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No. 2008/043

June 27, 2008

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

ASSESSORS' HANDBOOK SECTION 401,  
CHANGE IN OWNERSHIP

Board staff has initiated a project to develop a new section of the Assessors' Handbook relative to changes in ownership of property under the provisions of Article XIII A (Proposition 13). Enclosed is a draft of proposed Assessors' Handbook Section 401, *Change in Ownership*. Topics covered in this handbook include changes in ownership as they pertain to trusts and estates, joint tenancies, tenancies in common, cooperative housing, condominium conversions, interspousal and domestic partner transfers, eminent domain, and others.

Interested parties are encouraged to participate in the drafting process for this new handbook. You may provide suggested language changes and/or proposed additions in the form of alternative text. Identify the page and line number for all changes. Proposed changes/additions will be accepted until September 26, 2008 and should be submitted to Ms. Sherrie Kinkle at [sherrie.kinkle@boe.ca.gov](mailto:sherrie.kinkle@boe.ca.gov) or sent to the above address.

After reviewing comments received from interested parties, the project will proceed as follows:

- Staff will distribute an agenda matrix summarizing proposed changes to the draft.
- Staff will meet with interested parties to discuss proposed changes to the draft.
- The Board's Property Tax Committee will hear any unresolved issues.

All documents regarding proposed Assessors' Handbook Section 401 will be posted on the Board's website at [www.boe.ca.gov/proptaxes/otherprojects08.htm](http://www.boe.ca.gov/proptaxes/otherprojects08.htm). If you have any questions or comments regarding this project, you may contact Ms. Kinkle at 916-322-2921.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:sk  
Enclosure

**DRAFT**

**ASSESSORS' HANDBOOK  
SECTION 401**

**CHANGE IN OWNERSHIP**

**JUNE 2008**

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**CALIFORNIA STATE BOARD OF EQUALIZATION**

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MICHELLE STEEL, ROLLING HILLS ESTATE  
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RAMON J. HIRSIG, EXECUTIVE DIRECTOR



## Foreword

1  
2 On June 6, 1978, the voters in California approved Proposition 13 which added article XIII A to  
3 the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a  
4 maximum of 1 percent of the full cash value of the real property. For purposes of this limitation,  
5 the Constitution defines *full cash value* to mean a county assessor's valuation of real property as  
6 shown on the 1975-76 tax bill, or thereafter, the appraised value of that real property when  
7 purchased, newly constructed, or a change in ownership has occurred. As long as the property  
8 has the same owner, its assessed value generally cannot increase by more than 2 percent each  
9 year—even if the property's market value is increasing at a faster rate. As a result, the market  
10 value of many properties is higher than the assessed value.

11 In its original form and at the time of its passage in 1978, Proposition 13 did not provide for any  
12 exclusion from a change in ownership. However, even during the implementation process of  
13 Proposition 13, an exclusion for transfers between spouses was contemplated. Revenue and  
14 Taxation Code section 63 was added effective October 2, 1981 to provide an interspousal  
15 exclusion. In November 1986, the voters approved Proposition 58 to exclude parent-child  
16 transfers from change in ownership. Since then, many amendments to article XIII A have been  
17 approved by voters, including but not limited to, base year value transfers for persons over the  
18 age of 55 (Proposition 60), permanently disabled persons (Proposition 110), and the exclusion of  
19 grandparent-grandchild transfers (Proposition 193).

20 The California Legislature codified the definition of change in ownership, and any implemented  
21 amendments to article XIII A dealing with change in ownership, by enacting Revenue and  
22 Taxation Code sections 60 through 69.5. This section of the *Assessors' Handbook* is a  
23 compilation of the information included in the Revenue and Taxation Code statutes, Property  
24 Tax Rules, and court cases as they relate to change in ownership.

25 Topics covered in this handbook section include changes in ownership as they pertain to trusts  
26 and estates, joint tenancies, tenancies in common, cooperative housing, condominium  
27 conversions, interspousal transfers, domestic partners, eminent domain, and others.

28 Section 15606, subdivision (c), of the Government Code directs the State Board of Equalization  
29 (Board) to prescribe rules and regulations governing county assessors in the performance of their  
30 duties, and subdivision (f) provides that the Board shall issue instructions, such as those set forth  
31 in this handbook section. While rules and regulations adopted by the Board are binding as law,  
32 Board-adopted handbook sections are advisory only. Nevertheless, courts have held that they  
33 may be properly considered as evidence in the adjudicatory process.<sup>1</sup>

34 The citations and law references in this publication were current as of the writing of the  
35 handbook section. Board staff met with members of the California Assessors' Association,

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<sup>1</sup> *Coca-Cola Co. v. State Board of Equalization* (1945) 25 Cal.2d 918; *Prudential Ins. Co. v. City and County of San Francisco* (1987) 191 Cal.App.3d 1142; *Hunt-Wesson Foods, Inc. v. County of Alameda* (1974) 41 Cal.App.3d 163.

1 County Counsels' Association of California, and industry representatives to solicit input for this  
2 handbook section. The Board approved this handbook section on\_\_\_\_\_

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David J. Gau  
Deputy Director  
Property and Special Taxes Department  
California State Board of Equalization  
Date

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# CHAPTER 1: OVERVIEW

## ASSESSMENT PRE- AND POST-PROPOSITION 13

In June 1978, when California voters approved Proposition 13 (placed into law by article XIII A of the California Constitution and subsequent implementing statutes and rules), California property taxation was changed by:

1. Limiting the property tax rate applied to assessed values to 1 percent plus additional rates necessary to retire voter-approved bonded indebtedness;
2. Placing explicit limitations on the power of government to impose additional property taxes; and
3. Limiting increases in assessed values by significantly changing the method of property assessment.

Prior to Proposition 13, annual assessments for both real property and personal property were based on current fair market value. As a practical matter, fiscal and staffing constraints prevented county assessors from physically revaluing each property in their respective counties every year. Consequently, reappraisals were usually conducted on a cyclical basis. Typically, these cycles ranged in duration from three to seven years. Between physical reappraisals, county assessors would often apply interim value increases based on trending factors. This system of assessment ensured that all property, subject to the limitations of cyclical appraisal programs, was assessed based on its current fair market value.

Locally assessed real property is the only category of property subject to the provisions of article XIII A of the California Constitution. Locally assessed personal property and state assessed properties are not subject to its provisions and are annually assessed as of the January 1 lien date at current fair market value by county assessors and the State Board of Equalization, respectively.

Locally assessed real properties subject to Proposition 13 are assessed based on a set of assessment rules based on the properties' fair market value on the date of acquisition. *Acquisition value assessment* refers to the process of basing the assessment of property on its fair market value at the time of a change in ownership or completion of new construction. The new assessment at such time becomes the property's new base year value, which is subject to the annual inflation adjustment discussed below.

Specifically, under Proposition 13:

- Property assessments were rolled back to their 1975-76 levels for the 1978-79 fiscal year. Properties that have not been sold or newly constructed, in whole or in part, since February 1975 are said to have a 1975 base year value. The *base year value* is the current

1 fair market value (or full cash value) of real property in 1975-76, or in any subsequent  
2 year in which a change in ownership or the completion of new construction occurs.<sup>2</sup>

- 3 • Each property's base year value is adjusted annually to reflect inflation as measured by  
4 the California Consumer Price Index, but may not exceed an increase of 2 percent. This  
5 assessed value reflecting the annual inflation indexing is known as the *adjusted* or  
6 *factored base year value*.<sup>3</sup> The adjusted base year value is the maximum assessable  
7 amount for a property for that particular year unless a change in ownership or completion  
8 of new construction occurs.
- 9 • When a change in ownership occurs, a new base year value is established at the current  
10 fair market value on the date of the change in ownership.<sup>4</sup> The base year value of any  
11 newly completed construction is its current fair market value as of its date of completion.  
12 New construction in progress is appraised at its fair market value on the January 1 lien  
13 date.<sup>5</sup>
- 14 • If a partial change in ownership occurs, only the portion that changes ownership is given  
15 a new base year value based upon its current fair market value on the date of the change  
16 in ownership, and the portion that did not change ownership retains its existing adjusted  
17 base year value. Similarly, with new construction (for example, the addition of a  
18 bedroom), the new construction is given a new base year value upon the completion of  
19 the construction at its current fair market value, while the pre-existing portion(s) of the  
20 property retains its existing adjusted base year value. Thus, an assessment for one parcel  
21 may have multiple base year values for its separate portions.
- 22 • Property assessments must be reviewed each year for a decline in value and if a  
23 property's fair market value drops below its adjusted base year value, it will be  
24 temporarily reassessed at the lower fair market value.<sup>6</sup> This reduction is frequently  
25 referred to by the number of its ballot initiative approved by the voters—a *Proposition 8*  
26 adjustment. When the property's current fair market value returns to or exceeds its  
27 adjusted base year value, the adjusted base year value is restored to the assessment roll.

28 Constitutional amendments to article XIII A, and corresponding implementing statutes, have  
29 enacted several exclusions from the definitions of change in ownership and new construction.

### 30 CHANGE IN OWNERSHIP

31 Locally assessed real property subject to Proposition 13 is reassessed upon a change in  
32 ownership or new construction. Section 60 defines a *change in ownership* as a transfer of a  
33 present interest in real property, including the beneficial use thereof, the value of which is

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<sup>2</sup> Revenue and Taxation Code sections 50 through 51.5; section 110.1. All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

<sup>3</sup> Section 51.

<sup>4</sup> Section 51.

<sup>5</sup> Sections 70 and 71.

<sup>6</sup> Section 51(a)(2).

1 substantially equal to the value of the fee interest. For those transfers that are not specifically  
 2 addressed by statutes, regulations, or court decisions, section 60 provides the fundamental  
 3 criteria for determining whether a change in ownership has occurred.<sup>7</sup>

- 4 • A *transfer* may be voluntary or involuntary and may happen by operation of law or may  
 5 result from: a purchase or sale; a grant, gift or devise through inheritance or through a  
 6 trust; an addition or deletion of an owner; or a property settlement.<sup>8</sup> Payment or  
 7 consideration is not required.
- 8 • A *present interest* is one which entitles the person having such to the immediate  
 9 possession, present use, or present enjoyment of the property. This requirement excludes  
 10 from the definition of change in ownership the transfer of contingent and future interests,  
 11 including revocable transfers. (See Chapter 4 for a discussion of revocable trusts.)
- 12 • The term *beneficial use* means the right to enjoy the benefits of a property and includes  
 13 the right to occupy a property<sup>9</sup> and the right to receive income produced by a property.  
 14 This requirement excludes from the definition of change in ownership transfers involving  
 15 trustees, conservators, fiduciaries, security interest holders such as lenders, and other title  
 16 changes where there are no transfer of the beneficial use.<sup>10</sup>
- 17 • A change in ownership requires that the transferred property interest be substantially  
 18 equal to the value of the fee interest in the property.<sup>11</sup> Fee simple ownership means  
 19 absolute ownership of property. Thus, *substantially equal to the value of a fee interest*  
 20 means an ownership interest that is substantially equal to the value of absolute  
 21 ownership. This is known as the value equivalency test and it ensures that there is only  
 22 one primary owner for property tax purposes at any point in time.<sup>12</sup> Under this test, the  
 23 primary owner may be someone other than the record owner of the property and may not  
 24 be the person legally responsible for payment of property taxes.

