803; or
2. Receipt of a base year value transferred from another property under the provisions of section 69 (intracounty disaster relief), section 69.3 (intercounty disaster relief), or section 69.5 (principal residence).

A base year value cannot be transferred if an original property is sold to a governmental entity (for example, a county redevelopment agency) and becomes exempt as government-owned property.

While section 69.5 requires that the original property be *sold*, it makes no restrictions as to how the original property was acquired. Thus, the fact that the claimant may have acquired the original property by gift, inheritance, devise, or in a transaction excluded from change in

[340] Section 69.5(g)(8).
[341] Section 67.
[342] Section 63.

ownership will not affect that claimant's ability to transfer the original property's base year value when the property is sold.

Example 14-9

Husband H and his wife W are living in a home which W inherited from her mother. The home is W's sole and separate property. W wishes to sell the property and transfer its base year value to a new property that H and W purchase. H is 60 and W is 53.

W is an eligible claimant because H is over age 55 at the time of the sale of the original property and resides with her in the original property. The fact that W inherited the original property and owns it as her sole and separate property is not a disqualifying factor.

A replacement dwelling must be purchased or newly constructed within two years of the sale of the original property. Thus, relief under section 69.5 is unavailable if a replacement dwelling is, in whole or in part:

- Acquired in a transaction that is excluded from change in ownership; or
- Received by gift, inheritance, or devise.

Examples of transfers that are excluded from change in ownership, and thus are ineligible for section 69.5 relief include:

- Transfers between spouses and registered domestic partners.
- Transfers between parents and children for which claims were filed and granted.

NEWLY CONSTRUCTED REPLACEMENT DWELLING

To qualify for a base year value transfer, a replacement dwelling must be purchased or newly constructed. A newly constructed dwelling means an entirely new dwelling is built or an existing residence is gutted and remodeled to the extent that it is considered the substantial equivalent of a new structure. Minor construction, such as a room addition or the addition of a swimming pool, does not bring the dwelling to the level of a newly constructed building. To receive relief under section 69.5, the construction of a new residence must be completed within two years of the sale of the original property. Pursuant to Rule 463.500, the date of completion of new construction is the date upon which the property has been inspected and approved for occupancy by the local building department.

Example 14-10

T purchases a lot with a residence in 2000. After selling his original residence in October 2007, he added a bedroom and bathroom before occupying the residence in June 2009.

T is not eligible to transfer his base year value since he purchased the replacement dwelling more than two years before the time he sold his original residence. The addition of a bedroom and bathroom did not render the entire residence to be newly constructed or bring the entire residence to the substantial equivalent of a new structure.

PRINCIPAL RESIDENCE REQUIREMENTS

To qualify for relief under section 69.5, both the original property and the replacement dwelling must be eligible for either the homeowners' or disabled veterans' exemption.[343] This means a claimant must both own the property and occupy it as a principal residence. A principal residence is a person's true, fixed, and permanent home and principal establishment to which the owner, whenever absent, intends to return.

A homeowners' or disabled veterans' exemption does not need to actually have been granted. If an exemption has not been granted, the claimant must prove that the property is eligible for such exemption. Proof of residency may include vehicle registration, voter registration, bank accounts, or income tax records.

The original property must be eligible for the homeowners' or disabled veterans' exemption as of one of the following dates:[344]

1. At the time of the sale.
2. Within two years of the purchase or new construction of a replacement dwelling.
3. At the time when the original property was substantially damaged or destroyed by misfortune or calamity.

The replacement dwelling must be eligible for the homeowners' or disabled veterans' exemption when the claim is filed.[345]

EQUAL OR LESSER VALUE REQUIREMENT

A replacement dwelling must be of *equal or lesser value* than the original property. This is also referred to as the value equivalency test or requirement. To make this determination, the full cash value of the original property as of the date of its sale must be compared with the full cash value of the replacement dwelling as of its date of purchase or completion of new construction.

FULL CASH VALUE OF ORIGINAL PROPERTY

The *full cash value of the original property* is defined as:

1. The new base year value determined under subdivision (e) of section 69.5; or
2. Where an owner chooses not to rebuild on the original property after it has been substantially damaged or destroyed by misfortune or calamity, the property's full cash

[343] Section 69.5(b)(2) and (b)(4).
[344] Section 69.5(b)(2) and (g)(3).
[345] Section 69.5(b)(4).

value determined under section 110 (fair market value) immediately prior to such damage or destruction.[346]

The full cash value of the original property includes any inflationary factoring that occurs between the sale of the original property and the purchase of the replacement dwelling, if the replacement dwelling is purchased or newly constructed after the sale of the original property.[347]

FULL CASH VALUE OF REPLACEMENT DWELLING

The *full cash value of a replacement dwelling* is its full cash value, determined in accordance with section 110.1, as of date of purchase or the date of completion of new construction.[348]

If the replacement dwelling is, in part, purchased and, in part, newly constructed, the date on which it was purchased or newly constructed is the later of either (1) the date of purchase or (2) the date of completion of construction.[349]

Example 14-11

J purchased a lot in 1981. In August 2005, construction of a new residence was completed. The county established a new base year value for the residence at $650,000. The adjusted base year value of the land was $52,366. In October 2005, J sold his original property for $725,000 and applied to transfer the base year value to the replacement dwelling. The county determined that the full cash value of the replacement land and improvements as of the date of completion of construction was $850,000. Because the date of completion of construction occurred prior to the date of sale, the full cash value of the replacement dwelling must meet the 100 percent value standard.

The lot and newly constructed residence do not qualify because their full cash value as of the date of completion of construction ($850,000) exceeds the full cash value of the original property on the date of sale ($725,000).

VALUE COMPARISON

Section 69.5 provides that a replacement dwelling is of *equal or lesser value* if its full cash value does not exceed:[350]

- 100 percent of the full cash value of the original property if the replacement dwelling is purchased or newly constructed *prior to* the date of the sale of the original property.
- 105 percent of the full cash value of the original property if the replacement dwelling is purchased or newly constructed *within the first year* following the date of the sale of the original property.

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[346] Section 69.5(g)(7).
[347] Section 110.1(f).
[348] Section 69.5(g)(6).
[349] Section 69.5(g)(5); *Wunderlich v. County of Santa Cruz* (2009) 178 Cal.App.4th 680.
[350] Section 69.5(g)(5)(A) through (5)(C).

- 110 percent of the full cash value of the original property if the replacement dwelling is purchased or newly constructed *within the second year* following the date of the sale of the original property.

The relief granted under section 69.5 is all or nothing. If the full cash value of the entire replacement dwelling exceeds the applicable limit, then none of it will qualify for a base year value transfer. There is no partial base year value transfer.

Example 14-12

G sold her personal residence for $500,000 and purchased a single-family residence for $1,000,000.

G does not qualify for a base year value transfer from the sold residence to a portion of the purchased residence.

Example 14-13

T and J sell their respective personal residences for $800,000 each. Together they purchase a single-family residence for $1,500,000 with each receiving title as tenancy in common as to an undivided one-half interest.

The values of the two sold properties cannot be combined. Neither T nor J will qualify to transfer their base year value because $1,500,000 is greater than $800,000.

If a deed for the purchase of a replacement dwelling is recorded any time after a deed evidencing the sale of the original property is recorded, even if both are recorded on the same day, the purchase of the replacement dwelling is presumed to have occurred after the sale of the original property. Thus, if the sale of an original property and the purchase of a replacement dwelling are both recorded on the same day and the deed for the sale of the original property is recorded first, then the purchase of the replacement dwelling is presumed to occur after the sale of the original property and the full cash value of the replacement dwelling must meet the 105 percent or less value standard.

MISCELLANEOUS ISSUES

MANUFACTURED HOME

A base year value may be transferred from a manufactured home as an original property to a replacement dwelling, but only if the manufactured home is assessed on the local roll (not subject to the vehicle license fee). If the manufactured home is not assessed on the local roll, it has no base year value to transfer. In addition, an original property must be subject to reassessment under either section 110.1 or section 5803, unless a base year value is being transferred to it under section 69 (intracounty disaster relief), section 69.3 (intercounty disaster

relief), or section 69.5 (principal residence). A licensed manufactured home[351] is not subject to reappraisal upon a change in ownership.

A licensed manufactured home may be a replacement dwelling if it sits on a lot owned by the claimant. However, only the land on which the licensed manufactured home is located (and any miscellaneous improvements taxed as real property) will receive the base year value. The original property's base year value should not exceed the market value of the replacement dwelling land (and miscellaneous improvements).

In the situation where a licensed manufactured home is converted to the local property tax after a claim is approved transferring the base year value to the land only, upon the conversion the manufactured home would then be eligible for section 69.5 benefits. Any unallocated portion of the base year value of the original property can be applied to the manufactured home as of the lien date following the date of conversion. The conversion does not have to occur within two years of the sale of the original property in order for the manufactured home to be eligible.

When either the original property or the replacement dwelling is a manufactured home in a mobilehome park (on leased land), the base year value may be reallocated based on the land-improvement ratio of the replacement dwelling's full cash value.

Example 14-14

M sells a manufactured home (no lot) that is assessed on the local roll in January 2007. In March 2007, she acquires a conventional house and lot as a replacement dwelling. Both the original property and the replacement dwelling have a full cash value of $70,000.

The base year value may be transferred from the manufactured home to the new home, assuming M is otherwise qualified. The equal or lesser value test has been met since the full cash value of the replacement dwelling is less than 105 percent of the full cash value of the original property. The factored base year value of the manufactured home should be transferred to the house and lot, maintaining the same ratio for land and improvements as reflected in the full cash value of the replacement dwelling.

	Factored Base Year Value	**Full Cash Value as of Jan 2007**	**Full Cash Value as of Mar 2007**	**Ratio Land and Improvements to Total Property**	**Allocation of FBYV to Replacement Dwelling**
Original Property (Manufactured Home)	$35,000	$70,000	N/A	N/A	
Replacement Dwelling	N/A	N/A	$70,000		$35,000
House and Lot			$20,000 L $50,000 I	.29 x $35,000 .71 x $35,000	= $10,150 = $24,850

[351] Vehicle license fee administered by the California Department of Motor Vehicles.

Example 14-15

P sells a single-family residence and acquires a manufactured home (no lot) on the local property tax roll in January 2007.

The entire base year value of the single-family residence, not just the improvement value, could be moved to the manufactured home to the extent that it does not exceed the fair market value of the manufactured home and any miscellaneous improvements as of the date of purchase.

	Factored Base Year Value	**Full Cash Value as of Jan 2007**	**Full Cash Value as of Mar 2007**	**Allocation of FBYV to Replacement Dwelling**
Original Property (house and lot)	$35,000	$170,000	N/A	
Replacement Dwelling (manufactured home only)	N/A	N/A	$70,000	$35,000

Example 14-16

B's single-family residence, with a base year value of $120,000, sold for $450,000. B purchased a manufactured home and a pro rata interest in a resident-owned mobilehome park for $300,000

The factored base year value of the original property should be reallocated because the factored base year value of the original property improvement exceeds the fair market value of the replacement manufactured home. The allocation of the factored base year value should be based on the land-improvement ratio of the replacement dwelling's full cash value.

	Factored Base Year Value	**Full Cash Value as of Sale**	**Full Cash Value as of Purchase**	**Ratio Land and Improvements to Total Property**	**Allocation of FBYV to Replacement Dwelling**
Original property (house and lot)	$ 47,500 L $142,500 I $190,000	$450,000			
Replacement dwelling			$300,000		$190,000
Manufactured home and pro rata interest in park entity			$175,000 L $125,000 I	.58 x $190,000 .42 x $190,000	= $110,200 = $79,800

MULTI-UNIT DWELLING

Each unit of a multi-unit dwelling is considered to be a separate property.[352] Examples of a multi-unit dwelling would include a duplex, triplex, two residences on a lot, a cooperative housing corporation, etc. Thus, the base year value from one unit of a duplex may be transferred to a replacement dwelling if the fair market value of the replacement dwelling is equal to or less than the fair market value of one unit of the duplex. The same would be true of any multiple-unit residences, such as condominiums or triplexes.

If an original property includes a separate living unit that is used as a rental, the full cash value of the entire property would be allocated between the principal residence and the rental unit. A unit may be considered separate from the principal residence if it has its own kitchen, bathroom facilities, and entrance and is used for purposes incompatible with the homeowners' exemption. Where there is a separate living unit that is not considered part of the principal residence, only the full cash value of the principal residence would be compared to the full cash value of the replacement dwelling. In addition, the factored base year value would be allocated between the principal residence (and land) and the separate unit (including land) so that only the base year value of the principal residence is transferred to the replacement dwelling.

However, where a separate unit is used in a manner that is compatible with the homeowners' exemption, the unit may be considered a part of the original property. For example, an apartment or guest house that was not rented but was instead used intermittently by guests or family members may be considered part of a principal residence.

Example 14-17

> M and P, a married couple both over the age of 55, own a home with an apartment over the garage. The apartment was never rented but rather was used occasionally by guests and family members. The apartment was also eligible for the homeowners' exemption. M and P sell their home and file a claim to transfer their base year value.
>
> Since the apartment over the garage was considered as part of the principal residence and there was no evidence that M and P executed a lease or otherwise used the apartment for purposes incompatible with the homeowners' exemption, the entire property (residence and apartment) would be considered in the value test for the section 69.5 benefits. Thus, the base year value of the entire original property may be transferred to their replacement dwelling.

MULTIPLE OWNERS OF ORIGINAL PROPERTY AND/OR REPLACEMENT DWELLING

A section 69.5 base year value transfer is available to a claimant who is a co-owner of an original property, held as joint tenants, tenancy in common, or community property, subject to the following limitations:

[352] California Constitution, article XIII A, section 2(a); section 69.5(g)(3) and (g)(4).

