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PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082  
(916) 445-6493 • FAX 916-323-3387  
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November 7, 2006

Honorable Chuck Leonhardt  
Plumas County Assessor  
1 Crescent Street  
Quincy, CA 95971

Attn:

**Subject: Grant Deed – After-Acquired Title Doctrine**

Dear Mr. Leonhardt:

This is in response to your e-mail in which you attached copies of two grant deeds of real property and a copy of Section 8:51, *After-acquired title*, from Miller & Starr, *California Real Estate*, 3<sup>rd</sup> Edition, Chapter 8, *Deeds*, and you asked that we explain the after-acquired title doctrine in conjunction with the transfers occurring as the result of those deeds. As hereinafter explained, DCO transferred real property to herself and MO (her son), as joint tenants. DCO purportedly transferred the entire property to DCO as trustee of the DCO Revocable Living Trust, thereafter holding her one-half of the property in her trust as a joint tenant. Under the after-acquired title doctrine, if and when DCO obtained title to the other one-half of the property, that one-half of the property would also pass to DCO as Trustee of the DCO Revocable Living Trust; and that occurred, presumably, on October 4, 2005,<sup>1</sup> when MO and SO (his wife) purportedly transferred the entire property to DCO, and thereby transferred MO's one-half interest in the property. As the result, as of that date, the entire property was held by DCO as trustee of the DCO Revocable Living Trust.

**Facts**

In Book 599, Page 26, dated April 30, 1993, title to APN #xxx-xxx-005 is shown as held by DCO and MO (her son) as joint tenants. An inquiry disclosed that DCO had received title to the real property after her husband's death and had transferred the property to herself and MO (her son) as joint tenants.

By Grant Deed dated August 28, 2005/August 30, 2005, Recorded Document #2005 00xxxxx, DCO, recorded owner of one-half of the property, purportedly granted to DCO as Trustee of the DCO Revocable Living Trust title to APN #xxx-xxx-005:

The real property in the County of Plumas, State of California and more particularly described as follows:

<sup>1</sup> Property Tax Rule 462.260, Date of Change in Ownership, (a) Sales, states; in part:

(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.

Lot xx9, as shown on that certain map entitled, "Plumas Eureka Estates, Unit No. 1" filed August xx, 19xx in the office of the county recorder of Plumas County, California, in Book y of Maps, Page x1.

By Grant Deed dated September 8 and September 27, 2005/October 4, 2005, Recorded Document #2005-00xxxxx, MO, recorded owner of one-half of the property, and SO (his wife) purportedly granted to DCO title to APN #xxx-xxx-005:

The real property in the County of Plumas, State of California and more particularly described as follows:

Lot xx9, as shown on that certain map entitled, "Plumas Eureka Estates, Unit No. 1" filed August xx, 19xx in the office of the county recorder of Plumas County, California, in Book y of Maps, Page x1.

### **Analysis and Conclusions**

#### **1. April 30, 1993 Deed.**

Revenue and Taxation Code<sup>2</sup> 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."

Section 62, subdivision (f), provides, in pertinent part, that a change in ownership shall not include the creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

Section 65 provides in pertinent part:

(b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the 'original transferor or transferors' for purposes of determining the property to be reappraised on subsequent transfers....

When DCO transferred the real property to herself and MO as joint tenants, the transfer of that property interest to MO was excluded from change in ownership under subdivision (b) of section 65, because the transferor, DCO, was one of the joint tenants after a joint tenancy was created. As a result, DCO became an original transferor and MO became an "other than original transferor" for purposes of determining when the property was to be reappraised upon subsequent transfer(s).

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<sup>2</sup> All section references are to the Revenue and Taxation Code unless otherwise indicated therein.

## **2. August 28, 2005 Deed.**

### **A. Transfer to DCO's Revocable Trust.**

Section 62 contains exclusions applicable to transfers into trusts. Specifically, section 62, subdivision (d) provides, in pertinent part, that "Change in ownership shall not include: Any transfer by the trustor . . . into a trust for so long as . . . (2) the trust is revocable." A transfer to a revocable trust is excluded from change in ownership because such a transfer does not result in the transfer of a present beneficial interest, a requirement for a change in ownership pursuant to section 60.

The Board has interpreted section 62 as it relates to the creation of trusts in Property Tax Rule 462.160, Change in Ownership – Trusts, which provides in relevant part:

(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:

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(2) Revocable Trusts. The transfer of real property . . . by the trustor to a trust, which is revocable by the trustor . . .

Applying the foregoing provisions, the transfer by any person of real property into a trust is excluded from change in ownership at the time of the transfer if the trust is revocable by the transferor. Here, DCO, as a joint tenant, transferred her property interest into her revocable living trust. As such, the transfer is excluded from change in ownership pursuant to section 62, subdivision (d)(2) and Rule 462.160, subdivision (b)(2).

The Report of the Task Force on Property Tax Administration, Assembly Committee on Revenue and Taxation, January 22, 1979, explained that the "present interest" requirement "is necessary to protect a variety of contingent or inchoate transfers from unintended change in ownership treatment, including future interests, revocable transfers and transfers with retained life estates." That is, upon creation of a revocable trust and transfer of real property to that trust, the beneficiary receives only a contingent interest and, therefore, the trustor is deemed to retain the beneficial interest in the trust property. Thus, even though DCO's grant deed transferred the real property to her revocable trust, the transfer was excludable from change in ownership since DCO, as trustor of her trust, retained the present beneficial interest in her portion of the property.