## 25 TRANSFERS THAT DO NOT CONSTITUTE A CHANGE IN OWNERSHIP

26 Some transfers of title to real property reflect transfers that do not meet one or more of the  
 27 requirements of section 60, and are therefore not considered changes in ownership. Many of  
 28 these transfers are discussed in the other chapters of this handbook. Rules 462.200 and 462.240  
 29 interpret the statutory provisions of sections 60 through 69.5 to explain that certain transfers,  
 30 although they involve recorded deeds or other apparent transfers of real property, do not  
 31 represent changes in ownership that result in reappraisal of the interests transferred. Examples  
 32 include:

<sup>7</sup> *Shuwa Investments Corporation v. Los Angeles County* (1991) 1 Cal.App.4th 1635, 1647.

<sup>8</sup> Property Tax Rule 462.001. All references to Rules or Property Tax Rules are to Title 18, Public Revenues, California Code of Regulations.

<sup>9</sup> *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334, 338-339; *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 162.

<sup>10</sup> Rules 462.001, 462.200, and 462.240.

<sup>11</sup> *Pacific Southwest Realty Company v. County of Los Angeles* (1991) 1 Cal.4th 155, 164.

<sup>12</sup> *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334, 338.

- 1 • Transfers of only bare legal title, without the accompanying beneficial interest,<sup>13</sup>
- 2 including substitution of a trustee.<sup>14</sup>
- 3 • Transfer for the purpose of perfecting title<sup>15</sup> or to reform or correct a deed to reflect the
- 4 intentions of the parties.<sup>16</sup>
- 5 • Creation, assignment, or reconveyance of a security interest not coupled with the right to
- 6 immediate use, occupancy, possession, or profits,<sup>17</sup> such as lender on title as security for
- 7 a loan.<sup>18</sup>
- 8 • Transfer to or from a person or entity that acts only on behalf of and at the direction of
- 9 the principal conveying the title, thereby creating a *holding agreement*. However, there is
- 10 a change in ownership if there is a change in principals or the title is conveyed to another
- 11 principal.<sup>19</sup>
- 12 • Sale and leaseback when the transaction is demonstrated to be a financing mechanism
- 13 rather than a change in beneficial interest.<sup>20</sup>
- 14 • Transactions involving shares of mutual funds.<sup>21</sup>

## 15 **DATE OF CHANGE IN OWNERSHIP**

### 16 **SALES**

17 The change in ownership date for property that is sold is rebuttably presumed to be the recording  
 18 date if a deed or other document evidencing the transfer is recorded.<sup>22</sup> If a deed is unrecorded,  
 19 the change in ownership date is rebuttably presumed to be the date on the transfer document.<sup>23</sup> A  
 20 party may rebut these presumptions by proving that (a) all the parties' escrow instructions were  
 21 met on another date, or (b) the parties' agreement was specifically enforceable on another date.<sup>24</sup>

### 22 **INHERITANCE**

23 The date of change in ownership for transfers that occur as a result of inheritance by will or  
 24 intestate succession is the date of death of the decedent, even if the actual transfer deed is  
 25 recorded later.<sup>25</sup>

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<sup>13</sup> Rule 462.240(a).

<sup>14</sup> Section 62(c)(1); Rule 462.240(b).

<sup>15</sup> Section 62(b); Rule 462.240(a)(1).

<sup>16</sup> Section 62(l); Rule 462.240(f).

<sup>17</sup> Section 62(c)(2); Rule 462.240(a)(2).

<sup>18</sup> Rule 462.200(a).

<sup>19</sup> Rule 462.200(c).

<sup>20</sup> Rule 462.200(d).

<sup>21</sup> Section 62(h); Rule 462.240(c).

<sup>22</sup> Rule 462.260(a)(1).

<sup>23</sup> Rule 462.260(a)(2).

<sup>24</sup> Rule 462.260(a)(1) and (a)(2).

<sup>25</sup> Rule 462.260(c).

1 **Example 1-1**

2 X held his principal residence in his own name. Pursuant to the terms of X's will, his  
3 residence was to go to a charity upon his death. X died on January 15. X's will was probated  
4 and the residence was ultimately transferred to the charity on August 30.

5 The date of the change in ownership was the date of X's death on January 15.

6 The only exception to this general rule is the unique situation of a parent-child transfer when the  
7 decedent died before November 5, 1986, and the probate court decree of distribution was issued  
8 on or after November 5, 1986. In this particular case, the date of transfer is considered to be the  
9 date of the court decree of distribution, thus allowing for the parent-child exclusion even though  
10 the decedent died prior to the effective date of the exclusion.<sup>26</sup>

11 **TRUSTS**

12 For transfers made through a trust, the date of a change in ownership is the date property is  
13 transferred into an irrevocable trust.<sup>27</sup> If the property is held in a revocable trust, the date of the  
14 change in ownership is the date the trust becomes irrevocable (for example, upon the death of the  
15 trustor).

16 **Example 1-2**

17 X transferred a property into an inter vivos irrevocable trust. His nephew, B, was the sole  
18 present beneficiary of the trust. Upon X's death, the trustee recorded a deed transferring the  
19 property from the trust to B.

20 The property underwent a change in ownership on the date it was transferred into the  
21 irrevocable trust. There was no change in ownership when the trustee transferred the property  
22 from the trust to B.

23 **Example 1-3**

24 X creates an inter vivos revocable trust that becomes irrevocable upon X's death. The date of  
25 change in ownership of any real property held in the trust is the date of X's death.<sup>28</sup>

26 **REMAINDER OR REVERSIONARY INTEREST**

27 The date of a change in ownership upon the termination of a life estate is the date the right of  
28 present possession or enjoyment of the property vests in the remainderman or reverts back to the  
29 transferor.<sup>29</sup>

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<sup>26</sup> *Larson v. Duca* (1989) 213 Cal.App.3d 324, 334. For a more complete discussion of *Larson v. Duca*, see Chapter 5.

<sup>27</sup> Rule 462.260(d).

<sup>28</sup> Rule 462.260(d)(1), Example 1.

<sup>29</sup> Rule 462.260(d)(2)(B).

1 **Example 1-4**

2 X transfers real property to an irrevocable trust, which grants to X's wife, B, a life estate in  
 3 the property, with a remainder to C and D, who are unrelated to X and B. The creation of a  
 4 life estate in B is a transfer excluded from change in ownership under the interspousal  
 5 exclusion. Upon the termination of B's life estate upon her death, a change in ownership  
 6 occurs because on that date C and D have an immediate right to the present possession and  
 7 enjoyment of the property.<sup>30</sup>

8 **LEASES**

9 The date of a change in ownership in the case of a lease is the date that the lessee has the right to  
 10 possession.<sup>31</sup>

11 **REBUTTABLE PRESUMPTION REGARDING OWNERSHIP INTERESTS**

12 When more than one person's name appears on a deed, there is a rebuttable presumption that all  
 13 persons listed on the deed have an ownership interest.<sup>32</sup> The presumption may be rebutted by  
 14 clear and convincing evidence to the contrary. To establish that the property is actually owned  
 15 differently from what the deed reflects, a county assessor may give consideration to, but is not  
 16 limited by, the following:<sup>33</sup>

- 17 • A written document executed prior to or at the time of the conveyance in which all parties  
 18 agree that one or more of the parties do not have equitable ownership interests.
- 19 • Evidence of the monetary contribution of each party.

20 The best evidence of any fact is a final judicial finding, order, or judgment.<sup>34</sup> Proof may also be  
 21 made by a declaration under penalty of perjury, accompanied by written evidence such as written  
 22 agreements, canceled checks, insurance policies, and tax returns which substantiate the declared  
 23 facts.

24 **Example 1-5**

25 X and Y wanted to purchase an investment property together. Since X had poor credit, Y  
 26 purchased the property solely in his own name. Later, upon refinancing the property, X was  
 27 put on title with Y, as tenants in common. In response, the county assessor issued a  
 28 supplemental assessment for 50 percent of the fair market value of the property at the time X  
 29 was placed on title as a cotenant.

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<sup>30</sup> Rule 462.260(d)(1), Example 4.

<sup>31</sup> Rule 462.260(b).

<sup>32</sup> Rule 462.200(b).

<sup>33</sup> Rule 462.200(b)(1) and (b)(2).

<sup>34</sup> Rule 462.200(b)(2).

1 X and Y provided the county assessor with declarations made under penalty of perjury,  
 2 supported by canceled checks showing that X paid one-half of the mortgage, insurance, and  
 3 property taxes on the property during the time that only Y was on title. In addition, tax  
 4 returns indicated that X had taken the benefit of deductions for 50 percent of the deductible  
 5 interest and property taxes paid. This evidence constitutes clear and convincing evidence  
 6 sufficient to rebut the deed presumption and to conclude that X had a 50 percent beneficial  
 7 ownership interest in the property since the date of purchase. Thus, no change in ownership  
 8 occurred when X was added to title.

9 Any transfer resulting from correcting a deed which (a) inaccurately described the property  
 10 intended to be transferred, (b) adds or omits some terms not agreed to, or (c) otherwise fails to  
 11 express the parties' true intent, does not result in a change in ownership.<sup>35</sup>

### 12 ***Example 1-6***

13 X agrees to sell one acre to Y. The deed mistakenly describes a two-acre area.

14 Correction of the deed to describe the original acre intended to be transferred is not a change  
 15 in ownership.<sup>36</sup>

## 16 **VOID TRANSFERS**

17 Upon a change in ownership, real property is reassessed unless an exclusion from change in  
 18 ownership applies. If a transfer is *void*, the transfer has no force and effect from its inception, and  
 19 the taxpayer is entitled to a refund of taxes paid if a timely and valid refund claim is filed.  
 20 Examples of void transfers include a forged deed or one signed by a minor.

## 21 **RESCINDED TRANSFERS**

22 A transfer may be *rescinded* by the parties. That is, the parties to the transfer agree to undo the  
 23 transaction and are placed in the same position in which they stood before the transfer took  
 24 place. However, the original transfer remains valid until the rescission occurs.