1. If all the co-owners purchase or newly construct a single replacement dwelling in which each co-owner retains an interest, a claimant is eligible for relief whether or not any of the others are eligible claimants.

2. If two eligible co-owners sell an original property and each acquires a separate replacement dwelling, only one may qualify to transfer the base year value. The co-owners must decide by mutual agreement which one of them will receive the property tax relief.

3. If spouses who owned the original property as community property separately purchase or newly construct two replacement dwellings, only the spouse who is 55 or older, or who is severely and permanently disabled, is eligible for the base year value transfer. If both spouses are over 55 years of age, only one of them may transfer the base year value, and they must mutually agree which one of them will receive the relief.[353]

In the case of co-owners of a multiple-unit original property, the limitations imposed by paragraphs (2) and (3) above only apply to those co-owners who live in the same dwelling unit.[354] However, when co-owners of a multiple-unit original property qualify for separate homeowners' exemptions (for example, they reside in different units, each occupying one-half of a duplex owned jointly), each unit is to be treated separately,[355] and each portion of the base year value of the original property may be transferred to a different qualified replacement dwelling. Thus, when two otherwise eligible co-owners sell a duplex in which each person occupies one side, each may acquire a replacement dwelling and qualify for relief. The value comparison is made between their respective portions of the original property (each side of the duplex) and their respective replacement dwellings.

FRACTIONAL INTERESTS IN PROPERTY

Section 69.5 treats an original property and a replacement dwelling as appraisal units and does not contemplate the sale or purchase of fractional interests. The only exception is a multi-unit property.

If a claimant sells an original property in increments, all increments must be sold within two years of the date of purchase or completion of construction of the replacement dwelling. Similarly, if the replacement dwelling is purchased in increments, all transactions must occur within two years of the sale of the original property.

Example 14-18

D purchases 50 percent of a residence in November 2007. In April 2008, D purchases the other 50 percent. D sells his original property in June 2009.

[353] Section 69.5(d)(1) through (d)(3).
[354] Section 69.5(d)(3).
[355] Section 69.5(g)(3) and (g)(4).

Since the residence was purchased in its entirety within two years of the sale of the original property, it may qualify for the base year value transfer.

Example 14-19

In 1995, two brothers, B and T, purchased a residence as joint tenants. In 2006, B sold his primary residence, purchased T's 50 percent interest, and filed a claim to transfer the base year value.

B cannot transfer his base year value because half the interest was purchased more than two years before the sale of his original property.

If a claimant owns only a partial interest in either the original property or the replacement dwelling, the equal or lesser value requirement is tested by comparing the values of the entire properties. However, the entire original property must be sold within the applicable time limits in order to qualify for the base year value transfer. A transfer that results in only a partial reappraisal of either the original property or the replacement dwelling is ineligible for the base year value transfer.

Example 14-20

M, who is over age 55, sold her original property for $750,000. Two months later, M and daughter D purchased a single-family residence for $700,000.

M can transfer her base year value to the replacement dwelling because she is an owner and occupies it as her primary residence. The fact that her daughter is also on title does not affect her ability to transfer the base year value to the entire replacement dwelling.

ADDITIONAL NEW CONSTRUCTION

Where a claim to transfer the base year value has been timely filed and granted, and subsequently new construction is performed on the replacement dwelling, the new construction can be included in the base year value that was transferred if:

- The new construction is completed within two years of the date of sale of the original property;
- The owner notifies the county assessor in writing within 30 days after completion of the new construction; and
- The full cash value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is equal or less than the full cash value of the original property.[356] This comparison does not include the 5 or 10 percent time increase used for the value comparison test.

However, if the replacement dwelling is demolished and a new home is built in its place, it is possible that the full cash value of the replacement dwelling (land and residence) on the date of

[356] Section 69.5(h)(4).

purchase plus the full cash value of the newly constructed home would exceed the full cash value of the original property on the date of sale. In that case, the transferred base year value of the land would remain, the base year value of the demolished residence would be removed from the assessment roll, and the new home would be assessed at current market value as new construction.

DAMAGED OR DESTROYED ORIGINAL PROPERTY

If an original property was substantially damaged or destroyed by misfortune or calamity and sold in its damaged state, its base year value may be transferred to a replacement dwelling under certain circumstances. An original property is *substantially damaged or destroyed by misfortune or calamity* if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the misfortune or calamity. *Damage* includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature.[357]

The damage or destruction does not have to be caused by a disaster that resulted in a Governor-proclaimed state of emergency. *Disaster*, *misfortune*, or *calamity* is some event out of the ordinary; an unforeseeable, sudden, or unusual occurrence; in contrast to gradual deterioration or worsening condition over time. Damage to a building or land that occurs gradually due to ordinary natural forces is not caused by disaster, misfortune, or calamity.[358]

The date of misfortune or calamity does not have to meet the two-year requirement that otherwise applies under section 69.5. However, the sale of the original property in its damaged state must have occurred within two years of the purchase or new construction of the replacement dwelling and within the timeframe of the proposition under which relief is sought in order to qualify for relief.[359]

If an original property was substantially damaged or destroyed by misfortune or calamity and sold in its damaged state, the value to use in the value comparison test is the full cash value as of the date immediately prior to the misfortune or calamity. The base year value to transfer is the base year value immediately prior to the misfortunate or calamity, plus inflationary adjustments.

FILING REQUIREMENTS

The property tax relief provided by section 69.5 is not automatic. To transfer a base year value, a claimant must file a claim[360] with the assessor of the county in which the replacement dwelling is located. If a spouse of the claimant is a record owner of the replacement dwelling, the spouse

[357] Section 69.5(g)(13).
[358] *T.L. Enterprises, Inc. v. Los Angeles County* (1989) 215 Cal.App.3d 876.
[359] See Section 69.5(j) for effective dates.
[360] Form BOE-60-AH, *Claim of Person(s) at Least 55 Years of Age for Transfer of Base Year Value to Replacement Dwelling;* form BOE-62, *Disabled Persons Claim to Transfer Base Year Value to Replacement Dwelling.*

must also be listed on the claim.[361] Ownership and occupation of the replacement dwelling as a principal residence is a prerequisite to filing the claim.

Example 14-21

Mrs. B sold her property and moved to another state. Two years later she purchased a replacement dwelling in California, but continued to live outside the state. She filed a claim for base year value transfer of her original property in California in anticipation of moving into the replacement dwelling.

The county assessor properly denied Mrs. B's claim as she did not occupy the replacement dwelling as her principal place of residence at the time the claim was filed.

However, nothing in section 69.5 precludes a taxpayer from re-filing once all the qualifications are met. As long as the claim is filed within three years of the sale of the original property and all other requirements are met, the relief will extend to the entire period from the date of the filing of the claim back to the date provided in subdivision (h)(1), even if the claimant did not occupy the replacement dwelling until the time that the claim was re-filed.

In addition to filing the claim, proof of age or disability must be provided. If a spouse who resides with the claimant is the age or disability qualifier but is not a record owner of the replacement dwelling, the spouse should be prepared to provide proof of eligibility. Proof includes:

Age – a driver's license, birth certificate, or other legal document that contains a birth date.

Severe and permanent disability – a certification, signed by a licensed physician or surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition.[362]

A severely and permanently disabled claimant must identify the reason for the move—to accommodate the disability or to alleviate the financial burden caused by the disability. In addition to the proof of disability, a severely and permanently disabled claimant must also submit either of the following:

- A certification[363] signed by a licensed physician or surgeon that (1) identifies specific reasons why the disability necessitates a move to the replacement dwelling; and (2) sets forth the disability related requirements of the replacement dwelling, along with a substantiation by the claimant that the replacement dwelling meets those requirements and that the primary reason for the move is to satisfy such requirements.[364]

[361] Section 69.5(f).
[362] Section 69.5(f)(1)(B).
[363] Form BOE-62-A, *Certificate of Disability.*
[364] Section 69.5(f)(1)(B)(i).

- Proof that substantiates that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. A declaration under penalty of perjury by the claimant, claimant's spouse, or claimant's guardian can be used to establish a rebuttable presumption of the primary purpose of the move.[365]

FILING PERIOD

If a claim is filed within three years of the date a replacement dwelling was purchased or construction of a replacement dwelling was completed, it is considered timely.[366]

If a timely claim is filed and the base year value transfer is approved, the adjusted base year value of the replacement dwelling is transferred as of the *latest* of the following dates:

- The date the original property is sold;
- The date the replacement dwelling is purchased; or
- The date the new construction of the replacement dwelling is completed.[367]

Example 14-22

T was over age 55 when she sold her original property in March 2004 and purchased a replacement dwelling in April 2004. However, she rented an apartment from March 2004 through December 2004, and did not begin occupying the replacement dwelling as her principal residence until January 2005. In February 2005, T filed a claim to transfer her base year value to the replacement dwelling.

Relief should be granted dating back to the date of the purchase of the replacement dwelling in April 2004.

Example 14-23

If C purchases a replacement dwelling when C turns 55 but does not sell his original property until 18 months later, C will be responsible for the full amount of property taxes based on the replacement dwelling's fair market value on the date of purchase until the date of sale. The base year value cannot be transferred until the original property is sold. No refund of tax paid with respect to the replacement dwelling is available for the period between the date of purchase of the replacement dwelling and the date of sale of the original property.

If an original property had a Proposition 8 value (current market value) or a restricted value (for example, open space or historical property) enrolled at the time of sale, the value to transfer is the original property's adjusted base year value and not the Proposition 8 or restricted value.[368]

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[365] Section69.5(f)(1)(B)(ii).
[366] Section 69.5(f)(1)(F).
[367] Section 69.5(h)(1).
[368] Section 69.5(g)(2); sections 110.1(a) and (f).

PROSPECTIVE RELIEF

Effective January 1, 2007, if the three-year claim filing deadline is missed, base year value transfers may be granted on a prospective basis if all other requirements are satisfied and the replacement dwelling has not been transferred to a third party.[369]

A claimant is eligible for prospective relief beginning with the lien date of the assessment year in which the claim is filed.[370] No refunds or cancellation of taxes paid for prior years are available.

Example 14-24

> Z sold an original property and purchased a qualifying replacement dwelling in 2002, but never filed a claim to transfer the base year value.
>
> If Z files a claim in 2008, Z may get relief beginning with the 2008 lien date (January 1, 2008) for the 2008-09 fiscal year. Z will not receive any refunds or cancellation of taxes paid for the 2007-08 fiscal year or any prior years.

The value of the replacement dwelling for the assessment year in which the claim is filed is the adjusted base year value of the original property on the roll when it was sold, factored forward for inflation to the claim year.[371] The adjusted base year value of any new construction on the replacement dwelling completed between the date of purchase and the date prospective relief is granted must also be added to the transferred base year value.

The prospective relief provision applies only to the three-year claim filing period. It does not apply to a missed 30-day notice period for the completion of new construction after a transfer of base year value for a replacement dwelling that was purchased.

If a claim for prospective relief is filed in a county that no longer has an ordinance allowing intercounty transfers of base year values, the claim for prospective relief should still be granted if the ordinance was in effect at the time the base year value transfer occurred.

DENIAL OF A CLAIM AND PURCHASE OF ANOTHER REPLACEMENT DWELLING

If a claim is denied, a taxpayer may file a claim for the transfer of a base year value to another replacement dwelling.[372] However, the second replacement dwelling must also meet all the requirements of section 69.5 (for example, it must be purchased within two years of the sale of the original property). There are no exceptions or time extensions under any circumstances.

Example 14-25

> In July 2007, J purchased a home that had a full cash value of $250,000. J expected that his original property would sell for at least the same amount, and then he would file a claim to

[369] Section 69.5(f)(1)(F)(2).
[370] Section 69.5(f)(1)(F)(2)(A).
[371] Section 69.5(f)(1)(F)(2)(B).
[372] See the Board's *Assessment Appeals Manual,* and Publication 30, *Residential Property Assessment Appeals*, for further information on assessment appeals.

transfer his base year value. However, due to a slow real estate market, his original property finally sold in June 2009 for only $220,000.

J's claim to transfer the base year value was denied by the county assessor because the full cash value of the replacement dwelling exceeded the full cash value of the original property. However, since the first property that J purchased failed the value equivalency test, J did not use his one-time-only benefit and is not precluded from finding a qualifying replacement dwelling. J has two years from the sale of his original property in June 2009 to acquire a qualifying property.

CLAIM IS CONFIDENTIAL

A claim for transfer of base year value under section 69.5 is not a public document and not subject to public inspection. A claim may only be inspected by:[373]

> …the claimant or the claimant's spouse, the claimant's or the claimant's spouse's legal representative, the trustee of a trust in which the claimant or the claimant's spouse is a present beneficiary, and the executor or administrator of the claimant's or the claimant's spouse's estate.

RESCINDING A CLAIM

There are two circumstances under which a claim may be rescinded, thereby allowing the base year value of an original property to be transferred to a different replacement dwelling. Effective September 30, 1990, a section 69.5 claim may be rescinded if the following conditions have been met:[374]

1. A written notice of rescission, signed by the original claimant(s), is given to the county assessor's office where the claim was filed; and

2. If the original claim would have resulted in a refund, the notice is delivered to the county assessor's office *before* the date the county first issues a refund check. If a refund is not applicable, the notice must be delivered *before* any property taxes are paid on the new transferred base year value. If taxes have not been paid, the notice must be delivered *before* any property taxes on the new transferred base year value become delinquent.

If either of these conditions is not met, then the claim cannot be rescinded, and the base year value will remain with the first replacement dwelling.

Effective January 1, 2001, a section 69.5 claim may also be rescinded if *both* of the following conditions have occurred:[375]

[373] Section 69.5(n).
[374] Section 69.5(i)(2)(A).
[375] Section 69.5(i)(2)(B).

