220.0132 **Date of Change.** If a contract for the sale of real property can be specifically enforced, equity regards as done that which ought to be done and considers the purchaser to be owner of the property upon execution of the contract. If a purchaser is required to bring a court action for specific performance and is successful, transfer of title is nevertheless considered to have occurred on the date the contract became enforceable, i.e., when it was signed. C 11/19/80.

(916) 445-3076

November 19, 1980

Reappraisal Date - Block 60 Lot 9C
173/75 Chestnut Street

Dear :

This letter is in response to your letter to Glenn Rigby in which you request our opinion of the proper reappraisal date for the above described property.

Pursuant to the court documents which you have forwarded, the sequence of events concerning the change in ownership of the property is as follows:

1. On March 8, 1977, DeWit, owner of the Chestnut Street property, entered into a contract to sell the property to Pelsinger and Carmichael. The terms of the contract included a condition that the transaction was to be subject to the sale, within 30 days, of another parcel owned by Pelsinger and Carmichael. DeWit reserved the right to continue to offer her property for sale and if she received an acceptable offer, she was to give Pelsinger and Carmichael notice of the offer. If they did not waive the condition within 72 hours of the receipt of the notice, then their contract to buy the property was to be terminated. DeWit was represented in this transaction by Foisy, a real estate salesman.

2. On March 20, 1977, DeWit entered into a written contract to sell her property to Foisy and Dale. Notice of an offer was given to Pelsinger and Carmichael.

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3. On March 23, 1977, Pelsinger and Carmichael waived the condition contained in the March 8, 1977 contract and agreed to purchase DeWit's property without first selling their own. Pelsinger and Carmichael opened an escrow, refinanced other property, and were ready to perform the March 8, 1977 contract to purchase the DeWit property.

4. In April 1977, DeWit conveyed the property to Dale pursuant to the directions of Foisy and Dale.

5. On May 19, 1977, Pelsinger and Carmichael filed an action for specific performance and damages. The court ordered the property conveyed to Pelsinger and Carmichael and awarded them damages. Pelsinger and Carmichael were ordered to reimburse Foisy and Dale for property taxes paid by them during the period they held the property and also to pay them interest on the money paid for the property. Foisy and Dale were ordered to pay Pelsinger and Carmichael the rents received from the property.

You question whether the property should be reappraised on the date Pelsinger and Carmichael were entitled to the property or on June 5, 1980 when they finally received it.

We note initially that the Judgment and the Findings of Fact and Conclusions of Law which you have forwarded are not filed endorsed copies. Assuming that filed endorsed copies can be produced, it is our opinion that the property should be reappraised as of March 23, 1977, the date Pelsinger and Carmichael waived the condition and agreed to purchase DeWit's property without first selling their own. Our conclusion is based upon the following analysis.

Whenever a contract to purchase land is formed, an equitable exchange takes place. At that moment, the purchaser becomes the equitable owner of the land and the seller's interest is in the unpaid purchase price. Abrams v. Motter, (1970) 3 Cal. App. 3d 828, 847. If a contract for the sale of real property is one which can be specifically enforced, equity regards as done that which ought to be done and considers the purchaser to be the owner of the land upon execution of

the contract. Elliott v. McCombs, (1941) 17 Cal. 2d 23, 31. This is the principle which the court recognized when it awarded Pelsinger and Carmichael the back rent and ordered them to reimburse Foley and Dale for taxes and interest.

Rule 462(c) provides: "A transfer of equitable title is a change in ownership." Since equitable title was transferred to Pelsinger and Carmichael on March 23, 1977, that is the date the property changed ownership and should be reappraised. This conclusion is not to be interpreted as being in contravention of our Rule 462(a) which states that the date of recordation or the date all the parties' instructions have been met in escrow is the date of ownership change. This conclusion is to be narrowly applied to the instance when a contract for the sale of property has been enforced by a judgment for specific performance.

If you have any further questions, please contact us.

Very truly yours,

Michele F. Hicks
Tax Counsel

MFH:fr

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Legal Section