25 When rescission of a transfer is accepted as valid by a county assessor, the legal effect is that it  
 26 *relates back* to the creation of the deed—it is as though the transfer had never been made. The  
 27 property is returned to the transferor and the transferor's original adjusted base year value is  
 28 restored effective on the date of the rescission. Restoration of a base year value as a result of  
 29 rescission is not subject to supplemental assessment; the base year value is restored as of the  
 30 following lien date.

31 Furthermore, any increase in the assessment prior to the rescission remains in effect until the  
 32 effective date of the rescission. Thus, a rescission is not retroactive with respect to the taxes due

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<sup>35</sup> Rule 462.240(f).

<sup>36</sup> Rule 462.240, Example 1.

1 and owing prior to the date of rescission. Thus, there is no refund or cancellation of unpaid taxes  
 2 assessed for the period prior to the rescission since property taxes are determined by the facts  
 3 existing on the lien date.

## 4 **REPORTING CHANGES IN OWNERSHIP**

### 5 **CHANGE IN OWNERSHIP STATEMENT**

6 Whenever there is a change in ownership of real property subject to local taxation, the transferee  
 7 must file a Change in Ownership Statement (COS) with the county assessor or county recorder  
 8 for the county in which the property is located.<sup>37</sup> The statement must be filed at the time of  
 9 recording the transfer of property or, if the transfer is not recorded, within 45 days of the date of  
 10 the change in ownership unless the change in ownership occurred as the result of a death.

11 In the case of change in ownership resulting from death, the COS must be filed with each county  
 12 in which the decedent's real property is located, as follows:<sup>38</sup>

- 13 • If the estate is probated, prior to or at the time the inventory and appraisal are filed with  
 14 the court clerk; or
- 15 • If the estate is not probated, within 150 days after the date of death.

16 The COS must contain information detailing the transfer, including: a description of the  
 17 property, the date of transfer, the parties to the transaction, the amount of consideration paid for  
 18 the property (if any), and the terms of the transaction. The COS must be signed under penalty of  
 19 perjury unless the COS is attached to or accompanies the deed or other transfer document  
 20 evidencing a change in ownership. In that case, the notice, declaration under penalty of perjury,  
 21 and any information contained in the deed or other transfer document otherwise required on the  
 22 COS may be omitted.<sup>39</sup> The law authorizes a county assessor to impose a penalty for failure to  
 23 file change in ownership statements.<sup>40</sup>

24 COS's are also required for reporting changes in control of legal entities (discussed below).<sup>41</sup>

### 25 **PRELIMINARY CHANGE OF OWNERSHIP REPORT**

26 The Preliminary Change of Ownership Report (PCOR) is used by county assessors to assist in  
 27 the determination as to whether:

- 28 • A transfer results in a change in ownership;
- 29 • Any change in ownership exclusions apply; and
- 30 • The purchase price reflects fair market value.

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<sup>37</sup> Section 480(a).

<sup>38</sup> Section 480(b).

<sup>39</sup> Section 480(c) and (d).

<sup>40</sup> Sections 480(c) and 482(a) and (b).

<sup>41</sup> Sections 480.1 and 480.2.

1 In general, the PCOR must be filed with the county recorder at the time any document  
 2 evidencing a transfer of title to real property is recorded.<sup>42</sup> A county recorder may impose a \$20  
 3 additional recording fee if a PCOR is not filed with the recorder at that time.<sup>43</sup>

#### 4 **REPORTING CHANGES IN CONTROL OF LEGAL ENTITIES**

5 Whenever there is a change in ownership as a result of change in control under section 64(c)(1)  
 6 of any corporation, partnership, LLC, or other legal entity,<sup>44</sup> or whenever there is a section 64(d)  
 7 change in ownership, a COS must be filed with the State Board of Equalization (Board) by the  
 8 person or legal entity that acquired ownership control of such entity under section 64(c)(1), or by  
 9 the legal entity that underwent a change in ownership under section 64(d). In these cases, the  
 10 COS must be signed under penalty of perjury and must be filed within 45 days from the date of  
 11 the change in ownership; or within 45 days of a written request by the Board for the COS  
 12 regardless of whether a change in ownership has occurred.<sup>45</sup> The COS must list all the counties  
 13 in which the legal entity owns real property and must include a description of the property owned  
 14 by the entity, the parties to the transaction, and the date of the change in ownership.

15 The Board's Legal Entity Ownership Program (LEOP) has a cooperative arrangement with the  
 16 Franchise Tax Board (FTB) to assist in the discovery of legal entity changes in ownership.  
 17 Several questions on the income tax returns filed by legal entities inquire whether there has been  
 18 a change in ownership of the taxpayer in the past year.<sup>46</sup> If the taxpayer answers any of the  
 19 questions in the affirmative, the FTB informs the Board. The Board then sends a questionnaire<sup>47</sup>  
 20 to the legal entity to assist it in determining whether the reported change in ownership results in a  
 21 reappraisal of the entity's real property.

22 Monthly, the Board sends each county assessor a report identifying any properties in the county  
 23 owned by a legal entity that may have undergone a change in ownership. A copy of the COS  
 24 filed by the legal entity is also sent to the appropriate county assessor(s).

#### 25 **CONSEQUENCES OF CHANGE IN OWNERSHIP**

26 A change in ownership results in the establishment of a new base year value for that portion of a  
 27 property that has undergone such change in ownership, unless an exclusion applies.

28 Exclusions discussed in this handbook include the joint tenancy exclusion (see Chapter 2), the  
 29 interspousal and registered domestic partner exclusions (see Chapter 3), the parent-child and  
 30 grandparent-grandchild exclusions (see Chapter 5), the partition exclusion (see Chapter 8), the de  
 31 minimis transfer exclusion (see Chapter 8), and the proportional interest transfer exclusion (see

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<sup>42</sup> Section 480.3.

<sup>43</sup> Section 480.3(b).

<sup>44</sup> See Chapter 9.

<sup>45</sup> Sections 480.1 and 480.2.

<sup>46</sup> For corporations, Form 100, question J; for partnerships, Form 565, question T; and for LLCs, Form 568, question O.

<sup>47</sup> Form BOE-100-B, *Statement of Change in Control and Ownership of Legal Entities*.

- 1 Chapter 9). Chapters 14, 15, and 16 discuss transfers of base year values from previously owned
- 2 to newly acquired properties.

# CHAPTER 2: FORMS OF PROPERTY OWNERSHIP AND JOINT TENANCY EXCLUSION

## OVERVIEW OF FORMS OF PROPERTY OWNERSHIP

Ownership in real property can be held in four primary ways:

- Sole ownership
- Tenancy in common
- Joint tenancy
- Community property

*Sole ownership* (also called ownership in severalty) means that property ownership is vested in a single person or in a single legal entity such as a corporation or partnership. No division of the bundle of property rights is involved.

Tenancy in common, joint tenancy, and community property are forms of *concurrent ownership*; that is, ownership vests in two or more persons. Concurrent owners are known as co-owners or cotenants. Community property is a form of concurrent ownership of property specific to married couples and registered domestic partners. (See Chapter 3 for a discussion of interspousal and registered domestic partner exclusions.)

## TENANCY IN COMMON

*Tenancy in common* is a form of concurrent property ownership in which multiple owners have an undivided interest in property. Each tenant in common owns a *fractional share* of the property and is entitled to simultaneous possession and enjoyment of the entire property. In addition, tenants in common may own the property in unequal shares and do not have the right of survivorship. As a result, each cotenant may sell or pledge his or her separate interest in the property and may bequeath the interest to his or her heirs. Both individuals and legal entities may own property as tenants in common.

The creation, transfer, or termination of a tenancy in common interest is a change in ownership of the undivided interest transferred.<sup>48</sup>

### *Example 2-1*

X owns 60 percent of a property, and Y owns 40 percent as tenants in common. X dies. X's 60 percent interest will pass to his heirs, not to Y.

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<sup>48</sup> Section 61(f).

1 The transfer of X's 60 percent interest to his heirs will undergo a change in ownership unless  
 2 an exclusion applies. Y's 40 percent interest in the property will remain unchanged and will  
 3 not undergo a change in ownership. Y and X's heirs will become cotenants.

#### 4 **JOINT TENANCY**

5 *Joint tenancy* is a form of concurrent ownership in real property that involves equal undivided  
 6 interests in property. The owners are called co-owners, cotenants, or more commonly, joint  
 7 tenants. Each joint tenant owns an equal share of the property and is entitled to the simultaneous  
 8 possession and enjoyment of the entire property.<sup>49</sup>

9 The most significant characteristic of a joint tenancy is that it involves a right of survivorship.  
 10 This means that, upon the death of a joint tenant, his or her interest in the property is equally  
 11 divided and transferred to the remaining joint tenants. This transfer occurs automatically by  
 12 operation of law; no probate or other estate administration is necessary. If a joint tenant transfers  
 13 a joint tenancy interest during his or her life, the transferee becomes a tenant in common.

#### 14 ***Example 2-2***

15 A, B, and C own property together as joint tenants. Each has an undivided 1/3 interest in the  
 16 property. After A dies first, his joint tenancy interest automatically passes equally to B and C,  
 17 who remain joint tenants (each would have an undivided 50 percent interest). After B dies  
 18 next, her joint tenancy interest automatically passes entirely to C, who automatically  
 19 becomes the sole owner of the property.

20 For a joint tenancy to be created, it must be expressly stated in the deed. If a deed indicates co-  
 21 ownership and does not clearly and expressly indicate that the property is a joint tenancy, the  
 22 property is presumed to be a tenancy in common. For example, a deed that states

23 A and B, as joint tenants

24 would be interpreted as creating a joint tenancy. Only individuals, and not legal entities, can be  
 25 joint tenants. However, joint tenancy interests may be held in trust (see discussion below).

#### 26 **JOINT TENANCY EXCLUSION**

27 The general rule<sup>50</sup> provides that the creation, transfer, or termination of a joint tenancy interest is  
 28 a change in ownership in the interest transferred. Upon a change in ownership of a joint tenancy  
 29 interest, only the interest that has been transferred is reappraised.

#### 30 ***Example 2-3***

31 The purchase of property by A and B, as joint tenants, is a change in ownership of the entire  
 32 property unless an exclusion applies.

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<sup>49</sup> Civil Code section 683(a).

<sup>50</sup> Section 61(e).

