

Mr. Gordon Adelman

May 28, 1985

Barbara Elbrecht

Treatment of Transfers Between Common-Law Spouses As Exempt Interspousal Transfers

This is in response to your memorandum to Mr. Richard Ochsner dated April 23, 1985 with attachments in which you ask whether interspousal transfers include transfers between common law spouses as exempt transactions. The correspondence and documents attached to your memorandum provide the following information:

F , an unmarried woman, and B , an unmarried man, entered into a real estate purchase contract on September 30, 1976 to purchase property in Plumas County. They requested in the contract that title be taken by them as joint tenants. By grant deed dated March 25, 1985, Mr. B transferred his interest to Ms. F . The Assessor's office informed them that the transfer of Mr. B 's interest resulted in a change in ownership and reappraisal of Mr. B 's one-half interest in the property. Ms. F and Mr. B apparently contend that the change in ownership occurred because title was not taken in joint tenancy as they requested. They also apparently assert that they had a common law marriage. They state that "certain movie personalities" were found to be common law spouses and ask why the Assessor will not grant them the same status.

Ms. F ; and Mr. B 's first contention that the change in ownership resulted from the failure to take title as joint tenants is based on a misunderstanding of the change in ownership rules regarding joint tenancy. The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred, unless the transferor or transferors, after such creation or transfer, are among the joint tenants. (Rev. & Tax. Code, §61, subd. (d); Rule 462(c).) Mr. B , the transferor, transferred his interest to Ms. F as sole owner. Since he no longer held a joint tenancy interest in the property, there was a change in ownership of 50 percent of the property.

If Mr. B and Ms. F were spouses, the transfer of Mr. B's interest to Ms. F could be exempted from a change in ownership under the provisions governing interspousal transfers (Rev. & Tax. Code, §63; Rule 462(1)). California does not recognize common law marriage, however Civil Code, Section 4100 states:

Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and solemnization....

California only recognizes a common law marriage if the marriage was valid in the jurisdiction in which it was contracted. (Civ. Code, §4104.) Common law marriage in such jurisdictions requires that the parties agree to become husband and wife; they must also hold themselves out as husband and wife to the community around them (32 Cal.Jur.3d, Family Law, §51, pp. 78-79).

But the issue of the spousal exemption need not be considered here since no facts have been provided to show that Ms. F and Mr. B entered into a spousal relationship. There is no evidence that they agreed to become husband and wife or that they held themselves out as husband and wife to the community. In fact, all the evidence supports a contrary conclusion. They signed the deed of trust to secure the property purchased as an unmarried man and unmarried woman. The grant deed transferring Mr. B's interest to Ms. F describes them as an unmarried man and an unmarried woman. Therefore, even if California recognized common law marriage, Ms. F and Mr. B could not be considered common law spouses.

Ms. F and Mr. B's reference to "certain movie personalities" appears to be a reference to the Marvin case, in which Michele Marvin brought an action against Lee Marvin for her half of the property acquired while they lived together. The court did not award her relief as a common law spouse, but held that she could bring an action against Lee Marvin on an expressed or implied contract to share equally the property acquired during their relationship. (Marvin v. Marvin (1976) 18 Cal.3d 660 [557 P.2d 106]). The Marvin case is inapplicable here. Any transfer of real property from Lee to Michele Marvin pursuant to such a contract would constitute a change in ownership.

Based on the foregoing, the transfer of Mr. B's interest in the property owned in joint tenancy with Ms. F cannot be excluded from the change in ownership provisions as an exempt interspousal transfer.

BGE:mw

cc: Mr. Robert Gustafson  
Mr. Verne Walton