

(916) 445-4598

January 24, 1980

In our recent telephone conversation, you asked that we review the "Real Property Purchase Agreement" between the S and the D to determine when a change in ownership occurred.

On July 13, 1972, the S and D entered into a contract wherein the S agreed to sell "an as yet undivided place of real property" equaling 10 acres of a 23-acre parcel. Although the 25 acres are described by meets and bounds, there is no indication in the document there is any agreement as to what 10 acres are to be conveyed. For instance, in Item No. 3, the parties provided that:

" . . . The buyers realize that the ten (10) acres which the sellers are hereby agreeing to sell the buyers is an undivided portion of said property. The sellers warrant that upon the last payment of the periodic installments of the unpaid purchase price, sellers shall perform all acts necessary to set aside or otherwise divide said ten (10) acres and thereafter convey said ten (10) acres by such deed or deeds as shall be lawfully permitted, directly to buyers, as joint tenants"

In addition, Item No. 5 provides:

"This agreement or the purchase by buyers of the land heretofore mentioned, does not specifically give to buyers any right or rights of immediate possession of said property purchased except under such agreement as the parties shall hereafter make."

To constitute a binding contract for the sale of land, the material terms must be agreed on between the parties and nothing material to the validity of the contract left to the future settlement.

In the case at hand, one of the material terms is not agreed upon, i.e., the exact property that will be transferred is not identified. As provided by the terms of the agreement, the 10 acres will not be designated nor will there be any deed executed relating to the exact 10 acres until after final payment. In addition, the buyer has no right to possess the property until the final payment is made.

Under these circumstances, we view the change in ownership did not take place until the buyer paid the last installment and the seller performed his obligation of identifying and dividing the parcel.

If you have any further questions, please let me know.

Very truly yours,

Glenn L. Rigby
Assistant Chief Counsel