1 **Example 2-4**

2 The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in  
3 ownership of the entire property.

4 **Example 2-5**

5 The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in  
6 ownership of 50 percent of the property.

7 An exception to this rule is the original transferor exclusion. An *original transferor* is a  
8 person who creates a joint tenancy by transferring real property to others and remains among  
9 the resulting joint tenants.<sup>51</sup> All joint tenants that do not qualify as an original transferor are  
10 referred to as *other than original transferors*.

11 Rule 462.040<sup>52</sup> broadened the ability of co-owners to obtain original transferor status in two  
12 ways:

- 13 1. It allowed tenants in common to obtain original transferor status by transferring property  
14 held as tenants in common to themselves as joint tenants without adding an additional  
15 joint tenant (discussed below); and
- 16 2. It allowed joint tenants to transfer their joint tenancy interests to their revocable trusts for  
17 the benefit of all of the other joint tenants to obtain original transferor status (discussed  
18 below).

19 The following transfers do not constitute a change in ownership:<sup>53</sup>

- 20 • Transfers that create or transfer a joint tenancy interest if after such transfer the transferor  
21 is one of the joint tenants.
- 22 • Transfers back to an original transferor.
- 23 • Transfers to all of the remaining joint tenants where at least one remaining joint tenant is  
24 an original transferor.

25 **Example 2-6**

26 X owns a property as a sole owner. X deeds the property to herself and B as joint tenants.

27 No change in ownership results because X is an original transferor (since she was both  
28 transferor and a resulting joint tenant). B did not own the property before the transfer.  
29 Therefore, he is an other than original transferor.

30 **Example 2-7**<sup>54</sup>


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<sup>51</sup> Section 65(b).

<sup>52</sup> Amendments effective November 13, 2003.

<sup>53</sup> Rule 462.040(b)(1).

<sup>54</sup> Rule 462.040.

1 X, Y, and Z are joint tenants. X is an other than original transferor and Y is an original  
2 transferor. X transfers her interest to Y and Z.

3 No change in ownership results because X transferred her interest to the remaining joint  
4 tenants, which includes an original transferor, Y.

5 A corollary to the original transferor exclusion is that when the interest of the last surviving  
6 original transferor is terminated, that interest and all other interests that were previously excluded  
7 from change in ownership undergo a change in ownership. Consequently, 100 percent of the  
8 property will be subject to reappraisal.<sup>55</sup>

9 ***Example 2-8***

10 X and B transfer property to X, B, C, and D as joint tenants.

11 X dies first and no change in ownership results because B, an original transferor, remains as a  
12 joint tenant. However, assuming no other exclusion applies, a 100 percent change in  
13 ownership will occur when B dies because B will be the last surviving original transferor and  
14 C and D are other than original transferors.

15 **SPOUSE OF ORIGINAL TRANSFEROR**

16 A spouse of an original transferor who acquires an interest in a joint tenancy property during the  
17 time the spouse owns the property and they are married will also be considered to be an original  
18 transferor.<sup>56</sup>

19 ***Example 2-9***

20 X and B are joint tenants and transfer their property to X, B, C, and D as joint tenants. D is  
21 X's wife. C is unrelated to all.

22 No change in ownership results upon the transfer because transferors X and B are resulting  
23 joint tenants and are therefore original transferors. D becomes an original transferor because  
24 she received her interest by way of a transfer during her husband's lifetime. C is an other than  
25 original transferor.

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<sup>55</sup> Section 65(c); Rule 462.040(b)(2).

<sup>56</sup> Section 65(b); Rule 462.040(b)(1).

## 1 TENANTS IN COMMON

2 Prior to November 13, 2003, a third person was required to be added as a cotenant in the  
 3 resulting joint tenancy in order to create original transferor status. Thus, prior to  
 4 November 13, 2003, if cotenants transferred property to themselves as joint tenants, without  
 5 adding an additional joint tenant, the cotenants would become other than original transferors.  
 6 However, effective for transfers on or after November 13, 2003, cotenants obtain original  
 7 transferor status solely by transferring their cotenancy interests to themselves as joint tenants.  
 8 (See Chapter 10 for a discussion of the step transaction doctrine.)

### 9 *Example 2-10*

10 X and Y own property as tenants in common and transfer it to themselves as joint tenants.

11 If this transfer occurs on or after November 13, 2003, X and Y are both original transferors  
 12 and no change in ownership occurs. If the transfer occurred prior to November 13, 2003, the  
 13 transfer is still effective to make X and Y joint tenants, but both are other than original  
 14 transferors.

### 15 *Example 2-11*

16 X and B, tenants in common, transfer their property to X, B, and C as joint tenants.

17 No change in ownership results because X and B are original transferors. Prior to  
 18 November 13, 2003, the addition of C was required for X and B to obtain original transferor  
 19 status.

## 20 REVOCABLE TRUSTS AND JOINT TENANCIES

21 Co-owners, including joint tenants, can transfer their respective property interests to revocable  
 22 living trusts (or a joint trust) for the purpose of maintaining the ownership and survivorship  
 23 aspects of joint tenancy. A transfer of existing joint tenancy interests into a revocable trust will  
 24 not sever a joint tenancy for property tax purposes if the trust provisions maintain the  
 25 characteristics of a joint tenancy, including the requirement that upon death a joint tenant's  
 26 interest automatically passes to all of the surviving joint tenants. So long as a revocable trust  
 27 meets these requirements, the transfer of joint tenancy interests into such a trust for the equal  
 28 benefit of all other joint tenants makes the transferring joint tenants original transferors if the  
 29 transfer occurs on or after November 13, 2003;<sup>57</sup> transfers prior to that date do not result in  
 30 original transferor status.

### 31 *Example 2-12*

32 X and B, joint tenants, transfer their property to themselves as trustees of the X-B Revocable  
 33 Living Trust, which provides that: (1) each joint tenant places his respective joint tenancy

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<sup>57</sup> Rule 462.040(b)(1).

1 interest in trust for the benefit of the other joint tenant; (2) on X's death, X's interest will  
2 transfer to B; and (3) on B's death, B's interest will transfer to X.

3 For property tax purposes, upon the transfer of the property into the revocable trust, there is  
4 no change of ownership<sup>58</sup> and no severance of the joint tenancy because the trust provisions  
5 duplicate the essential characteristics of a joint tenancy. Both X and B are original transferors  
6 if the transfer occurred on or after November 13, 2003;<sup>59</sup> otherwise, both are other than  
7 original transferors.

## 8 **PRESUMPTION OF ORIGINAL TRANSFEROR STATUS**

9 For all joint tenancies created on or before March 1, 1975, there is a rebuttable presumption that  
10 all current joint tenants as of that date are original transferors.<sup>60</sup> This presumption may be  
11 rebutted by a review of the chain of title or other evidence. Generally, rebuttable presumptions  
12 are inferences that, in the absence of any evidence to the contrary, are to be made and accepted  
13 as established facts. However, where available evidence contradicts the presumption, the  
14 presumption may be overcome.

### 15 ***Example 2-13***

16 X and B purchased a property together and then B died in 1971. In 1973, X transferred the  
17 property to herself and C, as joint tenants. X died in 1981 and the entire property passed to C  
18 by operation of law as the surviving joint tenant. There is documentation of all purchases and  
19 transfers.

20 In this case, substantiating documentation establishes a complete chain of title. Such  
21 evidence is sufficient to overcome the presumption that C is an original transferor; as a  
22 consequence, C is not an original transferor.

23 There is a change in ownership of the entire property requiring reassessment as of the date of  
24 X's death in 1981, unless an exclusion applies.

## 25 **CORRECTING DEED TO JOINT TENANCY**

26 For any deed, persons holding joint title to property, such as tenants in common, may be  
27 considered to be joint tenants and original transferors if there is reasonable cause to believe that  
28 the parties intended to create a joint tenancy and each person was a transferor among the persons  
29 holding title. The standard for rebutting the deed presumption in most instances is clear and  
30 convincing evidence. *Reasonable cause* means a deed, affidavit of death of joint tenant, a trust,  
31 will, or estate plan indicating that a joint tenant was a transferor among the joint tenants unless

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<sup>58</sup> Section 62(d).

<sup>59</sup> Rule 462.040(b)(1).

<sup>60</sup> Section 65(e).

1 circumstances causing the application of the step transaction doctrine exist.<sup>61</sup> (See Chapter 10 for  
2 a discussion of the step transaction doctrine.)

3 ***Example 2-14***

4 On December 20, 2000, X and B jointly purchase their principal residence and title is  
5 recorded as tenants in common. The sales contract states that X and B intended to take title as  
6 joint tenants. Subsequently, X and B each create a revocable living trust transferring their  
7 respective interests in the property to their trusts for the benefit of each other.

8 The county assessor may determine that the sales contract and trust instruments establish that  
9 X and B intended to hold title as joint tenants upon purchase, and that each subsequently  
10 became an original transferor.

11 **TERMINATION OF JOINT TENANCY AND OF ORIGINAL TRANSFEROR STATUS**

12 When a joint tenancy is terminated, the original transferor status of a joint tenant terminates.<sup>62</sup>

13 ***Example 2-15***

14 X owns real property and transfers a 50 percent interest to B as a tenant in common resulting  
15 in a change in ownership of that 50 percent interest. They subsequently transfer to  
16 themselves as joint tenants and, as a result, become original transferors. X dies and his joint  
17 tenancy interest passes to B by operation of law without a change in ownership because B is  
18 an original transferor. Upon X's death, the joint tenancy is terminated and B ceases to be an  
19 original transferor.

20 **OTHER EXCLUSIONS AND JOINT TENANCIES**

21 The general exclusions from change in ownership apply to joint tenancies. These include the  
22 interspousal and registered domestic partner (see Chapter 3), parent-child or grandparent-  
23 grandchild (see Chapter 5), de minimis transfer (see Chapter 8) and proportional interest transfer  
24 (see Chapter 9) exclusions.<sup>63</sup> The original transferor concept and its deferral of reappraisal are  
25 limited to joint tenancies. There are no original transferors when property is held as tenants in  
26 common, community property, or by legal entities.

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<sup>61</sup> Rule 462.040(d).

<sup>62</sup> Rule 462.040(b)(3).

<sup>63</sup> Rule 462.040(b)(4), (b)(5), (b)(6), and (b)(7).

## CHAPTER 3: INTERSPOUSAL AND REGISTERED DOMESTIC PARTNER EXCLUSIONS

Transfers of real property or legal entity interests between spouses or registered domestic partners are excluded from change in ownership pursuant to section 63 for married persons and section 62(p) for registered domestic partners. No exclusion claim form is required to be filed.