1. The claimant vacated the replacement dwelling as his or her principal place of residence within 90 days after the original claim was filed regardless of whether the property continues to receive the homeowners' exemption; and

2. A notice of rescission, signed by the original claimant(s), is delivered to the office of the county assessor within six years after relief was granted.

If either of these conditions is not met, the transferred base year value remains with the first replacement dwelling.

Example 14-26

P sold an original property and transferred the base year value to a qualified replacement dwelling. After moving in, major structural problems were discovered which rendered the replacement dwelling partially uninhabitable. The builder was unable to correct the problems. A court ordered a rescission of the purchase. P purchased a second replacement dwelling and filed a claim to transfer the base year value from his original property.

In this situation, timing is critical. Either (1) a notice of rescission must be given to the county assessor before the date the county first issues a refund check or before property taxes based on the new transferred value are paid or, if unpaid, before the taxes become delinquent; or (2) the claimant must vacate the replacement dwelling within 90 days of filing the claim and a notice of rescission must be given to the county assessor within six years. In addition, regardless of the fact that a court rescinded the purchase, any new replacement dwelling must be purchased within two years of the sale of the original property and must meet the value equivalency requirement in order to qualify for relief.

If a claim is successfully rescinded, the taxpayer may purchase or construct another replacement dwelling and file a claim to transfer the base year value to that property. However, the second replacement dwelling must also meet all the requirements of section 69.5 (for example, it must be purchased within two years of the sale of the original property). There are no exceptions or time extensions under any circumstances.

CHAPTER 15: GOVERNMENT ACQUISITION OF PROPERTY

Proposition 3, approved by the voters on June 8, 1982, amended article XIII A by adding subdivision (d) to section 2. This provides that change in ownership does not include:

> …the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings, by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation.

This is implemented by section 68 and Property Tax Rule 462.500.

Displaced means a property owner is removed, expelled, or forced from property due to governmental action.[376]

Replacement property may be located in any California county. Intercounty transfers do not require a local authorizing ordinance.

ELIGIBLE PROPERTY

Property taken is defined as the real property taken or acquired by:

- Eminent domain proceedings instituted by an entity so authorized;
- A public entity; or
- Governmental action resulting in a judgment of inverse condemnation.[377]

Entities authorized by statute may include such public utilities as a telephone company or an electric company.

Real property includes land, land improvements, living improvements, manufactured homes, and fixed machinery and equipment. This base year value transfer does not apply to personal property.[378] A replacement property is not limited to a single parcel.

COMPARABILITY

Replacement property acquired by a person displaced by government action is deemed to be comparable to the property taken if it is similar in size, utility, and function.[379]

The *size* of the property focuses on value, not physical characteristics. Property is similar in size if its full cash value is not more than 120 percent of the award or purchase price paid for the property taken.[380] A replacement property or any portion of it that has a full cash value over

[376] Rule 462.500(b)(4).
[377] Rule 462.500(b)(1).
[378] Rule 462.500(b)(5).
[379] Rule 462.500(c).
[380] Rule 462.500(c)(1).

120 percent of the award or purchase price is not similar in size, but only to the extent of the excess.[381]

Replacement property is similar in *function* and *utility* if it either is, or is intended to be, used in the same manner as the property taken. Property is similar in function and utility if the property taken and the replacement property both fall into the same following categories:

1. ***Category A**, Single-Family Residence or Duplex*: Small miscellaneous buildings may be included when used with the residence.

2. ***Category B**, Commercial, Investment, Income, or Vacant Property*: A single-family residence or duplex used as an investment property may be considered income property if sufficient evidence is provided to the county assessor. Evidence may include, but is not limited to, rental or lease agreements, cancelled checks, income tax returns, and other investment records.

3. ***Category C**, Agricultural Property*: Agriculture includes farming in all aspects, including, but not limited to, soil cultivation and tillage; dairy farming; agricultural or horticultural commodity production, cultivation, growing, and harvesting; livestock, bee, furbearing animal, or poultry raising; forestry and lumber operations; and any other ancillary or incidental practices performed with such operations, including market preparation and storage, market delivery, or delivery to carriers for transport to market.[382]

Agricultural property that is in transition may be considered similar to Category B property if property in its vicinity has been changing from historically agricultural use to another use.

If property does not fall within Category A or Category C, it falls within Category B.

To the extent that a replacement property, or any portion thereof, is not similar in size, function, or utility, the property, or such portion thereof, is considered to have undergone a change in ownership.[383]

Example 15-1

An owner-occupied single-family residence is acquired by the state and the owner replaces it with a combination residential dwelling and commercial property.

Only the residential dwelling portion of the replacement property is eligible for the base year value transfer. The commercial portion is considered to have undergone a change in ownership.

[381] Rule 462.500(c)(1).
[382] Rule 462.500(c)(2).
[383] Rule 462.500(c)(3).

Example 15-2

M owns a 40-acre vineyard that includes an owner-occupied single-family residence. The state acquires the residence and five acres of the vineyard.

To qualify for relief, M must replace the residence with Category A property and replace the vineyard with Category C property. However, if the vineyard property is in transition to another use, M may replace it with Category B property.

BASE YEAR VALUE OF REPLACEMENT PROPERTY

To determine the appropriate adjusted base year value of comparable replacement property, a county assessor must use the following procedure:

1. Compare the award or purchase price paid for the property taken with the full cash value of the replacement property.

2. If the full cash value of the comparable replacement property is *equal or less than* 120 percent of the award or purchase price, the adjusted base year value of the property taken becomes the new base year value of the replacement property (regardless of allocation between land and improvements).

3. If, however, the full cash value of the comparable replacement property is *more than* 120 percent of the award or purchase price, the new base year value of the replacement property is the sum of:

   - The adjusted base year value of the property taken; and
   - The amount of the full cash value of the replacement property in excess of 120 percent of the award or purchase price paid.[384]

4. If the full cash value of the comparable replacement property is *less than* the adjusted base year value of the property taken, the taken property's adjusted base year value is not transferred and the full cash value of the replacement property becomes its new base year value.

Award or purchase price means the amount paid by the acquiring entity for the property taken. The amount does not include payment for relocation assistance or amounts paid for property other than the replaced real property. The award or purchase price may not reflect the full cash value of the property taken.[385] If there is no award or purchase price paid by the acquiring entity (property has been exchanged), then the full cash value of the property taken and the full cash value of the replacement property will be determined by the assessor of the county in which each property is located.

[384] Rule 462.500(d)(1) through (d)(3).
[385] Rule 462.500(b)(3).

When the adjusted base year value is transferred to the replacement property, the allocation between land and improvements may be adjusted, as needed, for the replacement property.

OWNERSHIP REQUIREMENTS

The base year value transfer relief afforded under section 68 is only available to the owner or owners of the property taken. The owner may be one or more individuals or legal entities. While not all owners of the property taken need be on title to the replacement property, relief is only available to an owner of property taken who acquires title to a replacement property. Acquiring an ownership interest in a legal entity that in turn directly or indirectly owns property does not qualify as an acquisition of title to replacement property.[386]

If the property taken had multiple owners, each owner may purchase or newly construct a replacement property and transfer their respective share of the base year value.

Example 15-3

> B and C were joint tenants of a home which was taken through eminent domain proceedings by the state. B purchased a replacement property which is comparable to the property taken. C contributed his share of the award or purchase price to a limited partnership that owns a home that is comparable to the property taken.
>
> B's relief under this section is limited to 120 percent of one-half of the award or purchase price of the property taken. C is entitled to no relief.

NEW CONSTRUCTION

The base year value transfer under section 68 is available for any new construction required to make the replacement property comparable to the property taken, as long as it meets the value, timing, and filing requirements.

New construction completed after the base year value is transferred may be included in the transferred base year value if it is completed within the appropriate time period, meets the value requirements, and a claim is timely filed.

TIMING AND FILING REQUIREMENTS

To obtain base year value transfer relief under section 68, the person acquiring the replacement property must file a timely claim[387] with the county assessor. The replacement property must be acquired before the claim is filed. Provided the claim is timely, the replacement property is reassessed retroactively to the date of its acquisition and refunds should be issued. To obtain base year value transfer relief under section 68, replacement property must be acquired on or after the *earliest* of the following dates:

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[386] Rule 462.500(e).
[387] Form BOE-68, *Claim for Base Year Value Transfer—Acquisition by Public Entity.*

1. The date the acquiring entity makes the initial written offer for the property;
2. The date the acquiring entity takes final action to approve a project resulting in an offer for or the acquisition of the property taken;
3. The date the "Notice of Determination," "Notice of Exemption," or similar notice as required by the California Environmental Quality Act is recorded by the public entity acquiring the taxpayer's property and the public project has been approved; or
4. The date the property was taken as declared by a court.[388]

No base year value transfer relief under section 68 is available for replacement property acquired before the date of displacement. However, the fact that a portion of a replacement property is ineligible (for example, previously owned land) does not preclude another portion of the property from qualifying (for example, a newly constructed improvement).

Example 15-4

A commercial property consisting of land and improvements is taken and replaced with a Category B structure that was built on land that the taxpayer already owned.

The land is ineligible for relief because it was previously owned. Despite the ineligibility of the land, the base year value of the property taken (land and improvements) may be transferred to the newly constructed improvements to the extent it meets the value and timing requirements.

A claim is *timely* if it is made within four years after one of the following applicable dates:

1. For eminent domain property, the date the final order of condemnation is recorded or the date the taxpayer vacates the property taken, whichever is later.
2. For public entity purchase or exchange property, the date of conveyance or the date the taxpayer vacates the property taken, whichever is later.
3. For inverse condemnation property, the date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the property taken, whichever is later.[389]

When a taxpayer files a claim for relief under section 68, a county assessor may consider any of the following documents as proof of actual displacement:

[388] Rule 462.500(g)(3)(A) through (g)(3)(D).
[389] Rule 462.500(g)(2)(A) through (g)(2)(C).

- A certified recorded copy of the final condemnation order. If the final order has not yet been issued, a certified recorded copy of the order for possession which shows the effective date on or after which the acquiring entity is authorized to take possession of the property taken;
- A copy of a recorded deed showing a public entity acquired the property taken; or
- A certified copy of a final judgment of inverse condemnation.[390]

[390] Rule 462.500(h)(1)(A) through (h)(1)(C).

CHAPTER 16: DAMAGED OR DESTROYED BY DISASTER

Three different types of base year value transfers exist for property that has been substantially damaged or destroyed in a disaster. What relief is available for a particular property depends on the type of property and whether the disaster was in an area subsequently proclaimed by the Governor to be in a state of emergency as a result of the disaster.

1. The base year value transfer for persons who are over age 55 or severely and permanently disabled may be used if their original property is substantially damaged or destroyed by *any* misfortune or calamity (not limited to Governor-proclaimed disasters) and sold in its damaged state (section 69.5).[391] (See Chapter 14 for a discussion of these provisions.)

2. For any property that has been substantially damaged or destroyed in a Governor-proclaimed disaster, its base year value may be transferred to a comparable replacement property within the same county (section 69).

3. For a principal residence that has been substantially damaged or destroyed in a Governor-proclaimed disaster, its base year value may be transferred to a comparable replacement property located in another county if that county has enacted an ordinance implementing these provisions (section 69.3).

This chapter discusses the base year transfer provisions of sections 69 and 69.3 which authorize the transfer of base year values from property that has been substantially damaged or destroyed in a disaster.[392] Sections 69(c)(3) and 69.3(b)(5) define *disaster* as a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity.

INTRACOUNTY TRANSFER

Proposition 50 was approved by the voters on June 3, 1986 and added subdivision (e) to section 2 of article XIII A of the California Constitution. These provisions authorize the Legislature to provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county. Revenue and Taxation Code section 69 implements this and applies to any comparable replacement property acquired or newly constructed on or after July 1, 1985.

Property is *substantially damaged or destroyed* if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. The damage includes diminution in value if the disaster caused permanent, restricted access to the property.[393]

[391] Section 69.5(b)(1).
[392] See also section 70(c).
[393] Section 69(c)(1).

Property means any type of property, real or personal, that has a base year value that can be transferred to another comparable property. The intracounty base year value transfer is not limited to principal residences.

A replacement property must be located in the same county as the substantially damaged or destroyed property. The owner of the substantially damaged or destroyed property must acquire or newly construct a comparable replacement property within five years[394] after the disaster.

COMPARABLE REPLACEMENT PROPERTY

The general rule is that replacement property for substantially damaged or destroyed property is comparable if it is similar in function, utility, and size.[395]

Replacement property is similar in *function* if it is subject to similar governmental restrictions, such as zoning.

Replacement property is similar in *utility* if it is, or is intended to be, used in the same manner as the damaged or destroyed property. If a replacement property (or any portion) is used or is intended to be used for a substantially different purpose than the way the damaged or destroyed property was used, it will be considered not similar in utility to the extent of that dissimilar use.

Size is associated with value and does not refer to physical characteristics such as acreage or square footage. Specifically, replacement property is similar in *size* if its full cash value is not more than 120 percent of the full cash value of the damaged or destroyed property. If a replacement property (or any portion) is similar in utility but has a full cash value over 120 percent of the full cash value of the damaged or destroyed property, it will be considered not similar in utility and size to the extent of that excess.[396]

If replacement property (or any portion) is not similar in function, utility, and size, the replacement property (or the portion) will be deemed to have undergone a change in ownership at the time the replacement property is acquired or newly constructed.[397]

BASE YEAR VALUE OF REPLACEMENT PROPERTY

To determine the adjusted base year value of comparable replacement property, a county assessor must use the following rules and procedures:

1. If the full cash value of the replacement property is not more than 120 percent of the full cash value of the damaged or destroyed property, the adjusted base year value of the damaged or destroyed property is the new base year value of the replacement property.

