



(916) 445-8485

October 10, 1980

Mr. Donald P. Stewart
MONTEREY COUNTY ASSESSOR
P. O. Box 570
Salinas, CA 93901

Attn: Mr. Bruce Reeves
Supervising Appraiser, Standards

Dear Mr. Reeves:

This is in response to your request that we summarize our recent telephone conversation wherein we advised that a conveyance from B to A constituted a change in ownership under Article XIII A of the California Constitution where:

A previously executed a grant deed conveying real property to B. Recently, B executed a grant deed conveying the same property back to A, and when confronted with the change in ownership statutes, B's attorney contended that both conveyances had been made in conjunction with an oral revocable trust such that the conveyance from B to A is excluded from "change in ownership" by Revenue and Taxation Code Section 62(d).

As we discussed, Article XIII A, Section 2(a) provides, in part, that "full cash value" means the appraised value of real property when a change in ownership has occurred after the 1975 assessment. Revenue and Taxation Code Section 60 declares "change in ownership" to mean a transfer of a present interest in real property, as does Board Rule 462, Change in Ownership, which continues to provide, among other things, that every transfer of property qualified as a "change in ownership" shall be so regarded whether the transfer is by grant or any other means.

Against this background, Civil Code Section 1107

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provides that every grant of an estate in real property is conclusive against the grantor. And a deed executed and delivered is conclusive as to the intention of the grantor to convey the property (Mascarel v. Mascarel's Executors, 3 Cal. App. 501). And all presumptions are in favor of the validity of a deed when it is regular on its face and recorded or acknowledged (Du Bois v. Larke, 175 Cal. App. 2d 737).

Additionally, California Civil Code Section 852 provides that no trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;
2. By the instrument under which the trustee claims the estate affected; or,
3. By operation of law.

and California Code of Civil Procedure Section 1971 provides, in part, that no estate or interest in real property nor any trust over or concerning it can be created, granted, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, or declaring the same. Pursuant thereto, an express trust with respect to real property is required to be in writing, subscribed by the trustor or trustee, and this is the only manner in which a trust in real property can be created, except by operation of law.

Accordingly, since the contention that a conveyance of real property has been made in conjunction with an oral revocable trust is inconsistent with existing statutory law, and since grant deeds are presumed to convey real property outright, the grant deed conveying the real property from B to A constitutes a change in ownership.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

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