### ELIGIBLE RELATIONSHIPS

#### MARRIAGES

The interspousal exclusion only applies to purchases or transfers between persons who have entered into a marital relationship recognized under California law. A marriage arising from a civil contract between a man and a woman must be accompanied by the issuance of a license and solemnization.<sup>64</sup> California will recognize an out-of-state marriage, including a common law marriage, as long as the marriage was valid in the jurisdiction in which it was contracted.<sup>65</sup> A common law marriage cannot be established in California.

As used in this handbook, *marriage* refers to any relationship recognized as such under California law, regardless of where it was entered. Similarly, *married individuals*, *married persons*, and *spouses* refer to the persons who entered into a marriage, as that term is used in this handbook.

#### REGISTERED DOMESTIC PARTNERSHIPS

The registered domestic partner exclusion only applies to purchases or transfers between persons who are registered domestic partners. In California, two persons may enter into a registered domestic partnership when both persons file a Declaration of Domestic Partnership<sup>66</sup> with the California Secretary of State. Additionally, to qualify as a registered domestic partnership, the parties must meet the following criteria:

1. Both share a common residence, regardless of how title or the right to possession to the residence is held.
2. Neither is married to another person or is a member of another registered domestic partnership that has not been terminated, dissolved, or annulled.
3. The two are not related by blood in a way that would prevent them from being married to each other.
4. Both are over the age of 18 and capable of consenting to the partnership.

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<sup>64</sup> Family Code section 300.

<sup>65</sup> Family Code section 308.

<sup>66</sup> Form NP/SF DP-1.



## 1 **COMMUNITY PROPERTY**

2 *Community property* is property owned by a husband and wife or by registered domestic  
 3 partners, with each person having an undivided one-half interest in the property by reason of  
 4 their marital or domestic partnership status. Only married persons and registered domestic  
 5 partners may own community property interests in real property, or take title to property as  
 6 community property. Each member of the community is presumed to own one-half of all  
 7 community property. The general rule is that all property acquired during marriage or during  
 8 a registered domestic partnership is presumed to be community property if community assets  
 9 were used to purchase or construct improvements on it, regardless of the manner in which  
 10 title to the property is held, unless specific conditions are met or the parties otherwise agree.<sup>70</sup>  
 11 The community property rule includes both real property and legal entity interests such as  
 12 voting shares in a corporation or membership interests in a limited liability company (LLC).

13 *Community property with right of survivorship* is community property that upon death of one  
 14 spouse or registered domestic partner passes automatically by operation of law to the other  
 15 party without probate. For purposes of this handbook, *community property* refers to  
 16 community property as defined above, and not community property with right of  
 17 survivorship.

### 18 **Example 3-1**

19 H and W are married and jointly own a parcel of land. If the land is held as community  
 20 property, for property tax purposes, H and W are considered to each own a 50 percent  
 21 interest.

## 22 **SEPARATE PROPERTY**

23 Any property owned by a married person or a registered domestic partner that is not  
 24 considered to be community property is separate property. *Separate property* of a married  
 25 person or a registered domestic partner includes all property owned by that person before  
 26 marrying or entering into a registered domestic partnership, acquired during the marriage or  
 27 registered domestic partnership by gift or inheritance, and any rents, profits, or other  
 28 proceeds of such property.<sup>71</sup>

## 29 **NO ATTRIBUTION BETWEEN MEMBERS OF THE COMMUNITY**

30 When property is held as community property, each person is treated as owning 50 percent of  
 31 the property or the legal entity interests. The marital or registered domestic partnership is not  
 32 considered the owner of community assets as a single unit or owner. Thus, for property tax  
 33 purposes, there is no attribution of ownership from one spouse or registered domestic partner  
 34 to the other.

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<sup>70</sup> Family Code section 760.

<sup>71</sup> Family Code section 770(a).

1 **Example 3-2**

2 One married couple owns a 50 percent membership interest in an LLC, and the other  
 3 50 percent membership interest is owned by registered domestic partners. Each couple's  
 4 interest is community property. For property tax purposes, each spouse is considered to  
 5 be the owner of a separate 25 percent membership interest in the LLC. Likewise, each  
 6 registered domestic partner is considered to be the owner of a separate 25 percent  
 7 membership interest in the LLC.

8 The spouse or registered domestic partner is not considered to own the additional  
 9 25 percent owned by his spouse or registered domestic partner by virtue of their  
 10 relationship.

11 **INTERSPOUSAL EXCLUSION**

12 Article XIII A, section 2, subdivision (g) of the California Constitution provides that a  
 13 change in ownership does not include the purchase or transfer of real property between  
 14 spouses since March 1, 1975. This constitutional provision is codified by section 63, which  
 15 provides examples of transfers between spouses that do not constitute a change in ownership.  
 16 The examples in section 63 are:

17 (a) Transfers to a trustee for the beneficial use of a spouse, or the surviving  
 18 spouse of a deceased transferor, or by a trustee of such a trust to the spouse of  
 19 the trustor.<sup>72</sup>

20 (b) Transfers to a spouse that take effect upon the death of a spouse.

21 (c) Transfers to a spouse or former spouse in connection with a property  
 22 settlement agreement or decree of dissolution of a marriage or legal  
 23 separation.

24 (d) The creation, transfer, or termination, solely between spouses, of any co-  
 25 owner's interest.

26 (e) The distribution of a legal entity's property to a spouse or former spouse in  
 27 exchange for the interest of such spouse in the legal entity in connection with  
 28 a property settlement agreement or a decree of dissolution of a marriage or  
 29 legal separation.<sup>73</sup>

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<sup>72</sup> See also section 62(d).

<sup>73</sup> Section 63(a)-(e).

1 Rule 462.220 expands on these examples and additionally provides that interspousal transfers  
 2 of legal entity interests do not result in a change in ownership of real property owned by the  
 3 legal entity.<sup>74</sup>

4 Thus, all transfers made between spouses, whether during marriage, taking effect upon the  
 5 death of a spouse, or related to a marital separation or dissolution, do not result in changes in  
 6 ownership.

## 7 REGISTERED DOMESTIC PARTNER EXCLUSION

8 Effective January 1, 2006, registered domestic partners receive the same exclusions from  
 9 change in ownership and reassessment for transfers between registered domestic partners that  
 10 spouses receive under the interspousal exclusion.<sup>75</sup> Specifically, section 62(p)(1) provides  
 11 that the following are excluded from change in ownership:

- 12 • Transfers to a trustee for the beneficial use of a registered domestic partner, or the  
 13 surviving registered domestic partner of a deceased transferor, or by a trustee of such  
 14 a trust to the registered domestic partner of the trustor.<sup>76</sup>
- 15 • Transfers that take effect upon the death of a registered domestic partner.
- 16 • Transfers to a registered domestic partner or former registered domestic partner in  
 17 connection with a property settlement agreement or decree of dissolution of a  
 18 registered domestic partnership or legal separation.
- 19 • The creation, transfer, or termination, solely between registered domestic partners, of  
 20 any co-owner's interest.
- 21 • The distribution of a legal entity's property to a registered domestic partner or former  
 22 registered domestic partner in exchange for the interest of the registered domestic  
 23 partner in such entity, in connection with a property settlement agreement or a decree  
 24 of dissolution of a registered domestic partnership or legal separation.<sup>77</sup>

25 If there has been a reassessment for a transfer between registered domestic partners that  
 26 occurred between January 1, 2000 and January 1, 2006 that resulted in a change in  
 27 ownership, retroactive relief is available, resulting in reversal of the reassessment. This  
 28 means that a reassessment that occurred between these dates may be reversed on a  
 29 prospective basis beginning with the lien date of the assessment year in which a claim is filed  
 30 with the county assessor where the transferred property is located.<sup>78</sup> However, claims for  
 31 such relief must be made to the county assessor on or before June 30, 2009.

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<sup>74</sup> Rule 462.220(a), (b) and (c).

<sup>75</sup> Section 62(p).

<sup>76</sup> See also section 62(d).

<sup>77</sup> Section 62(p)(1)(A) through (1)(E).

<sup>78</sup> Section 62(p)(2).

## 1 NO INTERSPOUSAL EXCLUSION FOR REGISTERED DOMESTIC PARTNERS

2 While section 62(p) creates an exclusion for registered domestic partners of identical scope  
3 to the interspousal exclusion, it does not make registered domestic partners spouses under  
4 California law. The interspousal exclusion provides that the terms *purchase* and *change in*  
5 *ownership* do not include the purchase or transfer of real property between spouses.<sup>79</sup> Since  
6 the term *spouse* within the meaning of the California Constitution does not include a  
7 registered domestic partner, a transfer of real property between registered domestic partners  
8 will not qualify for the interspousal exclusion under section 63.

## 9 TRANSFERS SOLELY BETWEEN SPOUSES OR REGISTERED DOMESTIC 10 PARTNERS

11 For any transfer to be eligible for the interspousal or registered domestic partner exclusions,  
12 it must be made *solely* between the spouses or registered domestic partners as individuals.<sup>80</sup>

13 Transfers between a spouse or a registered domestic partner and a legal entity, even one  
14 which is wholly owned by a spouse or registered domestic partner, do not qualify for these  
15 exclusions.

## 16 TRANSFERS UPON DEATH

17 For spouses, transfers of real property or legal entity interests that take effect upon the death  
18 of a spouse are excluded from the definition of change in ownership.<sup>81</sup> Such transfers include  
19 transfers by will, intestate succession, and trust.

20 For registered domestic partners, transfers of real property or legal entity interests that take  
21 effect upon the death of a registered partner are excluded from the definition of change in  
22 ownership.<sup>82</sup> Additionally, the inheritance of property via intestate succession from one's  
23 registered domestic partner is excluded from change in ownership.<sup>83</sup> This exclusion is  
24 applied to all transfers resulting from the death of a registered domestic partner, including  
25 transfers by will, intestate succession, and trust.<sup>84</sup>

## 26 TRANSFERS OF LEGAL ENTITY INTERESTS

27 The interspousal and registered domestic partner exclusions apply to transfers of legal entity  
28 interests as well as interests in real property.<sup>85</sup> Thus, where a legal entity owns real property

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<sup>79</sup> California Constitution, article XIII A, section 2(g).

<sup>80</sup> Sections 63 and 62(p).

<sup>81</sup> Section 63(b).

<sup>82</sup> Section 62(p)(1)(B).

<sup>83</sup> Property Tax Rule 462.240(k), effective July 1, 2003.

<sup>84</sup> Section 62(p)(1)(B).

<sup>85</sup> Rule 462.220(a).

1 in California, if the interspousal or registered domestic partner exclusion applies to the  
 2 transfer of the legal entity interest, real property owned by such entity will not undergo a  
 3 change in ownership as a result of the transfer.