2. If the full cash value of the replacement property exceeds 120 percent of the full cash value of the damaged or destroyed property, then the amount of the full cash value over

[394] For damage or destruction caused by disasters occurring before July 1, 2003, the replacement period was three years. An exception to this three-year period was the 1994 Northridge earthquake which had a period of five years.
[395] Section 69(c)(2).
[396] Section 69(c)(2)(A) and (2)(B).
[397] Section 69(c)(2)(C).

120 percent of the full cash value of the damaged or destroyed property shall be added to the adjusted base year value of the damaged or destroyed property. The sum of these amounts shall become the replacement property's base year value.

3. If the full cash value of the replacement property is less than the adjusted base year value of the damaged or destroyed property, then the full cash value of the replacement property will become its new base year value.

The full cash value of the damaged or destroyed property is the full cash value immediately prior to the damage or destruction as determined by the county assessor.[398]

BASE YEAR VALUE OF ORIGINAL PROPERTY

When the base year value of the substantially damaged or destroyed property is transferred to the replacement property, the substantially damaged or destroyed property is reassessed at its full cash value reflecting its damaged state, but will not get a new base year value. However, the substantially damaged or destroyed property retains its base year value. In other words, the damaged property will receive Proposition 8 treatment and its base year value is replicated to the replacement property.

If the base year value of the original property is transferred under section 69 and the original property is subsequently reconstructed, then no exclusion from new construction under the disaster relief provision of section 70(c) or 170 is available for the original property.

OWNERSHIP REQUIREMENT

The base year value transfer relief afforded by section 69 is only available to the owner or owners of the damaged or destroyed property who take title to the replacement property. The owner can be one or more individuals or legal entities. While not all owners of the property taken need be on title to the replacement property, relief is only available to an owner of property taken who acquires title to a replacement property. However, acquiring an interest in a legal entity that in turn directly or indirectly owns replacement property does not qualify as an acquisition of title to replacement property.[399]

FILING REQUIREMENTS

Section 69 does not require that a claim be filed, nor does it specify any time period in which to request relief. For administrative ease, a claim form[400] has been created for taxpayers and county assessors to use.

INTERCOUNTY BASE YEAR VALUE TRANSFER

Proposition 171, approved by the voters on November 2, 1993, amended subdivision (e) of section 2 of article XIII A of the California Constitution. Section 69.3 implements this provision

[398] Section 69(b)(1) through (b)(4).
[399] Section 69(e).
[400] Forms BOE-65-P, *Claim for Intracounty Transfer of Base Year Value for Property Damaged or Destroyed in a Governor-Declared Disaster to Replacement Property.*

and authorizes a base year value transfer from a principal residence damaged or destroyed in a Governor-proclaimed disaster to a comparable replacement residence located in another county if that county has adopted an ordinance that implements such a transfer.

The Governor must proclaim the area to be in a state of emergency as a result of the misfortune or calamity. This relief applies to any disaster occurring on or after October 20, 1991. All proclamations since 1991 affecting property taxes are posted on the State Board of Equalization's website.[401]

A county's board of supervisors must approve an ordinance allowing such a transfer after consultation with affected local agencies. It is separate from an ordinance to allow a transfer of base year value under section 69.5 (Proposition 90). Currently, the nine counties that have adopted an ordinance to implement these disaster relief provisions are:

Contra Costa	Orange	Solano
Los Angeles	San Francisco	Sutter
Modoc	Santa Clara	Ventura

The requirements to obtain relief under section 69.3 are more restrictive than those discussed above with respect to base year value transfers under section 69. The base year value transfer requirements under section 69.3 are similar, but not identical, to those in section 69.5 (transfers of base year value for persons over age 55 or severely and permanently disabled; see Chapter 14).

ORIGINAL AND REPLACEMENT PROPERTIES

The original property is *substantially damaged or destroyed* if either the land or improvements sustain physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster.

An *original property* and a *replacement property* are defined as a building, structure, or other shelter constituting a place of abode and any land owned by the claimant on which it is situated. *Land* includes only that area of reasonable size that is used as a site for a residence. Land also includes land for which the claimant holds a leasehold interest under section 61(c) or a land purchase contract.

Both the original property and the replacement property must be the claimant's *principal place of residence*.[402] A principal residence is a person's true, fixed, and permanent home and principal establishment to which the owner, whenever absent, intends to return. If the property was not granted a homeowners' or disabled veterans' exemption, the county assessor may require proof of residency. Examples of proof include vehicle registration, voter registration, bank accounts, or income tax records.

[401] www.boe.ca.gov/proptaxes/pdf/Disasterlist.pdf.
[402] Section 69.3(b)(9) [original property] and (b)(11) [replacement property].

OWNERSHIP

Only individuals who own the original property can be claimants.[403] An *individual* does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

TIMING

The replacement property must be acquired or newly constructed within three years after the damage or destruction of the original property.[404] This three-year period is specified in the California Constitution; thus, it cannot be extended under any circumstances.

EQUAL OR LESSER VALUE

The replacement property must be of equal or lesser value than the original property, which means that the full cash value of the replacement property cannot exceed one of the following:

- 105 percent if the replacement property is purchased or newly constructed within the first year following the date of the damage or destruction of the original property.
- 110 percent if the replacement property is purchased or newly constructed within the second year following the date of damage or destruction of the original property.
- 115 percent if the replacement property is purchased or newly constructed within the third year following the date of damage or destruction of the original property.[405]

Full cash value of the original property means its fair market value immediately prior to its substantial damage or destruction as determined by the county assessor of the county in which the property is located.

Full cash value of the replacement property means its fair market value as of the date it was purchased or new construction was completed. If a replacement property is purchased, in part, and newly constructed, in part, the *date the replacement property is purchased or newly constructed* is the date of the purchase or the date of completion of new construction, whichever is later.[406]

BASE YEAR VALUE OF ORIGINAL PROPERTY

At the time the base year value of the substantially damaged or destroyed property is transferred to the replacement property, the substantially damaged or destroyed property is reassessed at its full cash value, but will not get a new base year value. The substantially damaged or destroyed property will retain its base year value.

When a substantially damaged or destroyed property's base year value has been transferred to a replacement property under this section, the substantially damaged or destroyed property is not

[403] Section 69.3(b)(10).
[404] Section 69.3(a)(1).
[405] Section 69.3(b)(6)(A) through (b)(6)(C).
[406] Section 69.3(b)(6)(C).

eligible for the new construction exclusion under section 70(c) or 170 in the event of its later reconstruction.

FILING REQUIREMENTS

A claim[407] must be filed with the county assessor within three years after the acquisition or new construction of the replacement property.[408] Prospective relief is not available if the filing period is missed.

[407] Form BOE-65-PT, *Claim for Intercounty Transfer of Base Year Value from Principal Residence Damaged or Destroyed in a Governor-Declared Disaster to Replacement Property.*
[408] Section 69.3(e).

CHAPTER 17: ENVIRONMENTAL CONTAMINATION

Proposition 1, approved by the voters on November 3, 1998, added subdivision (i) to section 2 of article XIII A of the California Constitution. This amendment allows property tax relief in one of two forms for qualified contaminated property. Specifically, property owners are able to either:

- Sell or otherwise transfer the qualified contaminated property and transfer its base year value to a replacement property of equal or lesser value; or
- Repair or replace without reassessment structures located on the qualified contaminated property that were substantially damaged or destroyed during the course of the remediation of the environmental problems.

The base year value transfer is implemented by section 69.4. The new construction exclusion is implemented by section 74.7 and is not discussed in this handbook. This chapter discusses the base year value transfer provisions for qualified contaminated property.

QUALIFIED CONTAMINATED PROPERTY

The property must be located on a site that a state or federal government agency has designated as a toxic or environmental hazard or as an environmental cleanup site.[409] A determination of contamination by a city or county is not sufficient to deem a property as qualified for this property tax relief.

CONDITION OF PROPERTY

Residential property has to be *uninhabitable* and nonresidential property has to be *unusable* as the result of either:

- Environmental problems, including but not limited to, the presence of toxic or hazardous materials.
- The remediation of those environmental problems.

Uninhabitable means that residential real property is unfit for human habitation as a result of health hazards caused by or associated with the environmental problems. *Unusable* means that nonresidential property is unhealthy and unsuitable for occupancy as a result of health hazards caused by or associated with the environmental problems.[410]

OWNERSHIP

The owner of the property must not have caused the property to be uninhabitable or unusable. Additionally, the property owner cannot be related to the individual or entity that caused the property to be contaminated. There is a rebuttable presumption that the owner participated or acquiesced in an act or omission that rendered the property uninhabitable or unusable if the

[409] California Constitution, article XIII A, section 2(i)(2)(B).
[410] California Constitution, article XIII A, section 2(i)(2)(A).

owner is related to any individual or entity that committed the act or omission in any of the following ways:

- A spouse, parent, child, grandparent, grandchild, or sibling of that individual.
- A corporate parent, subsidiary, or affiliate of that entity.
- An owner of, or has control of, that entity.
- Owned or controlled by that entity.[411]

The owner must provide satisfactory evidence to the county assessor that he or she did not participate in any act or omission that resulted in the contamination or that he or she is not related to an individual or entity that caused the property to be contaminated. The county assessor is not bound by the findings of the lead government agency in determining whether this presumption has been overcome.

BASE YEAR VALUE TRANSFER

In addition to the above eligibility requirements, the replacement property and its owner must meet the following criteria in order to be eligible for the base year value transfer.

TIMING

The qualified contaminated property must be sold or transferred before the base year value can be transferred. Upon the sale or transfer, the qualified contaminated property must be subject to a change in ownership that results in either of the following:

1. A reappraisal at its current fair market value pursuant to sections 110.1 or 5803; or
2. Receipt of a base year value transferred from another property under the provisions of section 69 (intracounty disaster relief), section 69.3 (intercounty disaster relief), or section 69.5 (principal residence).[412]

A replacement property must be acquired or new construction completed within five years after the sale or transfer of the qualified contaminated property.[413] Property acquired prior to the sale or transfer of the qualified contaminated property is not eligible for relief under section 69.4. These provisions apply to a replacement property that is acquired or newly constructed on or after January 1, 1995.[414]

[411] California Constitution, article XIII A, section 2(i)(3).
[412] Section 69.4(c).
[413] California Constitution, article XIII A, section 2(i)(1)(A)(ii).
[414] Section 69.4(h).

LOCATION

Both the qualified contaminated property and the replacement property must be located in the *same* county.[415]

A replacement property may be located in a different county if that county has a resolution authorizing intercounty transfers under this code section. Currently, none of the 58 California counties has passed such a resolution.

COMPARABILITY

A replacement property must be comparable to the qualified contaminated property. Comparable means a replacement property is similar in utility and function to the property that it replaces. Property is similar in function and utility if it is, or is intended to be, used in the same manner as the qualified contaminated property.[416]

EQUAL OR LESSER VALUE

The fair market value of the replacement property must be equal or less than the fair market value of the original property.[417] *Equal or less* means the fair market value of the replacement property cannot exceed:[418]

- 105 percent of the market value of the original property as if uncontaminated if the replacement property is purchased or newly constructed within the first year following the date of sale or transfer of the original property;
- 110 percent of the market value of the original property as if uncontaminated if the replacement property is purchased or newly constructed within the second year following the date of sale or transfer of the original property;
- 115 percent of the market value of the original property as if uncontaminated if the replacement property is purchased or newly constructed within the third year following the date of sale or transfer of the original property;
- 120 percent of the market value of the original property as if uncontaminated if the replacement property is purchased or newly constructed within the fourth year following the date of sale or transfer of the original property;
- 125 percent of the market value of the original property as if uncontaminated if the replacement property is purchased or newly constructed within the fifth year following the date of sale or transfer of the original property.

[415] California Constitution, article XIII A, section 2(i)(1)(A)(i).
[416] Section 69.4(e)(7).
[417] California Constitution, article XIII A, section 2(i)(1)(A)(i).
[418] Section 69.4(e)(2).

The *fair market value of the replacement property* on the date of purchase or completion of new construction is that which the property would bring on the open market in accordance with section 110.1.[419]

The *fair market value of the qualified contaminated property* means its full cash value as if uncontaminated on the date of sale or transfer.[420]

FILING PERIOD

A claim[421] for relief must be filed within three years of the date the replacement property is acquired or new construction is completed.[422] In addition to filing the claim, the owner must provide the following information:

- Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.[423]
- Proof that the owner did not participate in, or acquiesce to, any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is not related to any individual or entity that committed that act or omission.[424]

No prospective relief is available if the filing deadline is missed.

Upon the timely filing of a claim, the county assessor will transfer the adjusted base year value from the qualified contaminated property to the replacement property as of the date the replacement property is acquired or construction of the replacement property is completed, whichever is later.[425]

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[419] Section 69.4(e)(4).
[420] Section 69.4(e)(5).
[421] Form BOE-65-CP, *Claim for Transfer of Base Year Value from Qualified Contaminated Property to Replacement Property*.
[422] Section 69.4(f).
[423] Section 69.5(f)(2)(A).
[424] Section 69.5(f)(2)(B).
[425] Section 69.4(g).

APPENDIX 1: PROPERTY TAX RULES

Title 18, Public Revenues
California Code of Regulations

RULE 462.001. CHANGE IN OWNERSHIP – GENERAL

Reference: Sections 60-67, Revenue and Taxation Code.
Section 15606 Government Code.

A "change in ownership" in real property occurs when there is a transfer of a present interest in the property, including the transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a "change in ownership" shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means. A change in the name of an owner of property not involving a change in the right to beneficial use is excluded from the term "transfer" as used in this section.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.
Amended May 5, 1981, effective August 12,1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(a).
Amended February 4, 1997, effective June 11, 1997.