### **B. Joint Tenancy Status.**

DCO's transfer of the real property to her revocable trust did not sever the joint tenancy because none of the conditions exists for severance as set forth in Civil Code section 683.2. That section provides, in relevant part, that:

Subject to the limitations and requirements of this section . . . a joint tenant may sever a joint tenancy in real property . . . by any of the following means:

- (1) Execution and delivery of a deed that conveys legal title to the joint tenant's interest to a third person . . .
- (2) Execution of a written instrument that evidences the intent to sever the joint tenancy. . .

Nothing in this section authorizes severance of a joint tenancy contrary to a written agreement of the joint tenants . . .

In this instance, there is nothing to indicate an intent to sever the joint tenancy by DCO. The grant deed conveyance was made to DCO as trustee of DCO's (one of the joint tenant's) living trust, not to a third party. Moreover, there is no written instrument evidencing an intent to sever the joint tenancy. Thus, after the transfer, DCO continued to hold her joint tenancy interest in the real property as an original transferor through her revocable trust, and MO continued to hold his joint tenancy interest in the real property as other than an original transferor.

Because the joint tenancy was not severed, there was no change in ownership.

### **C. After-Acquired Title Doctrine.**

By the August 28, 2005 Grant Deed, DCO purportedly granted title to the entire property although she was the recorded owner of only one-half of the property. As stated in Section 8:51, *After-acquired title*, from Miller & Starr, *California Real Estate*, 3<sup>rd</sup> Edition, Chapter 8, *Deeds*:

**Doctrine of after-acquired title.** The 'doctrine of after-acquired title' applies in some circumstances where the deed purports to convey a greater title or estate in property than is actually owned by the grantor. When the grant purports to convey the fee title when . . . the grantor holds an estate that is less than is granted by the deed, and the grantor subsequently acquires the title or estate that was purportedly conveyed, . . . this after-acquired or perfected title passes to the grantee by operation of law.<sup>3</sup>

- **Case Example:** A cotenant purported to convey the entire fee title. When he subsequently acquired the interest of the other cotenant, the court held that it passed to his prior grantee.

Applying the after-acquired title doctrine to the facts of this case, when DCO purportedly granted title to the real property to DCO as trustee of the DCO Revocable Living Trust, DCO only transferred one-half of the property to her trust because that was the extent of her interest in the property as of that date, August 28, 2005. Thus, there was a change in ownership of one-half of the real property, presumably, on August 30, 2005,<sup>4</sup> but the transfer was excludable as explained in 2., A., above.

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<sup>3</sup> The paragraph continues on to state that the net effect is the same as if the grantor specifically provided in the deed that it conveyed all of the title and estate that the grantor then possessed or might at any time thereafter acquire.

<sup>4</sup> Property Tax Rule 462.260, subdivision (a)(1), above.

As the result of the language of the Grant Deed and the after-acquired title doctrine, however, if and when DCO obtained title to the other one-half of the real property, that one-half of the property would also pass to the original grantee, DCO as Trustee of the DCO Revocable Living Trust. (See 3., B., below.)

### **3. September 8, 2005/ September 27, 2005 Deed.**

#### **A. Transfer to DCO.**

Section 61, subdivision (e) provides, in pertinent part, that change in ownership includes the termination of any joint tenancy interest, except as provided in subdivision (f) of section 62, in section 63, and in section 65.

Section 65 provides, in pertinent part:

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor... , provided that one of the remaining joint tenants is an original transferor.

Property Tax Rule 462.040, Change in Ownership – Joint Tenancies, which interprets and implements section 65, is to the same effect.

When MO and SO transferred the real property to DCO, they were transferring MO's joint tenancy interest in the property back to DCO, an original transferor. The result was a change in ownership of one half of the property under section 60, but the transfer could be excludible under section 65, subdivision (d) and Rule 462.040 if all the requirements therefor were met because the entire interest transferred was transferred to DCO, an original transferor.

#### **B. After-Acquired Title Doctrine.**

By the September 8, 2005/ September 27, 2005, Grant Deed, MO and SO purportedly granted title to the entire property to DCO. As MO only owned one-half of the property, the Grant Deed could only transfer one-half of the property to DCO, at which time, however, as explained in 2., C., above, that one-half of the property would pass to DCO as Trustee of the DCO Revocable Living Trust. Presumably then, on October 4, 2005,<sup>5</sup> the entire property was held by DCO as Trustee of the DCO Revocable Living Trust as the result of the after-acquired title doctrine.

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<sup>5</sup> Property Tax Rule 462.260, subdivision (a)(1), above.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

J. K. McManigal, Jr.  
Senior Tax Counsel

JKM:eb

Prop/Prec/Trusts/06/047.jkm

Prop/Prec/Jt.Tenancy/06/047.jkm

cc: Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Mickie Stuckey, MIC:62  
Mr. Todd Gilman, MIC:70