4 Transfers of legal entity ownership interests that result in one spouse or registered domestic  
 5 partner obtaining control<sup>86</sup> do not result in a change in ownership.<sup>87</sup> The interspousal and  
 6 partner-to-partner transfers are not counted or cumulated for determining whether a change in  
 7 control under has occurred.

8 ***Example 3-3***

9 Spouses H and W each owns a 30 percent ownership interest in a partnership. W transfers  
 10 her interest to H; H now owns a 60 percent ownership interest.

11 There is no change in ownership.<sup>88</sup>

12 In addition, between spouses or registered domestic partners, transfers of legal entity  
 13 ownership interests by original coowners which would otherwise be cumulated or counted  
 14 for purposes of section 64(d) do not cause a change in ownership.<sup>89</sup> (See Chapter 9 for a  
 15 discussion regarding cumulated or counted interests.)

16 ***Example 3-4***

17 Spouses H and W are original co-owners of a partnership; each own a 50 percent  
 18 partnership interest. They each transfer a 20 percent interest to X and to B, leaving H and  
 19 W each with a 30 percent partnership interest. W thereafter transfers a 15 percent interest  
 20 to H. Although cumulatively more than 50 percent of the original co-owner interest has  
 21 been transferred, there is no change in ownership.

22 **PROPERTY SETTLEMENT AND POST-SETTLEMENT AGREEMENT TRANSFERS**

23 Transfers of real property or legal entity interests pursuant to legal separation or a decree of  
 24 dissolution of a marriage or a registered domestic partnership are excluded from change in  
 25 ownership if the transfer is made to the other party in connection with a property settlement  
 26 agreement or decree of dissolution or a legal separation.<sup>90</sup> Only transfers between the spouses  
 27 or registered domestic partners that occur before the property rights are finally settled are  
 28 excluded under these provisions.

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<sup>86</sup> Section 64(c)(1).

<sup>87</sup> Rule 462.220(b).

<sup>88</sup> Rule 462.220(b), Example 1.

<sup>89</sup> Rule 462.220(c).

<sup>90</sup> Sections 63(c) and 62(p)(1)(E).

1 **IN CONNECTION WITH**

2 Any transfers made in connection with a property settlement agreement, including post-  
3 dissolution transfers which are based on the terms of the settlement agreement, and post-  
4 dissolution transfers resulting from finalizing the former spouses' or registered domestic  
5 partners' property rights under the settlement agreement or decree of dissolution, are  
6 excluded from reappraisal because they are directly related to the terms of the settlement  
7 agreement or decree of dissolution.<sup>91</sup>

8 If, however, the parties intended to permanently settle their property rights and a decree of  
9 dissolution has become final, then any subsequent transfers are considered to be between  
10 unmarried or unregistered parties and are therefore not eligible for interspousal or registered  
11 domestic partner exclusions.<sup>92</sup>

12 *Example 3-5*

13 Upon divorce, H and W entered into a property settlement agreement which provided for  
14 W to transfer her interest in all real properties owned by the community in exchange for  
15 the H's payment of \$1 million. After the final dissolution of marriage, H and W agree to  
16 transfer the title to one of H's properties to W in lieu of paying W the \$1 million.

17 The transfer of the property results in a change in ownership because it was not made in  
18 connection with the former spouses' dissolution of marriage.

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<sup>91</sup> Section 63(c).

<sup>92</sup> Section 63(c) and (e); Section 62(p)(1)(C).

## CHAPTER 4: TRUSTS

1  
2 A primary characteristic of a trust that distinguishes it from other interests in real property is that  
3 a trust involves a separation of legal title to the property held in trust from the equitable or  
4 beneficial title to such property. For all trusts, the trustee holds the legal title. For revocable  
5 trusts, the equitable or beneficial title is held by the trustor, and for irrevocable trusts, the  
6 equitable or beneficial title is held by the present beneficiary. Only a transfer of the present  
7 beneficial ownership interest will result in a change in ownership of real property held in the  
8 trust.

### DEFINITIONS

9  
10 The following definitions pertain to the various types of trusts used to hold title to interests in  
11 real property or legal entities.

12 *Inter vivos trusts* (also called *living trusts*) take effect during the life of the trustor and may be  
13 revocable or irrevocable.

14 A revocable trust is the most common type of inter vivos or living trust. A *revocable trust* is an  
15 arrangement in which the trustor retains beneficial ownership and control of the property  
16 transferred into the trust by having the power to amend or revoke the trust. Revocable trusts are  
17 created during the life of the trustor. The trust becomes irrevocable upon the death of the trustor  
18 or upon circumstances specified in the trust (for example, upon the trustor's incapacity).

19 An *irrevocable trust* is an arrangement in which the trustor relinquishes the beneficial ownership  
20 and control of the property. The trustor cannot revoke or amend the trust after it is established.  
21 Thus, an irrevocable trust permanently dedicates the property transferred into the trust to the  
22 benefit of the trust beneficiaries. The *present beneficial owners* of property held in an irrevocable  
23 trust are the named present beneficiaries, which may or may not include the trustor.

24 *Testamentary trusts* are created by will, take effect only upon death of the trustor, and are always  
25 irrevocable.

26 *Massachusetts trusts* or *business trusts* are legal entities that are managed for profit for the  
27 benefit of trust certificate holders similar to corporate stockholders. For property tax purposes, a  
28 Massachusetts or business trust is treated as a legal entity and not as a trust<sup>93</sup> (See Chapter 9 for a  
29 discussion of Massachusetts trusts.)

30 The *trustor*, also called the *settlor*, *creator*, or *grantor*, is the person who establishes the trust and  
31 transfers assets into the trust. With revocable trusts, the trustor is commonly, but not necessarily,  
32 also the trustee and the named present beneficiary. A trust may have multiple trustors, such as a  
33 married couple.

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<sup>93</sup> Rule 462.160(e).

1 A *trustee* is the individual or entity (such as a bank) who handles the administration of the trust  
 2 and holds legal title to the trust property as a fiduciary. The trustee is not considered to be the  
 3 present beneficial owner of the trust property.

4 The *beneficiaries* are the persons or entities (such as a charity) designated by the trust instrument  
 5 to receive the beneficial use of the trust property. Such beneficial use may be the right to use the  
 6 trust property or the income from the trust property.

7 A *future beneficiary* is someone who will only receive the beneficial use of the trust property at  
 8 some future time.

9 A *remainderman* is a future beneficiary who will receive the beneficial use of the trust property  
 10 after an intervening estate terminates, such as a life estate or estate for years.

## 11 **CHANGE IN OWNERSHIP—TRUSTS**

12 As a general rule, transfers of real property into and out of a trust result in a change in  
 13 ownership, unless an exclusion applies.<sup>94</sup> Additionally, a transfer upon the termination of a trust  
 14 results in a change in ownership.<sup>95</sup>

15 For purposes of change in ownership, it is necessary to determine whether the present beneficial  
 16 ownership interest has been transferred. To determine who has the present beneficial ownership  
 17 interest in the trust property, you must disregard the trustee's legal title. This is referred to as  
 18 "looking through a trust."

## 19 **REVOCABLE TRUSTS**

20 The trustor maintains the present beneficial ownership interest of the property transferred to a  
 21 revocable trust because the trustor has the power to amend or revoke a revocable trust. Thus,  
 22 transfers of property into or out of a revocable trust do not result in a change in ownership.<sup>96</sup> This  
 23 is true even if the trustor has given a third party beneficiary the right to use the trust property or  
 24 the right to receive income from the trust property, or the trustee has the right to sell or encumber  
 25 the trust property.

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<sup>94</sup> Rule 462.160(a).

<sup>95</sup> Rule 462.160(c).

<sup>96</sup> Section 62(d).

1 **Example 4-1**

2 X and B transfer property into the X-B Revocable Living Trust for the benefit of C. Five  
3 years later, they decide to revoke the trust and title to the property is transferred back to X  
4 and B.

5 X and B at all times retained the present beneficial ownership of the trust property because  
6 they had the power to revoke the trust. There is no change in ownership when property was  
7 transferred into or out of the revocable trust upon the trust creation or termination,  
8 respectively.

9 **IRREVOCABLE TRUSTS**

10 The present beneficial owners of property held in an irrevocable trust are the named present  
11 beneficiaries because the trustor does not have the power to amend or revoke an irrevocable  
12 trust. Because the trustor makes a permanent dedication of such property and thereby passes the  
13 present beneficial ownership interest to the named beneficiaries, a transfer of real property into  
14 an irrevocable trust results in a change in ownership unless an exclusion applies.<sup>97</sup> In addition,  
15 when a revocable trust becomes an irrevocable trust (for example, upon the death of the trustor),  
16 there is a change in ownership unless an exclusion applies.

17 **Example 4-2**

18 Z transfers income-producing real property to revocable living Trust X in which Z is the sole  
19 present beneficiary. Trust X provides that upon Z's death, income from the trust property is to  
20 be distributed to Z's brother B for his lifetime. Upon Z's death, 100 percent of the property  
21 held in Trust X, representing B's present beneficial interest, undergoes a change in  
22 ownership.<sup>98</sup>

23 There is no change in ownership when property is transferred to an irrevocable trust (or a  
24 revocable trust becomes irrevocable) *and either* (1) the trustor or trustor's spouse is the sole  
25 present beneficiary of the trust, *or* (2) all present beneficiaries of the trust qualify for exclusions  
26 from change in ownership.

27 The distribution of trust property to a beneficiary upon the termination of an irrevocable trust  
28 does not result in a change in ownership.<sup>99</sup>

29 **MULTIPLE BENEFICIARIES AND SPRINKLE PROVISIONS—IRREVOCABLE TRUSTS**

30 Where a trustee of an irrevocable trust has total discretion to distribute the trust property to a  
31 number of potential beneficiaries (*sprinkle power*), the property is subject to change in

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<sup>97</sup> Rule 462.160(a).

<sup>98</sup> Rule 462.160, Example 1.

<sup>99</sup> Rule 462.160(b)(5).

1 ownership if any of the potential beneficiaries lack an exclusion. This is because even though the  
 2 trustee may not distribute the trust property to a non-excludable beneficiary, the trustee has the  
 3 authority to make such a distribution.<sup>100</sup> However, if all potential beneficiaries to whom the  
 4 property may be distributed under the trustee's sprinkle power qualify for an exclusion, there is  
 5 no change in ownership.

6 ***Example 4-3***

7 An irrevocable trust is established for the benefit of the trustor's spouse and nephew in equal  
 8 shares. When the trustor dies, there will be a change in ownership to the extent of the interest  
 9 transferred to the nephew.

10 If, instead of specifying the interest that each beneficiary was to receive, the trust had given  
 11 the trustee a sprinkle power, all of the real property held in the trust would undergo a change  
 12 in ownership and be reassessed because the nephew *could* receive 100 percent of the  
 13 property.