RULE 462.020. CHANGE IN OWNERSHIP – TENANCIES IN COMMON

Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1, and 67, Revenue and Taxation Code.
Section 15606, Government Code.

(a) General Rule. The creation, transfer, or termination of a tenancy in common interest is a change in ownership of the undivided interest transferred.

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

(1) The transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional ownership interests of the co-owners, such as:

(A) a partition,

(B) a transfer from a co-tenancy to a joint tenancy, or

(C) a transfer from a co-tenancy to a legal entity which results solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" of the property for purposes of determining whether a change in ownership has occurred upon the subsequent transfers of the ownership interests in the property.)

Example 1: A and B own a parcel of real property as tenants in common each owning a 50% interest. They transfer the property to a newly formed corporation each receiving 50% of the stock. Such a transfer would not be regarded as a change in ownership.

(2) The transfer is of an undivided interest of less than five percent of the value of the total property and has a value of less than $10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage

interest and value transferred. When the value of the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or $10,000, then that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

Example 2: At the end of the assessment year the value of the accumulated interests transferred equals 3 percent of the value of the total property and the dollar value of these interests is $12,000. There will be a reappraisal of the transferred accumulated interests because their value exceeds $10,000.

Example 3: At the end of the assessment year the value of the accumulated interests transferred equals 7 percent of the value of the total property and the dollar value of these interests is $9,000. There will be a reappraisal of the transferred accumulated interests because they exceed 5 percent of the value of the total property.

(3) The transfer is one to which the interspousal exclusion applies.

(4) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(b).
Amended October 9, 1997, effective February 20, 1998.

RULE 462.040. CHANGE IN OWNERSHIP – JOINT TENANCIES

Authority Cited: Section 15606, Government Code.
Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1, 67, Revenue and Taxation Code; Section 662, Evidence Code.

(a) The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire property.

Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of the entire property.

Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in ownership of 50% of the property.

(b) 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, and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) 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 joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and subsequent joint tenants are considered to be "other than original transferors."

Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A and B are both "original transferors."

Example 4-1: 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. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors."

Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than original transferors."

Example 6: A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in ownership because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." E is also an "original transferor." (C and D are "other than original transferors.")

Example 7-1: A, B, and C are joint tenants and A is an "original transferor." A dies. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.

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.

Example 7-3: A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B as joint tenants transfer to A, B, and C. C is an original transferor.

Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of the transferred interests because A is not one of the transferees.

Example 9: 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 due to their intent to avoid a change in ownership, A, B, C, and D do not become "original transferors" as the result of their transfers to each other.

(2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest vests in whole or in part in the remaining original transferor(s); except that, upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent change in ownership.

Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant.

Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D. 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal and B was the last surviving original transferor.

(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.

Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an original transferor.

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."

(4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

(A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal interests.

(B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

(C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer(s) of the ownership interests in the property.)

(5) The transfer is one to which the interspousal exclusion applies.

(6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a value of less than $10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage interest and value transferred. When the accumulated interests transferred during any assessment year equals or exceeds five percent of the value of the total property or $10,000, exclusive of any interest transferred to a spouse or other exempt transfer, only that percentage of the property represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from change in ownership.

(7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(c) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

(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 exist.

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."

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed old rule and adopted new rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(c).

Amended October 15, 1998, effective January 29, 1999.
Amended and effective April 3, 2001.
Amended July 9, 2003, effective November 13, 2003.

RULE 462.060. CHANGE IN OWNERSHIP – LIFE ESTATE AND ESTATES FOR YEARS

Reference: Sections 60, 61, 62, 63, 67, Revenue and Taxation Code.

(a) Life estates. The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership.

(b) Estate for years. The creation of an estate for years for a term of 35 years or more in real property is a change in ownership at the time of transfer unless the instrument creating the estate for years reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such an estate for years by the transferor or the transferor's spouse to a third party is a change in ownership. Upon the termination of a reserved estate for years for any term, the vesting of the right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership. The creation or transfer of an estate for years for less than 35 years is not a change in ownership.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended May 5, 1981, effective August 12,1981.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (d).

RULE 462.080. CHANGE IN OWNERSHIP – POSSESSORY INTERESTS

Reference: Sections 60, 61, 62 and 67, Revenue and Taxation Code.
Section 15606, Government Code.

(a) General Rule. The creation, renewal, extension, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term is a change in ownership. "Renewal" and "extension" do not include the granting of an option to renew or extend an existing agreement pursuant to which the term of possession of the existing agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto. "Assignment" of a possessory interest means the transfer of all rights held by a transferor in a possessory interest.

(b) EXCEPTIONS. The following do not constitute changes in ownership of taxable possessory interests:

(1) An interest, whether an estate for years or an estate for life, created by a reservation in an instrument deeding the property to a tax exempt governmental entity.

(2) Any renewal or extension of a taxable possessory interest during the reasonably anticipated term of possession used by the assessor in establishing the initial base year value of the interest, in which case, a change in ownership occurs at the end of the reasonably anticipated term of possession used by the assessor to value that interest.

(3) A sublease of a taxable possessory interest for a term, including renewal options, that does not exceed half the length of the remaining term of the leasehold, including renewal options.

(4) The termination of a sublease of a taxable possessory interest with an original term, including renewal options, that did not exceed half the length of the remaining term of the leasehold, including renewal options, when the sublease was entered into.

(5) Any transfer of a sublessee's interest in a taxable possessory interest, with a remaining term, including renewal options, that does not exceed half of the remaining term of the leasehold.

(6) Any transfer of a taxable possessory interest subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended May 5, 1981, effective August 12,1981.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (e).
Amended February 4, 1997, effective June 11, 1997.

RULE 462.100. CHANGE IN OWNERSHIP – LEASES

Reference: Sections 60, 61, 62, 67, Revenue and Taxation Code.

(a) The following transfers of either the lessee's interest or the lessor's interest in taxable real property constitute a change in ownership of such real property:

(1) Lessee's Interest:

(A) The creation of a leasehold interest in real property for a term of 35 years or more.

(B) The transfer, sublease, or assignment of a leasehold interest with a remaining term of 35 years or more.

(C) The termination of a leasehold interest which had an original term of 35 years or more.

(2) Lessor's Interest:

(A) The transfer of a lessor's interest in taxable real property subject to a lease with a remaining term of less than 35 years.

(B) The transfer of a lessor's interest in taxable real property subject to multiple leases, one or more of which is for a remaining term of less than 35 years and one or more of which is for a remaining term of 35 years or more, in which case there is a change in ownership of the portion of the property subject to the lease(s) with a remaining term of less than 35 years.

(b) The following transfers of either the lessee's interest or the lessor's interest in taxable real property do not constitute a change in ownership of such real property.

(1) Lessee's interest:

(A) The creation of a leasehold interest in real property for a term of less than 35 years.

(B) The transfer, sublease, or assignment of a leasehold interest with a remaining term of less than 35 years (regardless of the original term of the lease).

(C) The termination of a leasehold interest which had an original term of less than 35 years.

(2) Lessor's interest:

(A) The transfer of a lessor's interest in real property subject to a lease with a remaining term of 35 years or more, whether to the lessee or another party.

(c) Once a change in ownership of taxable real property subject to a lease has been deemed to have occurred, the entire property subject to the lease is reappraised (i.e., the value of both the lessee's interest and the reversion).

(d) The calculation of the term of a lease for all purposes of this section shall include written renewal options.

(e) It shall be conclusively presumed that all homes (other than mobilehomes subject to Part 13 of Division 1 of the Revenue and Taxation Code) eligible for the homeowners' exemption which are on leased land have written renewal options on the lease of such land of at least 35 years, whether or not such renewal options in fact exist in any contract or agreement.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended November 13,1979, effective December 6,1979.
Amended May 5, 1981, effective August 12,1981.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (f).

RULE 462.120. CHANGE IN OWNERSHIP – FORECLOSURE

Reference: Sections 60, 62, Revenue and Taxation Code.

(a) Mortgage or deed of trust foreclosed by judicial action is a sufficient change in ownership only:

(1) After the period of redemption has passed and property has not been redeemed, or

(2) Upon redemption when title vests in the original debtor's successor in interest.

(b) Deed of trust foreclosed by trustee's sale shall cause a reappraisal as of the date the right of possession vests in the purchaser.

(c) A transfer by a trustor in lieu of a trustee's foreclosure sale constitutes a change in ownership.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended November 13,1979, effective December 6,1979.
Amended May 5, 1981, effective August 12,1981.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (g).

RULE 462.140. CHANGE IN OWNERSHIP – TRANSFERS RESULTING FROM TAX DELINQUENCY

Reference: Section 60, Revenue and Taxation Code.
Section 15606, Government Code.

Redemption of tax-defaulted property by the assessee shall not be considered as a change in ownership. However, a sale of tax-defaulted property by the tax collector, whether to the former assessee or to any other person, is a change in ownership requiring reappraisal as of the date of the sale.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended May 5, 1981, effective August 12,1981.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (h).
Amended February 4, 1997, effective June 11, 1997.

RULE 462.160. CHANGE IN OWNERSHIP – TRUSTS

References: Sections 60, 61, 62, 63, 63.1, 63.1 note, and 64, Revenue and Taxation Code.
Section 15606, Government Code.

(a) CREATION. General Rule. The transfer by the trustor, or any other person, of real property into a trust is a change in ownership of such property at the time of the transfer.

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

(1) Irrevocable Trusts.

(A) Trustor-Transferor Beneficiary Trusts. The transfer of real property by the trustor to a trust in which the trustor-transferor is the sole present beneficiary of the trust. However, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

Example 1: M transfers income-producing real property to revocable living Trust A, in which M is the sole present beneficiary. Trust A provides that upon M's death, Trust A becomes irrevocable, M's brother B becomes a present beneficiary, and income from the trust property is to be distributed to B for his lifetime. Upon M's death, 100% of the property in Trust A, representing B's present beneficial interest, undergoes a change in ownership. Where a trustee of an irrevocable trust has total discretion ("sprinkle power") to distribute trust income or property to a number of potential beneficiaries, the property is subject to change in ownership, because the trustee could potentially distribute it to a non-excludable beneficiary, unless all of the potential beneficiaries have an available exclusion from change in ownership.

Example 2: H and W transfer real property interests to the HW Revocable Trust. No change in ownership. HW Trust provides that upon the death of the first spouse the assets of the deceased spouse shall be distributed to "A Trust", and the assets of the surviving spouse shall be distributed to "B Trust", of which surviving spouse is the sole present beneficiary. H dies and under the terms of A Trust, W has a "sprinkle" power for the benefit of herself, her two children and her nephew. When H dies, A Trust becomes irrevocable. There is a change in ownership with respect to the interests transferred to the A Trust because the sprinkle power may be exercised so as to omit the spouse and children as present beneficiaries for whom exclusions from change in ownership may apply, and there are no exclusions applicable to the nephew. However, if the sprinkle power could be exercised only for the benefit of W and her children for whom exclusions are available, the interspousal exclusion and the parent/child exclusion would exclude the interests transferred from change in ownership, provided that all qualifying requirements for those exclusions are met.

Example 3: Same as Example 2 above, except that "A Trust" is without any sprinkle power. When H dies, A Trust becomes irrevocable. Since A Trust holds the assets for the benefit of W, the two children, and the nephew in equal shares, with any of W's share remaining at her death to be distributed to the two children and the nephew in equal shares, there is a change in ownership only to the extent of the interests transferred to the nephew, providing that the parent/child exclusion of Section 63.1 and the interspousal exclusion of Section 63 apply to the interests transferred to the two children and to W respectively. Upon the death of W, there is a 2 change in ownership to the extent of the interests transferred to the nephew, although the parent/child exclusion of Section 63.1 may exclude from change in ownership the interests transferred to the two children. If A Trust had included a sprinkle power, instead of specifying the beneficiaries of the trust income and principal, then as in Example 2, none of the exclusions would apply.

(B) 12 Year Trustor Reversion Trusts. The transfer of real property or ownership interests in a legal entity holding interests in real property by the trustor to a trust in which the trustor-transferor retains the reversion, and the beneficial interest of any person other than the trustor-transferor does not exceed 12 years in duration.

(C) Irrevocable Trusts Holding Interests in Legal Entities. The transfer of an ownership interest in a legal entity holding an interest in real property by the trustor into a trust in which the trustor-transferor is the sole present beneficiary or to a trust in which the trustor-transferor retains the reversion as defined in subdivision (b) (1) (B) of this rule. However, a change in ownership of the real property held by the legal entity does occur if Revenue and

Taxation Code section 61 (i), 64 (c) or 64 (d) applies because the change in ownership laws governing interests in legal entities are applicable regardless of whether such interests are held by a trust.

Example 4: Husband and Wife, partners in HW Partnership who are not original coowners, transfer 70 percent of their partnership interests to HW Irrevocable Trust and name their four children as the present beneficiaries of the trust with equal shares. Husband and Wife do not retain the reversion. Under Revenue and Taxation Code section 64 (a) the transfer of the partnership interests to HW Irrevocable Trust is excluded from change in ownership because no person or entity obtains a majority ownership interest in the HW Partnership.

(2) Revocable Trusts. The transfer of real property or an ownership interest in a legal entity holding an interest in real property by the trustor to a trust which is revocable by the trustor. However, a change in ownership does occur at the time that a revocable trust becomes irrevocable unless the trustor-transferor remains or becomes the sole present beneficiary or unless otherwise excluded from change in ownership.

(3) Interspousal Trusts. The transfer is one to which the interspousal exclusion applies. However, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor's spouse are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

(4) Parent-Child or Grandparent-Grandchild Trusts. The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been made as required by law. However, a change in ownership of trust property does occur to the extent that persons for whom the parent-child or grandparent-grandchild exclusion is not applicable are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

(5) Proportional Interests. The transfer is to a trust which results in the proportional interests of the beneficiaries in the property remaining the same before and after the transfer.