14 **FILING OF A SUBDIVISION MAP FOR A TRUST**

15 Filing a subdivision map for the purpose of dividing properties held in an irrevocable trust does  
 16 not result in a change in ownership.

17 ***Example 4-4***

18 X establishes an irrevocable trust for his three children. The principal asset in the trust is a  
 19 three-acre parcel of real property. Under the terms of the trust, each of X's three children is to  
 20 receive a specific portion of the parcel.

21 The recording of a map dividing the three acres into three one-acre parcels prior to the  
 22 termination of the trust will not cause a change in ownership and will not trigger a  
 23 reappraisal.

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<sup>100</sup> Rule 462.160(b)(1)(A).

# CHAPTER 5: PARENT-CHILD AND GRANDPARENT-GRANDCHILD EXCLUSIONS

## OVERVIEW

Provisions of the parent-child exclusion include:

- On November 4, 1986 voters approved Proposition 58, which added subdivision (h) to the California Constitution, article XIII A, section 2.
- Subdivision (h) provides that the terms *purchased* and *change in ownership* exclude the purchase or transfer of (1) a principal residence between parents and their children; and (2) the first \$1 million of the full cash value of all real property other than a principal residence between parents and children.
- Section 63.1 was enacted to implement the provisions of Proposition 58.
- The parent-child exclusion applies to changes in ownership that occur on or after November 6, 1986.<sup>101</sup>

Provisions of the grandparent-grandchild exclusion include:

- On March 26, 1996 voters approved Proposition 193, which amended subdivision (h) of the California Constitution, article XIII A, section 2.
- The amendment provides for the exclusion from change in ownership of certain transfers from grandparents to grandchildren.
- Section 63.1 was amended to implement Proposition 193.
- The grandparent-grandchild exclusion applies to changes in ownership that occur on or after March 27, 1996.<sup>102</sup>

## ELIGIBLE TRANSFERORS AND TRANSFEREES

Only a transfer between an eligible transferor and an eligible transferee qualifies for an exclusion under section 63.1.<sup>103</sup> An *eligible transferor* is a grandparent, parent, or child of an eligible transferee.<sup>104</sup> An *eligible transferee* is a parent, child, or grandchild of an eligible transferor.<sup>105</sup>

Article XIII A, section 2, subdivision (h) of the California Constitution delegates to the Legislature the task of defining the terms *parent*, *child*, *grandparent*, and *grandchild*. The terms

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<sup>101</sup> Section 63.1(h)(1).

<sup>102</sup> Section 63.1(h)(2).

<sup>103</sup> Section 63.1(a).

<sup>104</sup> Section 63.1(c)(6).

<sup>105</sup> Section 63.1(c)(7).

1 *parent* and *grandparent* are not specifically defined by statute. Rather, the eligible relationships  
 2 are defined with respect to *children* and *grandchildren*. Section 63.1(c) defines *children* as any  
 3 of the following:

- 4 1. Any child born of the parent or parents, except a child who has been adopted by the age  
 5 of 18 by another person or persons.
- 6 2. Any stepchild or spouse of that stepchild while the relationship of stepparent and  
 7 stepchild exists, which means until the marriage on which the relationship is based is  
 8 terminated by divorce or, if terminated by death, until remarriage of the surviving  
 9 stepparent.
- 10 3. Any son-in-law or daughter-in-law of the parent(s) while the in-law relationship exists,  
 11 which means until the marriage on which the relationship is based is terminated by  
 12 divorce, or, if terminated by death, until remarriage of the surviving son-in-law or  
 13 daughter-in-law.
- 14 4. Any child statutorily adopted by the parent(s) by the age of 18.
- 15 5. Any foster child of a state-licensed foster parent if that child was not, because of a legal  
 16 barrier, adopted by the foster parent before the child aged out of the foster care system.

## 17 **GRANDPARENT-GRANDCHILD RELATIONSHIPS**

18 *Grandchild* is defined as any child of the child of the grandparent or grandparents.<sup>106</sup>

19 For transfers made prior to January 1, 2006, the grandparent-grandchild exclusion is only  
 20 available if all of the parents of the grandchild or grandchildren, who were the children of the  
 21 grandparents, are deceased as of the date of transfer.<sup>107</sup>

22 For transfers made on or after January 1, 2006, however, the grandparent-grandchild exclusion is  
 23 available if all the parents of that grandchild who qualify as children of the grandparents are  
 24 deceased, with the exception of a son-in-law or daughter-in-law that is a stepparent to that  
 25 grandchild who is still living on the date of transfer.<sup>108</sup> Such stepparents are still considered to be  
 26 parents of their stepchildren and in-law children of the grandparents, and remain eligible for the  
 27 parent-child exclusion.<sup>109</sup>

28 For a transfer to qualify for the grandparent-grandchild exclusion, both parents of the grandchild  
 29 must actually be deceased at the time of the transfer (with the exception mentioned above where  
 30 only a stepparent is living). As a consequence, if a living parent merely disclaims any interest in

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<sup>106</sup> Section 63.1(c)(4).

<sup>107</sup> Section 63.1(a)(3)(A).

<sup>108</sup> Section 63.1(a)(3)(A).

<sup>109</sup> Section 63.1(c)(3)(B) and (3)(C).

1 the grandparent's property, the transfer of real property between a grandparent and a grandchild  
2 will not qualify for the exclusion.

### 3 **ELIGIBLE PURCHASES AND TRANSFERS**

4 The parent-child exclusion provides that:

- 5 • A change in ownership does not include the transfer of a principal residence and the first  
6 \$1 million of full cash value of other real property.<sup>110</sup> (See below for a discussion of the  
7 principal residence and \$1 million limit rules.) The exclusion applies only to the transfer  
8 of real property, and not to interests in legal entities that hold title to real property.
- 9 • A qualifying transfer can be either from the parent(s) to the child(ren) or from the  
10 child(ren) to the parent(s).<sup>111</sup>
- 11 • The transfer must have occurred on or after November 6, 1986.

12 The grandparent-grandchild exclusion provides that:

- 13 • A change in ownership does not include a transfer from a grandparent or grandparents to  
14 a grandchild or grandchildren so long as at the date of transfer all of the parents of that  
15 grandchild or those grandchildren who qualify as the children of the grandparents are  
16 deceased (with the exception of a living stepparent as discussed above).<sup>112</sup>
- 17 • Grandchildren are allowed to use an unused parent-child exclusion.
- 18 • Only transfers *from* grandparents to grandchildren are eligible for exclusion and *not*  
19 transfers from grandchildren to grandparents.
- 20 • The purchase or transfer must have occurred on or after March 27, 1996.

21 These exclusions apply to both voluntary transfers and transfers resulting from a court order or  
22 judicial decree<sup>113</sup> or by operation of law. Thus, most transfers of real property between eligible  
23 transferors and transferees that occur after the respective operative dates can qualify for the  
24 exclusions.

### 25 **ACQUISITION BY INHERITANCE**

26 An inheritance of real property can qualify for the parent-child or grandparent-grandchild  
27 exclusion. The transfer can occur by will or intestate succession. The transferor must be the  
28 parent or child (for the parent-child exclusion) or the grandparent (for the grandparent-grandchild  
29 exclusion) as an individual and may not be from a legal entity owned by such person.

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<sup>110</sup> Section 63.1(a)(1) and (a)(2).

<sup>111</sup> Section 63.1(c)(1).

<sup>112</sup> Section 63.1(c)(2).

<sup>113</sup> Section 63.1(g).

## 1 TRANSFERS INTO AND OUT OF LEGAL ENTITIES

2 Both the parent-child and the grandparent-grandchild exclusions apply only to a transfer of real  
3 property. *Real property* means real property as defined in section 104 and does not include any  
4 legal entity interest.<sup>114</sup> Thus, unlike the interspousal and registered domestic partner exclusions, a  
5 transfer of a legal entity ownership interest cannot qualify for either the parent-child or the  
6 grandparent-grandchild exclusion.

7 To qualify for an exclusion, if property is held in a legal entity such as a family limited  
8 partnership, the property must first be transferred from the legal entity to the individual partners  
9 prior to making the parent-child or grandparent-grandchild transfer. In such circumstances, if the  
10 transfer of the real property out of the legal entity is for the purpose of qualifying for the  
11 exclusion under section 63.1, the step transaction doctrine does not apply.<sup>115</sup> (See Chapter 10 for  
12 a discussion of the step transaction doctrine.)

## 13 TRUSTS AND SECTION 63.1 EXCLUSIONS

14 The transfers of real property via trust are eligible for the parent-child and grandparent-  
15 grandchild exclusions.<sup>116</sup> Transfers via trust are treated as occurring between individuals, and not  
16 between an individual and the trust as an entity. Thus, if the requirements of section 63.1 are  
17 otherwise satisfied, transfers to and from a trust are eligible for either exclusion. (See Chapter 4  
18 for a discussion of trusts.)

### 19 *Example 5-1*

20 X transfers his principal residence into a revocable living trust. When X dies, the trust  
21 terminates and distributes the property to his daughter, B.

22 The transfer into X's revocable living trust is excluded from change in ownership.<sup>117</sup> The  
23 distribution of the property to B upon termination of the trust is treated as a transfer from X  
24 to B and is excluded from change in ownership under the parent-child exclusion if a timely  
25 claim is filed and all other requirements have been satisfied.<sup>118</sup>

## 26 PRO RATA AND NON-PRO RATA DISTRIBUTIONS

27 The application of a parent-child or grandparent-grandchild exclusion to the distribution of real  
28 property held in trust depends on whether a trust limits the trustee's powers to distribute the trust  
29 property. It is common for a trust to provide that the trust property is to be distributed to the  
30 beneficiaries on a share-and-share-alike basis, meaning that each beneficiary is to receive his  
31 proportional share of the trust property. If a trustee is required to distribute the trust property on a  
32 share-and-share-alike basis, a distribution of real property is a direct transfer from the trustor to

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<sup>114</sup> Section 63.1(c)(8).

<sup>115</sup> Senate Bill 1607 (2005-2006 Reg. Session) Amendment to Assembly Bill 47.

<sup>116</sup> Section 63.1(c)(9).

<sup>117</sup> Section 62(d).

<sup>118</sup> Rule 462.160(d)(5).

1 the beneficiary to the extent that the value of the property transferred does not exceed the value  
2 of the beneficiary's share of the trust property.

3 If a trust provides for distributions on a share-and-share-alike basis and the trustee's statutory  
4 authority to make non-pro rata distributions is not limited, the trustee may either give the  
5 beneficiaries equal ownership in each trust asset (*pro rata*) or may allocate specific assets to  
6 individual beneficiaries (*non-pro rata*), the value of which do not exceed each beneficiaries'  
7 equal percentage interest in the trust property.