(6) Other Trusts. The transfer is from one trust to another and meets the requirements of (1), (2), (3), (4), or (5).

(c) TERMINATION. General Rule. The termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.

(d) EXCEPTIONS. The following transfers do not constitute changes in ownership:

(1) Prior Change in Ownership. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest (either use of or income from the property) when the trust was created, when it became irrevocable, or at some other time. However, a change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary unless otherwise excluded from change in ownership.

Example 5: B transfers real property to Trust A and is the sole present beneficiary. Trust A provides that when B dies, the Trust terminates and Trust property is to be distributed equally to R and S, who are unrelated to B. B dies, Trust A terminates, and the transfers of the Trust property to R and S result in changes in ownership, allowing for reassessment of 100 percent of the real property.

(2) Revocable Trusts. Termination results from the trustor-transferor's exercise of the power of revocation and the property is transferred by the trustee back to the trustor-transferor.

(3) Trustor Reversion Trusts. The trust term did not exceed 12 years in duration and, on termination, the property reverts to the trustor-transferor.

(4) Interspousal Trusts. Termination results in a transfer to which the interspousal exclusion applies.

(5) Parent-Child or Grandparent-Grandchild Trusts. Termination results in a transfer to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(6) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same proportional interests in the property as they held before the termination of the trust.

(7) Other Trusts. Termination results in the transfer from one trust to another and meets the requirements of (1), (2), (3), (4), (5), or (6) of subdivision (b).

(e) For purposes of this rule, the term "trust" does not include a Massachusetts business trust or similar trust, which is taxable as a legal entity and managed for profit for the holders of transferable certificates which, like stock shares in a corporation, entitle the holders to share in the income of the property. For rules applicable to Massachusetts business trusts or similar trusts, see Section 64 of the Revenue and Taxation Code and Rule 462.180, which address legal entities.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended November 16, 1994, effective December 16, 1994. Renumbered, formerly 462 (i).
Amended September 10, 1997, effective February 20, 1998.

RULE 462.180. CHANGE IN OWNERSHIP – LEGAL ENTITIES

Authority Cited: Section 15606, Government Code.
Reference: Sections 60, 61, 62, 63, 64 and 67, Revenue and Taxation Code; Sections 16909 and 17554, Corporations Code; Section 1351, Civil Code.

(a) TRANSFERS OF REAL PROPERTY TO AND BY LEGAL ENTITIES.

General Rule. The transfer of any interest in real property to a corporation, partnership, limited liability company, or other legal entity is a change in ownership of the real property interest transferred. For purposes of this rule, "real property" or "interests in real property" includes real property interests and fractional interests thereof, the transfer of which constitute a change in ownership under Sections 60 and following applicable sections of the Revenue and Taxation Code and under the applicable change in ownership provisions of the Property Tax Rules.

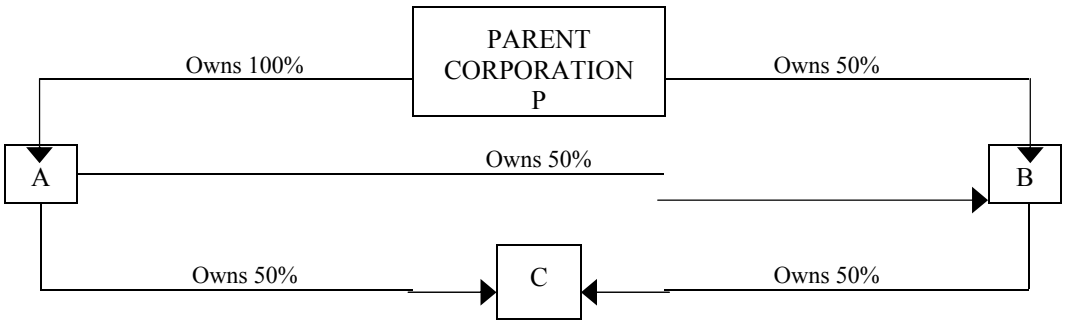
(b) EXCEPTIONS. The following transfers do not constitute changes in ownership of the real property:

(1) AFFILIATED CORPORATION TRANSFERS. Transfers of real property between or among affiliated corporations, including those made to achieve a corporate reorganization if:

(A) the voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by one or more corporations related by voting stock ownership to a common parent, and

(B) the common parent corporation owns directly 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations.

SIMPLE EXAMPLE



A transfer of real property by P, A, B, or C to any of the other three corporations would not be a change in ownership.

Example 1: Any transfer by C (wholly owned by A and B) to B (wholly owned by A and P) would not be a change in ownership because of those relationships and because P owns 100% of A.

If real property is transferred between non-affiliated corporations, only the property transferred shall be deemed to have undergone a change in ownership.

(2) PROPORTIONAL TRANSFERS OF REAL PROPERTY. Transfers of real property between separate legal entities or by an individual to a legal entity (or vice versa), which result solely in a change in the method of holding title and in which the proportional ownership interests in each and every piece of real property transferred remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented by stock, partnership interests, or other types of ownership interests, shall be defined as "original co-owners" for purposes of determining whether a change in ownership has occurred upon the subsequent transfer of the ownership interests in the legal entity.) This subdivision shall not apply to a transfer of real property which is also excluded from change in ownership pursuant to subdivision (b)(1) (transfers between or among affiliated corporations).

Examples of Transfers of Real Property in Legal Entities:

Example 2: A transfer of real property from A and B, as equal co-tenants, to Corporation X, where A and B each take back 50 percent of the stock. No change in ownership. However, if A and B each take back 49 percent of the stock and C receives 2 percent of the stock then there will be a change in ownership of the entire property.

Example 3: A transfers Whiteacre to Corporation X and B transfers Blackacre (equal in value to Whiteacre) to Corporation X. A and B each take back 50 percent of the stock. Change in ownership of 100 percent of both Whiteacre and Blackacre.

Example 4: Corporation X owns Blackacre and Whiteacre (both are of equal value). A and B each own 50% of Corporation X's shares. X transfers Whiteacre to A and Blackacre to B. Change in ownership of 100% of both Blackacre and Whiteacre. However, if Corporation X transfers Whiteacre and Blackacre to both A and B as joint tenants or as equal tenants in common, there is no change in ownership.

Example 5: A transfer of real property from Corporation X to its sole shareholder A. No change in ownership, even if A is an "original co-owner," because interests in real property, and not ownership interests in a legal entity, are being transferred.

(c) TRANSFERS OF OWNERSHIP INTERESTS IN LEGAL ENTITIES.

General Rule. The purchase or transfer of corporate stock, partnership interests, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity, pursuant to Section 64(a) of the Revenue and Taxation Code.

(d) EXCEPTIONS. The following transfers constitute changes in ownership, except as provided in (d)(4) which is an exclusion from change in ownership:

(1) CONTROL. When any corporation, partnership, limited liability company, Massachusetts business trust or similar trust, other legal entity or any person:

(A) obtains through a reorganization or any transfer, direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporations as described in (b)(1), or

(B) obtains through multi-tiering, reorganization, or any transfer direct or indirect ownership of more than 50 percent of the total interest in partnership or LLC capital and more than 50 percent of the total interest in partnership or LLC profits, or

(C) obtains through any transfer direct or indirect ownership of more than 50 percent of the total ownership interest in any other legal entity.

Upon the acquisition of such direct or indirect ownership or control, which may include any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

(2) TRANSFERS OF MORE THAN 50 PERCENT. When on or after March 1, 1975, real property is transferred to a partnership, corporation, limited liability company, or other legal entity and the transfer is excluded from change in ownership under Section 62(a)(2) of the Revenue and Taxation Code, and the "original co-owners" subsequently transfer, in one or more transactions, cumulatively more than 50 percent of the total control or ownership interests, as defined in subdivision (d)(1), in that partnership, corporation, limited liability company or legal entity, there is a change in ownership of only that property owned by the entity which was previously excluded under Section 62(a)(2). However, when such transfer would also result in a change in control under Section 64(c) of the Revenue and Taxation Code, then reappraisal of the property owned by the corporation, partnership, limited liability company, or other legal entity shall be pursuant to Section 64(c) rather than Section 64(d).

For purposes of this subdivision ((d)(2)), interspousal transfers excluded under Section 63 of the Revenue and Taxation Code, transfers into qualifying trusts excluded under Section 62(d) of the Revenue and Taxation Code, and proportional transfers excluded under Section 62(a)(2) of the Revenue and Taxation Code shall not be cumulated or counted to determine a change in ownership.

Examples of Transfers of Interests in Legal Entities:

> Example 6: A and B each own 50 percent of the stock of Corporation X. Corporation X acquires Whiteacre from Corporation Y, an unaffiliated corporation in which neither A nor B has interests, and Whiteacre is reappraised upon acquisition. A transfers 30 percent of Corporation X's stock to C, and B later transfers 25 percent of Corporation X's stock to C. Upon C's acquisition of 55 percent of Corporation X's stock, there is a change in control of Corporation X under Section 64(c) and a reappraisal of Whiteacre.
>
> Example 7: Spouses H and W acquire as community property from the current owners, who are not original co-owners, 100% of the capital and profits interests in an LLC which owns Blackacre. Each of H and W is treated as acquiring 50 percent of the ownership interests as defined in subdivision (c) and Revenue and Taxation Code Section 64(a). No change in control of the LLC; no change in ownership of Blackacre.
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> Example 8: A and B, hold equal interests as tenants in common in Greenacre, a parcel of real property. A and B transfer Greenacre to Corporation Y and in exchange A and B each receive 50 percent of the corporate stock. No change in ownership pursuant to Section 62(a)(2). Pursuant to Section 64(d), A and B become original coowners. A transfers 30 percent of Corporation Y's stock to C (A's child), and B then transfers 25 percent of Corporation Y's stock to D (B's grandchild). Change in ownership of Greenacre upon B's transfer to D. Parent/child and grandparent/grandchild exclusions are not applicable to transfers of interests in legal entities. However, if the same transfers were made by A and B to their respective spouses, no change in ownership pursuant to Section 63 and Rule 462.220.

(3) COOPERATIVE HOUSING CORPORATION. When the stock transferred in a cooperative housing corporation ("stock cooperative" as defined in subdivision (m) of Section 1351 of the Civil Code) conveys the exclusive right to occupancy of all or part of the corporate property, unless:

(A) the cooperative was financed under one mortgage which was insured under Sections 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or was financed or assisted pursuant to Sections 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or was financed by a direct loan from the California Housing Finance Agency, and

(B) the regulatory and occupancy agreements were approved by the respective insuring or lending agency, and

(C) the transfer is from the housing cooperative to a person or family qualifying for purchase by reason of limited income.

(4) PROPORTIONAL INTEREST TRANSFERS. Transfers of stock, partnership interests, limited liability company interests, or any other interests in legal entities between legal entities or by an individual to a legal entity

(or vice versa) which result solely in a change in the method of holding title and in which proportional ownership interests of the transferors and transferees, in each and every piece of property represented by the interests transferred, remain the same after the transfer, do not constitute changes in ownership, as provided in subdivision (b)(2) of this rule and Section 62(a)(2) of the Revenue and Taxation Code. This provision shall not apply to a statutory conversion or statutory merger of a partnership into a limited liability company or other partnership (or a limited liability company into a partnership) when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer and the partners or members of the converting or disappearing entity maintain the same ownership interest in profits and capital of the converted or surviving entity that they held in the converting or disappearing entity.

Examples of Excluded Proportional Interest Transfers:

Example 9: General Partnership (GP), which owns Whiteacre and in which A and B hold equal partnership interests, converts to Limited Partnership (LP) under the Revised Uniform Partnership Act of 1994 (California Corporations Code section 16100 et seq.). As a result of the conversion, A and B each hold 50 percent of the LP interests in capital and profits. No change in ownership of Whiteacre upon the conversion, because, under Section 16909 of the Corporations Code, there is no transfer of Whiteacre. Section 62(a)(2) of the Revenue and Taxation Code does not apply. However, if A and B were "original coowners" in GP, they remain "original coowners" in LP.

Example 10: Following the conversion in Example 9, A and B each transfer 30 percent of their capital and profits interests in LP to Limited Liability Company (LLC), which is owned equally by A and B. Each retain an equal 20 percent interest in LP. No change in ownership of Whiteacre pursuant to Section 62(a)(2) because A and B own 100 percent of both LP and LLC and their respective proportional interests remain the same after the transfer. Neither section 64(c) nor section 64(d) of the Revenue and Taxation Code applies to this transfer, although A and B become "original coowners" with respect to their interests in LLC.

Example 11: A limited partnership (LP), which owns Blackacre and in which C and D hold equal partnership interests, changes its form to a limited liability company (LLC), in which C and D hold equal membership interests, by statutory merger under the California Revised Limited Partnership Act (California Corporations Code section 15611 et seq.) and the Beverly-Killea Limited Liability Company Act (California Corporations Code section 17000 et seq.). No change in ownership of Blackacre upon the change in form because under section 17554 of the California Corporations Code, there is not a transfer of property from LP to LLC. Section 62(a)(2) of the Revenue and Taxation Code does not apply. However, if C and D were "original coowners" in LP, they remain "original coowners" in LLC.

(e) PARTNERSHIPS.

(1) TRANSFERS OF REAL PROPERTY BY PARTNERSHIPS. General Rule. Except as provided by (b)(2), where the proportional ownership interests remain the same, when real property is contributed to a partnership or is acquired, by purchase or otherwise, by the partnership, there is a change in ownership of such real property, regardless of whether the title to the property is held in the name of the partnership or in the name of the partners with or without reference to the partnership. Except as provided by (b)(2) where the proportional ownership interests remain the same, the transfer of any interest in real property by a partnership to a partner or any other person or entity constitutes a change in ownership.

(2) Except as provided in (d)(1)(B) and (d)(2), the addition or deletion of partners in a continuing partnership does not constitute a change in ownership of partnership property.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed old rule and adopted new rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (j).

Amended and effective December 19,1995. Amended subdivision (b)(1)(b) to insert the "Simple Example" diagram, at the end of the first sentence. The "Simple Diagram was inadvertently omitted in the renumbering amendments that previously were approved to former Rule 462.
Amended December 9, 1998, effective April 8, 1999. Amended subdivisions (a), (b), (c), (d) and (e) to delete and to update outdated portions of the rule and to clarify other provisions.
Amended June 25, 2003, effective October 15, 2003.

RULE 462.200. CHANGE IN OWNERSHIP – MISCELLANEOUS ARRANGEMENTS

Reference: Sections 60, 62, and 67, Revenue and Taxation Code.
Section 1105, Civil Code; Section 662, Evidence Code.
Section 15606, Government Code.

(a) Security transactions. There are transactions that may be interpreted to be either a conveyance of the property or a mere security interest therein, depending on the facts. There is a rebuttable presumption under Civil Code Section 1105 and Evidence Code Section 662 that a grant of title to real property is a transfer of a present interest in the real property, including the beneficial use thereof, equal to a fee interest. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

(1) The existence of a debt or promise to pay.

(2) The principal amount to be paid for reconveyance is the same, or substantially the same, as the amount paid for the original deed.

(3) A great inequality between the value of the property and the price alleged to have been paid.

(4) The grantor remaining in possession with the right to reconveyance on payment of the debt; and

(5) A written agreement between the parties to reconvey the property upon payment of the debt. The best evidence of the existence of any factor shall be an adjudication of the existence of the factor reflected in a final judicial finding, order, or judgment. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, canceled checks, insurance policies, and tax returns.

(b) Deed presumption. When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property, unless an exclusion from change in ownership applies. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

(1) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests. (2) The monetary contribution of each party. The best evidence of the existence of any factor shall be an adjudication of the existence of the factor reflected in a final judicial finding, order, or judgment. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, canceled checks, insurance policies, and tax returns.

(c) Holding agreements. A holding agreement is an agreement between an owner of the property, hereinafter called a principal, and another entity, usually a title company, that the principal will convey property to the other entity merely for the purposes of holding title. The entity receiving title can have no discretionary duties but must act only on explicit instructions of the principal. The transfer of property to the holder of title pursuant to a holding agreement is not a change in ownership. There shall be no change in ownership when the entity holding title pursuant to a holding agreement conveys the property back to the principal.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New rule August 16, 1979, effective August 22, 1979.

Amended May 5, 1981, effective August 12, 1981.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (k).
Amended March 19, 1997, effective June 11, 1997.

RULE 462.220. CHANGE IN OWNERSHIP – INTERSPOUSAL TRANSFERS

Reference: Sections 60, 61, 62, 63, 64, 65, 65.1, and 67, Revenue and Taxation Code.
Section 15606, Government Code.

Notwithstanding any other provision of Rules 460 through 471, a change in ownership shall not include any interspousal transfer, including, but not limited to:

(a) Transfers of ownership interests in legal entities,

(b) Transfers of ownership interests in legal entities resulting in one spouse obtaining control as defined in Section 64(c) of the Revenue and Taxation Code,

Example 1: Husband (H) owns a 30 percent ownership interest in a partnership and wife (W) owns a 30 percent ownership interest in the same partnership. W transfers her interest to H; H now owns a 60 percent ownership interest. There is no change in ownership.

(c) Transfers of ownership interests in legal entities by "original coowners" which would otherwise be cumulated or counted for purposes of Section 64(d) of the Revenue and Taxation Code,

Example 2: Spouses H and W are "original coowners" of a partnership; each originally owned a 50 percent partnership interest. They have previously each transferred a 10 percent interest to X and to Y, leaving H and W each with a 30 percent partnership interest. W transfers a 15 percent interest to H. Although cumulatively more than 50 percent has been transferred, there is no change in ownership.

(d) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a transfer of such a trust to the spouse of the trustor,

(e) Transfers which take effect upon the death of a spouse,

Example 3: H and W each own a 30 percent interest in General Partnership (GP). H and W transfer their respective partnership interests to the HW Revocable Trust. No change in ownership. Trust provides that upon the death of the first spouse: the assets of the deceased spouse, including partnership interests in GP, shall be distributed to "A Trust", and the assets of the surviving spouse, including partnership interests in GP, shall be distributed to "B Trust." Surviving spouse is the sole present beneficiary of both A Trust and B Trust. No change in ownership upon the death of the first spouse.

(f) Transfers to a spouse or former spouse in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or legal separation, **(g)** The creation, transfer, or termination, solely between spouses, of any co-owner's interest, or **(h)** The distribution of property of a corporation, partnership, or other legal entity to a spouse or former spouse having an ownership interest in the entity, in exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended May 5, 1981, effective August 12,1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (l).
Amended September 10, 1997, effective February 20, 1998.

RULE 462.240. THE FOLLOWING TRANSFERS DO NOT CONSTITUTE A CHANGE IN OWNERSHIP

Authority Cited: Section 15606, Government Code.
Reference: Sections 60, 61, 62, 62.1, 62.2, 64, 66 and 67, Revenue and Taxation Code; Sections 37, 6401, 6402, Probate Code.

The following transfers do not constitute a change in ownership:

(a) The transfer of bare legal title, e.g.,

(1) Any transfer to an existing assessee for the purpose of perfecting title to the property.

(2) Any transfer resulting in the creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession or profits.

(b) Any transfer caused by the substitution of a trustee.

(c) Any purchase, redemption or other transfer of the shares or units of participation of a group trust, pooled fund, common trust fund, or other collective investment fund established by a financial institution.

(d) Any contribution of real property to an employee benefit plan, any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock in the employer corporation, or the creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan. The terms used herein shall have the meaning ascribed to them in the Employee Retirement Income Security Act of 1974, which is codified as United States Code annotated, Title 29, Section 1002. (The term "any contribution" as used in Section 66(b) of the Revenue and Taxation Code and this section means only those contributions of real property made to an employee benefit plan by an employer, a group of employees, or both, without any consideration.)

(e) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h of the Revenue and Taxation Code holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any transfer from one such entity to the same type of entity), provided that both the transferee and the transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(f) Any transfer, occurring on or after January 1, 1983, which results from the reformation or correction of a deed which, by mistake, inaccurately describes the property intended to be conveyed, or adds or omits some term not agreed to by the parties, or in some other manner fails to express the true intentions of the parties. Example 1: A agrees to sell one acre to B. The deed mistakenly describes a two-acre area. Reformation of the deed to describe the original acre intended to be transferred is not a change in ownership.

(g) Any transfer, occurring on or after January 1, 1983, of an eligible dwelling unit from a parent(s) or legal guardian(s) to a minor child or children or among minor siblings, or to a trust for the sole benefit of such persons, resulting from a court order or judicial decree due to the death of one or both of the parents. An "eligible dwelling unit" means the dwelling which was the principal place of residence of the minor child or children prior to the transfer and remains such after the transfer.

(h) Any transfer of property to a disabled child or ward, whether minor or adult, or to a trust for the sole benefit of such person, upon the death of a parent or guardian pursuant to Section 62(n) of the Revenue and Taxation Code.

(i) Any transfer, on or after January 1, 1985, of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.1 of the Revenue and Taxation Code.

(j) Any transfer of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.2 of the Revenue and Taxation Code.

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

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed old rule and adopted new rule August 16, 1979, effective August 22, 1979.
Amended November 13, 1979, effective December 6, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended March 31, 1982, effective June 10, 1982.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(m).
Amended September 10, 1997, effective February 20, 1998.
Amended August 6, 2003, effective November 13, 2003.

RULE 462.260. DATE OF CHANGE IN OWNERSHIP

Reference: Sections 60, 61, 62, 63 and 67, Revenue and Taxation Code.
Section 15606, Government Code.

For purposes of reappraising real property as of the date of change in ownership of real property, the following dates shall be used:

(a) Sales.

(1) Where the transfer is evidenced by recordation of a deed or other document, the date of recordation shall be rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a different date to be the date all parties' instructions have been met in escrow or the date the agreement of the parties became specifically enforceable.

(2) Where the transfer is accomplished by an unrecorded document, the date of the transfer document shall be rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a different date to be the date all parties' instructions have been met in escrow or the date the agreement of the parties became specifically enforceable.

(b) Leases. The date the lessee has the right to possession.

(c) Inheritance (by will or intestate succession). The date of death of the decedent.

(d) Trusts.

(1) Revocable. The date the trust becomes irrevocable.

Example 1: A creates an inter vivos revocable trust that becomes irrevocable upon A's death. The date of change in ownership is the date of A's death.

(2) Irrevocable.

(A) The date the property is placed in trust.

Example 2: A's estate plan provides that upon A's death, property is transferred to an irrevocable testamentary trust. The date of change in ownership is the date of A's death.

Example 3: A transfers to an irrevocable inter vivos trust. The date of change in ownership is the date of the transfer.

(B) The effective date of the immediate right to present possession or enjoyment of a remainder or reversion occurs upon the termination of a life estate or other similar precedent property interest.

Example 4: A creates an irrevocable trust, granting A's wife, B, a life estate in the beneficial use of the property with a remainder to C and D who are unrelated to A and B. The creation of a life estate in B is a transfer

subject to the interspousal exclusion from change in ownership. Upon B's death, however, a change in ownership occurs because on that date C and D have an immediate right to the present possession and enjoyment of the remainder.

NOTE: Refer to Section 462.160 for trust transfer exceptions.

History: Adopted June 29, 1978, effective July 3, 1978.
Amended September 26, 1978, effective October 2, 1978.
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.
Amended May 5, 1981, effective August 12, 1981.
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (n).
Amended March 19, 1997, effective June 11, 1997.

RULE 462.500. CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED TO REPLACE PROPERTY TAKEN BY GOVERNMENTAL ACTION OR EMINENT DOMAIN PROCEEDINGS

Authority Cited: Section 15606, Government Code.
References: Article XIII A, Section 2(d), California Constitution.
Section 68, Revenue and Taxation Code.

(a) GENERAL . The term "change in ownership" shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:

(1) Eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or

(2) Acquisition by a public entity, or

(3) Governmental action which has resulted in a judgment of inverse condemnation.

(b) DEFINITIONS. The following definitions govern the construction of the words or phrases used in this section.

(1) "Property taken" means real property taken or acquired as provided in (a).

(2) "Replacement property" means real property acquired to replace property taken.

(3) "Award or purchase price" means the amount paid for "property taken" but shall not include amounts paid for relocation assistance or any thing other than the replaced real property. The award or purchase price may not reflect full cash value.

(4) "Displaced" means a property owner is removed, expelled, or forced from property as a result of eminent domain proceedings, acquisition by a public entity in lieu of instituting eminent domain proceedings, or governmental action resulting in a judgment of inverse condemnation.

(5) "Real property" includes land, land improvements, living improvements, manufactured homes, and fixed machinery and equipment. Personal property is not entitled to relief under this section.

(6) "Adjusted base year value" means the base year value, as determined in accordance with Revenue and Taxation Code Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1.

(c) COMPARABILITY. Replacement property, acquired by a person displaced under circumstances enumerated in (a), shall be deemed comparable to the property taken if it is similar in size, utility, and function.

(1) The size of property is associated with value, not physical characteristics. Property is similar in size if its full cash value does not exceed 120 percent of the award or purchase price paid for the property taken. A

replacement property, or portion thereof, that has a full cash value which exceeds 120 percent of the award or purchase price shall be considered, to the extent of the excess, not similar in size.

(2) Property is similar in function and utility if the replacement property is or is intended to be used in the same manner as the property taken. Property is similar in function and utility if the property taken and the replacement property both fall into the same category:

Category A: Single family residence or duplex. Small miscellaneous buildings may be included when used with residence.

Category B: Commercial, investment, income, or vacant property. Single family residences and duplexes that are used as investment property may be considered income property if sufficient proof is provided to the assessor. Proof may include, but is not limited to, rental or lease agreements, cancelled checks, income tax returns, or other investment records. If property does not fall within Category A or Category C, it falls within Category B.

Category C: Agricultural property. "Agriculture" includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed incidental to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. Agricultural property that is in transition may be considered similar to property described in Category B if property in its vicinity has been changing from historically agricultural use to another use. Factors that may be considered to determine whether agricultural property is in transition include, but are not limited to:

- Restrictions that would prohibit the property taken from converting to property described in Category B such as the general plan, community plan, or special plan. Current zoning restrictions are not such a restriction if the general plan, community plan, or special plan contemplate a zoning change.
- The highest and best use of the property taken.
- The type of comparable property that was used by the acquiring government body to value the property taken.

(3) To the extent that replacement property, or any portion thereof, is not similar in function, size and utility, the property, or portion thereof, shall be considered to have undergone a change in ownership.

EXAMPLE 1: An owner-occupied single family residence is replaced by a combination dwelling and commercial property. Relief is applicable to only the dwelling portion of the replacement property; the commercial portion shall be considered as having changed ownership.

EXAMPLE 2: A combination dwelling and commercial property is replaced with an owner-occupied single family

residence. Only the dwelling portion of the property taken shall be considered in determining the comparability and the amount of relief. The right to relief on the commercial portion of the property taken is waived unless replacement Category B property is acquired after the date of displacement and a timely request is made for assessment relief.

EXAMPLE 3: A combination dwelling and commercial property is replaced with a Category A single family residence, and later the displaced person also acquires a separate replacement Category B property. Pro-rata relief shall be granted on both the replacement Category A single family residence and Category B property.

EXAMPLE 4: An owner-occupied single family residence is replaced with an owner-occupied single family residence and a vacation home. Relief is applicable to both properties.

EXAMPLE 5: An owner-occupied single family residence that has a homeowners' exemption is replaced with a single family residence that is to be used as a rental property. The replacement property qualifies for relief because a Category A property is replaced by another Category A property.

EXAMPLE 6: A duplex in which the property owner lived in one unit and rented the other unit is replaced with two single family residences, one of which will be owner occupied. Relief is applicable to both properties.

EXAMPLE 7: Three single family residences that were owned by a taxpayer and used as rental properties were replaced by a small apartment complex. Relief is available under Category B if the taxpayer provides proof to the assessor that the single family residences were held as income property.

EXAMPLE 8: A taxpayer owns a 40-acre vineyard which includes an owner-occupied single family residence. The owner-occupied single family residence is taken along with 5 acres of grapevines. To qualify for relief, the occupied single family residence must be replaced with Category A property; the vineyard must be replaced with other Category C property or, if the property is in transition to another use, it may be replaced with a Category B property.

(d) BASE YEAR VALUE OF REPLACEMENT PROPERTY. The following procedure shall be used by the assessor in determining the appropriate adjusted base year value of comparable replacement property:

(1) Compare the award or purchase price paid by the acquiring entity for the property taken or acquired with the full cash value of the comparable replacement property.

(2) If the full cash value of the comparable replacement property does not exceed 120 percent of the award or purchase price of the property taken, then the adjusted base year value of the property taken shall become the replacement property's base year value, regardless of the allocation between land and improvements.

(3) If the full cash value of the replacement property exceeds 120 percent of the award or purchase price of the property taken, then the amount of the full cash value over 120 percent of the award or purchase price paid shall be added to the adjusted base year value of the property taken. The sum of these amounts shall become the replacement property's base year value.

(4) If the full cash value of the comparable replacement property is less than the adjusted base year value of the property taken, then that lower value shall become the replacement property's base year value.

(5) If there is no award or purchase price paid by the acquiring entity (i.e., an exchange) for the property taken, then the full cash value of the acquired property and the full cash value of the replacement property shall be determined by the assessor of the county in which each property is located for the purpose of applying the other provisions of this subdivision. The procedure set forth in subdivision (d)(1) through (d)(4) shall then be applied to determine the replacement property's base year value.

(6) A base year value may be reallocated upon the transfer of the replacement property. The appraisal unit that is normally bought and sold in the market place may be used to determine the amount of base year value that is allocated to the property taken.

EXAMPLE 9: A commercial property, consisting of land and improvements, is taken and replaced with a Category B structure that was built on land that the taxpayer already owned. The land is ineligible for relief because it was previously owned. Despite the ineligibility of the land, the base year value of the property taken (land and improvements) may be transferred to the newly constructed improvements to the extent it meets the value and timing requirements.

(e) OWNERSHIP REQUIREMENTS. Only the owner or owners of the property taken, whether one or more individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief under this section. Relief under this section shall be granted to an owner(s) of property taken who obtains title to replacement property. The acquisition of an ownership interest in a legal entity which, directly or indirectly, owns real property is not an acquisition of comparable property.

EXAMPLE 10: A and B each own an undivided 50 percent interest as joint tenants in a home which is taken through eminent domain proceedings by the state. A purchases a replacement property which is comparable to the property taken. B contributes his share of the award or purchase price to a limited partnership which owns a home which is comparable replacement property. A's relief under this section is limited to 120 percent of one-half of the award or purchase price of the property taken. B is entitled to no relief.

EXAMPLE 11: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership uses the award or purchase price to acquire Category B property. The partnership is entitled to relief under this section.

EXAMPLE 12: A partnership composed of two corporations owns commercial property which is taken through eminent domain proceedings. The partnership distributes the award or purchase price to the partner corporations in the same percentage as their ownership interests and the corporations separately or jointly acquire comparable replacement property retaining the same percentage of ownership interest in the partnership. No tax relief may be granted under this section. For purposes of this section, owner means the fee owner or life estate owner of the real property taken and excludes the lessee thereof unless the lessee owns improvements located on land owned by another, in which case, the lessee shall be entitled to property tax relief for comparable replacement improvements.

(f) NEW CONSTRUCTION. Any new construction required to make replacement property comparable to the property taken shall, to that extent, be eligible for property tax relief, if such new construction is completed on or after the earliest of the dates listed in subdivision (g)(3), and if a timely request is made for assessment relief.

(g) TIME LIMITS FOR QUALIFICATION.

(1) The provisions of this section shall apply to property acquired as replacement property for property taken by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation, provided the person acquiring replacement property makes a timely request for such assessment with the assessor. The replacement property must be acquired before a request is made. Reassessments and refunds shall be made retroactively to the date of acquisition of replacement property for property taken, provided a timely request is made therefor.

(2) For purposes of this section, a request shall be deemed timely if made within four years after one of the following dates, whichever is applicable:

(A) The date final order of condemnation is recorded or the date the taxpayer vacates the property taken, whichever is later, for property acquired by eminent domain;

(B) The date of conveyance or the date the taxpayer vacates the property taken, whichever is later, for property acquired by a public entity by purchase or exchange; or

(C) The date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the property taken, whichever is later, for property taken by inverse condemnation.

(3) Replacement property shall be eligible for property tax relief under this section if it is acquired on or after the earliest of the following dates:

(A) The date the initial written offer is made for the property taken by the acquiring entity;

(B) The date the acquiring entity takes final action to approve a project which results in an offer for or the acquisition of the property taken;

(C) The date the "Notice of Determination," "Notice of Exemption," or similar notice, as required by the California Environmental Quality Act (CEQA), is recorded by the public entity acquiring the taxpayer's property and the public project has been approved; or

(D) The date, as declared by the court, that the property was taken.

(4) No property tax relief shall be granted to replacement property, however, prior to the date of displacement. The date of displacement shall be the earliest of the following dates:

(A) The date the conveyance of the property taken to the acquiring entity or the final order of condemnation is recorded;

(B) The date of actual possession by the acquiring entity of the property taken; or

(C) The date upon or after which the acquiring entity may take possession of the property taken as authorized by an order for possession.

(h) ADMINISTRATION.

(1) The assessor shall consider any of the following documents as proof of actual displacement of a taxpayer when a request has been made for the assessment relief provisions under this section:

(A) A certified recorded copy of the final order of condemnation, or, if the final order has not been issued, a certified recorded copy of the order for possession showing the effective date upon or after which the acquiring entity is authorized to take possession of the property taken;

(B) A copy of a recorded deed showing acquisition by a public entity; or

(C) A certified copy of a final judgment of inverse condemnation.

(2) Upon receipt of a taxpayer request and proof of actual displacement, the assessor shall forward to the Board such information regarding the identification of a displaced property as the Board may require. The Board shall review such information to determine whether more than one request for assessment relief has been made as a result of a single taking or governmental acquisition and if so shall advise the appropriate assessor(s).

History: Adopted September 13, 1984, effective February 16, 1985.
Amended November 18, 1987, effective February 14, 1988.
Amended September 8, 2004, effective December 18, 2004.

APPENDIX 2: GLOSSARY OF TERMS

Term	Definition
Ad Valorem	Latin phrase meaning "in proportion to the value." In California, the property tax is considered to be an ad valorem tax.
Adjusted Base Year Value	The base year value, as determined in accordance with Revenue and Taxation Code section 110.1, with the adjustments permitted by subdivision (b) of section 2 of article XIII A of the California Constitution and section 110.1(f).
Adverse Possession	A method of acquiring title to another's property without that owner's consent through obvious occupancy of the land, while claiming ownership for the period of years set by law.
Appraisal Unit	That property which persons in the marketplace normally buy and sell as a unit or which is normally valued separately.
Assessed Value	The taxable value of a property against which the tax rate is applied.
Assessee	Person who owns, claims, possesses, or controls the property on the lien date.
Assessment Roll	A listing of all taxable property within a county. It identifies, at a minimum: (1) the property (usually by assessor's parcel number); (2) the tax-rate area where the property is located; (3) the name (if known) and mailing address of the assessee; (4) the assessed value of the property, including separate assessed values for land, improvements, and personal property; (5) penalties (if any); and (6) the amount (if any) of specified exemptions (for example, homeowners', church, welfare). Distinct assessment rolls include the locally assessed secured and unsecured regular assessment rolls, the locally assessed supplemental assessment roll, and the state-assessed roll (which is added to the locally assessed secured roll).
Assessment Year	Assessment year means the period beginning with a lien date and ending immediately prior to the succeeding lien date.
Base Year Value	In accordance with section 110.1, a property's base year value is its fair market value as of either the 1975 lien date or the date the property was last purchased, newly constructed, or underwent a change in ownership after the 1975 lien date.

Term	Definition
Change in Ownership	A transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.
Condominium	An estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include a separate interest in other portions of such real property. Such estate may be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, (3) an estate for years, such as a leasehold or a sub-leasehold, or (4) any combination of the foregoing.
Devise	A transfer of real property by will. The term is also used as a verb to describe the transfer.
Displaced	A property owner is displaced when removed, expelled, or forced from property as a result of eminent domain proceedings, acquisition by a public entity in lieu of instituting eminent domain proceedings, or governmental action resulting in a judgment of inverse condemnation.
Eminent Domain	The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character.
Executor	Nominated by the decedent, who files a petition to establish the will's validity.
Fair Market Value	The amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both with knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes. [Section 110]
Fee Interest	The absolute legal possession and ownership of land, property, or rights, including mineral rights. A fee interest can be sold (in its entirety or in part) or passed on to heirs or successors.
Full Cash Value	The fair market value as determined in section 110 for either the 1975 lien date or when purchased, newly constructed, or ownership has changed after the 1975 lien date. [Section 110.1]

Term	Definition
Full Value	Fair market value, full cash value, or such other value standard as is prescribed by the Constitution or in the Revenue and Taxation Code under the authorization of the Constitution.
Highest and Best Use	The most profitable use of a property at the time of the appraisal; that available use and program of future utilization that produces the highest present land value; must be legal, physically possible, financially feasible, and maximally profitable.
Improvements	All buildings, structures, fixtures, and fences erected on or affixed to the land, all fruit, nut bearing, ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms between four and eight years of age.
Joint Tenancy	Creates undivided interests in property, with each joint tenant owning an equal fractional share; and each is entitled to simultaneous possession and enjoyment of the entire property; right of survivorship.
Land Purchase Contract	A contract for the purchase of real estate in which the seller retains title until the buyer makes a specific number of periodic installment payments. A land purchase contract may also be called a land sales contract, installment land contract, contract of sale, real property sales contract, or installment contract.
Leasehold Interest (or Estate)	The lessee's interest in property; the right to use and occupy real property during the term of a lease, subject to any contractual restrictions.
Legal Title	The title held by the record owner of an interest in real property. The owner of legal title is presumed to be, but is not necessarily, the owner of the beneficial interest in the property. (When property is held in trust, the trustee holds the legal title and the beneficiary holds equitable title.)
Lessee	One who has the right to use or occupy property under a lease agreement; a tenant.
Lessor	One who holds property title and conveys the right to use and occupy the property under a lease agreement; a landlord.

Term	Definition
Lien Date	All taxable property (both state and locally assessed) is assessed annually for property tax purposes as of 12:01 a.m. on January 1, which is called the lien date. It is referred to as the lien date because on this date the taxes become a lien against all real property assessed on the secured roll.
Partition	A division of property between co-owners resulting in individual ownership of the interest of each.
Possessory Interest	Interest in real property that exists as a result of (1) a possession of real property that is independent, durable and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with the ownership of a fee simple or life estate in the real property in the same person; or (2) a right to the possession of real property, or a claim to a right to the possession of real property, that is independent, durable and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with the ownership of a fee simple or life estate in the real property in the same person; or (3) possession of taxable improvements on tax-exempt land.
Probate	The judicial process for determining the validity of a will.
Property Eligible for Homeowners' Exemption	Property that is the principal place of residence of its owner and is entitled to exemption pursuant to section 205.5.
Purchase Price	The amount of money a buyer agrees to pay and a seller agrees to accept in an exchange of property rights; purchase price is based on a particular transaction, not necessarily on what the typical buyer would pay or the typical seller would accept.
Real Property	The possession of, claim to, ownership of, or right to the possession of land; all mines, minerals, and quarries in the land; all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto; and improvements; in California property tax law, the term is synonymous with "real estate."
Regular Assessment Roll	Roll covering period starting July 1 of the current calendar year to June 30 of the next year.
Remainder Interest	The property that passes to a beneficiary after the expiration of an intervening property interest.

Term	Definition
Rescission	The cancellation of a contract by mutual consent of both parties; the act of putting the parties back to their position as if the contract had not existed.
Reversion	The return of property to its former owner or his or her heirs at the end of a specific period.
Reversionary Interest	The rights of the lessor at the expiration of a lease; the estate returned or due to be returned to the grantor or investor.
Structure	An edifice or building; an improvement whose primary use or purpose is for housing or accommodation of personnel, personalty, or fixtures and has no direct application to the process or function of the industry, trade, or profession.
Sublease	An agreement in which the lessee in a prior lease conveys the right of use and occupancy of a property to another.
Taxable Value	For real property subject to article XIII A of the California Constitution, the base year full value adjusted for any given lien date as required by laws or the full cash value (market value) for the same date (whichever is less) as set forth in section 51(a). For personal property, the full cash value for the lien date each year.
Tenancy in Common	A form of concurrent property ownership in which multiple owners have an undivided interest in the property.
Trust	An entity created to hold assets for the benefit of certain persons or legal entities, with a trustee managing the trust.