8 ***Example 5-2***

9 X transfers her home with a fair market value of \$500,000 and securities valued at \$500,000  
10 to her trust for the benefit of B and C, to be distributed on a share-and-share-alike basis.

11 The trustee's authority to make non-pro rata distributions is not limited by the trust. The  
12 trustee could make a pro rata distribution by giving B and C each a 50 percent interest in the  
13 home and \$250,000 in securities. Alternatively, the trustee could make a non-pro rata  
14 distribution by giving B the home and C the securities.

15 **EQUALIZING TRUST DISTRIBUTIONS**

16 If the trustee has the authority to make a non-pro rata distribution and thus allocate specific  
17 assets to an individual beneficiary, the value of which (taking into consideration all  
18 encumbrances on the property) does not exceed that beneficiary's share of the trust property, the  
19 transfer is considered to be made from the trustor to the beneficiary.

20 Furthermore, unless prohibited by the trust, a trustee who makes a non-pro rata distribution may  
21 encumber the property with a loan prior to distributing the property to one beneficiary. The  
22 trustee may then distribute the loan proceeds (cash or promissory note) to the other beneficiaries  
23 to equalize the value of the distributions to all of the beneficiaries. However, the trustee must be  
24 the party encumbering the property and the trustee may not encumber the property with a loan  
25 from the beneficiary who will receive the property. The trustee may obtain a loan secured by the  
26 property from a third-party lender, such as a bank, or a beneficiary who will not receive the  
27 property as part of the trust distribution.

28 ***Example 5-3***

29 X transfers her principal residence with a fair market value of \$500,000 to her trust, to be  
30 distributed on a share-and-share-alike basis to B and C. The trustee is authorized to make  
31 non-pro rata distributions.

32 If the trustee decides to distribute the entire residence to B, the trustee may first borrow  
33 \$250,000 from a third party, secured by the residence, and may distribute the loan proceeds  
34 to C. The trustee may then distribute the residence, encumbered by the \$250,000 deed of  
35 trust, to B; B would have to repay the promissory note. The encumbrance would equalize the  
36 non-pro rata distribution.

1 If B and C are the children of X, the transfer of the principal residence to B qualifies for the  
2 parent-child exclusion if all other requirements are satisfied.

### 3 **BENEFICIARY-TO-BENEFICIARY TRANSFER**

4 If the trustee does not have the authority to make a non-pro rata distribution, or a particular  
5 non-pro rata distribution is in excess of the recipient beneficiary's share of the trust property, the  
6 transfer is considered to be made between the beneficiaries rather than from the trustor to a  
7 beneficiary. Additionally, if real property is distributed to all of the beneficiaries, any subsequent  
8 transfer between the beneficiaries is a change in ownership unless an exclusion applies.

#### 9 ***Example 5-4***

10 M's trust directed that the trust property be distributed equally to each of her three children—  
11 X, Y, and Z. The trustee transferred M's principal residence to X, Y, and Z as tenants in  
12 common. X and Y subsequently transferred their interests to Z.

13 The transfer of the principal residence to the three children qualifies for the parent-child  
14 exclusion. However, the subsequent transfers by X and Y to Z results in a two-thirds  
15 reassessment of the property.

## 16 **PRINCIPAL RESIDENCE**

17 A change in ownership does not include the purchase or transfer of real property that is the  
18 principal residence of an eligible transferor between parents and their children.<sup>119</sup> A *principal*  
19 *residence* is defined in section 63.1 as:

20 (b)(1)...a dwelling that is eligible for a homeowners' exemption or a disabled  
21 veterans' exemption as a result of the transferor's ownership and occupation of the  
22 dwelling....

### 23 **PARENT-CHILD EXCLUSION**

24 The parent-child exclusion can be used to transfer (and receive) an unlimited number of principal  
25 residences. Additionally, there is no dollar amount exclusion limit on principal residence  
26 transfers. The only requirement is that the residence be the principal residence of the transferor  
27 on the date of the transfer.

#### 28 ***Example 5-5***

29 Parent P sells her principal residence to her child C and purchases a smaller home that  
30 becomes P's new principal residence. Thereafter, P sells this second principal residence to C  
31 and then purchases a condominium which becomes P's principal place of residence.

32 Both sales from P to C may qualify as transfers of a principal residences.

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<sup>119</sup> Section 63.1(a)(1).

## 1 GRANDPARENT-GRANDCHILD EXCLUSION

2 In the event a child did not receive a principal residence from his or her parents that was  
3 excludable under the parent-child exclusion, the child may receive a principal residence under  
4 the grandparent-grandchild exclusion regardless of its value (it will not be subject to the  
5 \$1 million exclusion limit).<sup>120</sup> However, if a grandchild has received an excludable principal  
6 residence from his or her parent, the transfer of any dwelling from the grandparent, including the  
7 grandparent's principal residence, is considered other real property, which is subject to the  
8 \$1 million limitation.<sup>121</sup>

### 9 *Example 5-6*

10 Grandfather G sells his principal residence with an adjusted base year value of \$1.5 million  
11 to his grandchild C (whose parents have died).

12 If C never received a principal residence from her parents, the sale qualifies for the  
13 grandparent-grandchild exclusion. If C had received an excludable principal residence from  
14 her parents but had not received any other property from her parents, \$1 million of the  
15 adjusted base year value would qualify for the grandparent-grandchild exclusion.  
16 Accordingly, there would be a change in ownership with respect to one-third (\$500,000) of  
17 the principal residence C purchased from G.

## 18 REASONABLE SIZE REQUIREMENT

19 Only that portion of the land underlying the principal residence that consists of an area of  
20 reasonable size that is used as a site for a residence is considered to be part of the principal  
21 residence eligible for the parent-child or grandparent-child exclusion.<sup>122</sup> Whether the size is  
22 reasonable is a question of fact to be determined by a county assessor. Any excess land above the  
23 reasonable amount would be considered other real property of an eligible transferor and therefore  
24 subject to the \$1 million limit.

## 25 \$1 MILLION LIMIT

26 For the parent-child exclusion, a change in ownership does not include transfers of the first  
27 \$1 million of *full cash value* of non-principal residence real property for which exclusion claims  
28 are filed.<sup>123</sup> (See below for a discussion of filing requirements.) The \$1 million exclusion applies  
29 separately to each eligible transferor of real property owned by that transferor. The grandparent-  
30 grandchild exclusion may be claimed only to the extent that a parent's \$1 million exclusion has  
31 not been claimed.

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<sup>120</sup> Section 63.1(a)(3)(B).

<sup>121</sup> Section 63.1(a)(3)(B).

<sup>122</sup> Section 63.1(b)(1).

<sup>123</sup> Section 63.1(a)(2).

1 *Full cash value* is defined in section 110.1 and in California Constitution article XIII A,  
 2 section 2, as the fair market value as determined under section 110, including the value of new  
 3 construction in progress as of the date immediately prior to the date of a purchase or transfer.

4 For a direct transfer, the full cash value is the adjusted base year value on the local roll  
 5 immediately prior to the transfer to an eligible transferee.<sup>124</sup>

6 The transfer of real property outside California, and transfers for which the exclusion is not  
 7 claimed, are not counted toward the \$1 million exclusion limit.

#### 8 ***Example 5-7***

9 Parents jointly own as community property one parcel of investment real estate with an  
 10 assessed value of \$3 million.

11 Each parent can transfer up to \$1 million in value of what they own to a child or children. If  
 12 the entire parcel is transferred to one child, \$2 million would be excluded from reassessment  
 13 under the parent-child exclusion and one-third (\$1 million) of the property would be  
 14 reappraised.

### 15 **JOINT TENANCIES AND THE \$1 MILLION EXCLUSION**

16 The \$1 million exclusion cannot be used to exclude the transfer of a property in which the  
 17 eligible transferor's interest was received through a transfer that was excluded from change in  
 18 ownership under sections 65(b) or 62(f), unless the eligible transferor was an original  
 19 transferor.<sup>125</sup> (See Chapter 2 for a discussion of original transferor.)

#### 20 ***Example 5-8***

21 X is the mother of B and C. B owned real property outright and then added X, her mother,  
 22 and C, her brother, to title as joint tenants. X died and her interest passed to B and C by right  
 23 of survivorship.

24 When B added X and C as joint tenants, there was no change in ownership<sup>126</sup> because B  
 25 remained a joint tenant. Thus, B became an original transferor and X and C became other  
 26 than original transferors.

27 When X died, the interest that transferred back to B is excluded under the joint tenancy  
 28 rules<sup>127</sup> because B is an original transferor.

29 However, X's interest that passed to C does not qualify for the parent-child exclusion because  
 30 when X received her interest it was excluded from reassessment under the joint tenancy  
 31 rules, and X was an other than original transferor.

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<sup>124</sup> Rule 460(b)(1) and (b)(2).

<sup>125</sup> Section 63.1(b)(2).

<sup>126</sup> Sections 62(f) or 65(b).

<sup>127</sup> Section 65(b).

1 Even though the transfer of X's interest to C does not qualify for the parent-child exclusion,  
 2 like the transfer of X's interest to B, it is excluded under the joint tenancy rules because B, an  
 3 original transferor, remained on title as a joint tenant.

#### 4 **MULTIPLE PROPERTIES**

5 If parent-child or grandparent-grandchild claims are filed for multiple properties and the total  
 6 assessed values exceed \$1 million, the properties transferred first (as determined by transfer date)  
 7 receive the \$1 million exclusion, unless the claimants otherwise designate. If the transfer date is  
 8 the same for all properties (for example, upon a date of death), the transferees must decide which  
 9 properties are to receive the \$1 million exclusion.

#### 10 **Example 5-9**

11 X owns a vacation cabin, an apartment building, and other commercial property. X transfers  
 12 to his daughter B a commercial building with an adjusted base year value of \$400,000.

13 B failed to file a claim for the exclusion. Years later, when X transfers to his son C the  
 14 vacation cabin with an adjusted base year value of \$250,000 and the apartment building with  
 15 an adjusted base year value of \$750,000, X's entire \$1 million exclusion amount is still  
 16 available to because B failed to file a claim for the exclusion.

#### 17 **ALLOCATION OF THE \$1 MILLION EXCLUSION**

18 When the adjusted base year value of the real property exceeds the \$1 million limit, the  
 19 exclusion must be allocated between the land and improvements on a pro rata basis.<sup>128</sup>

#### 20 **Example 5-10**

21 X inherits an investment property (not a principal residence) from her parents. The property  
 22 had an adjusted base year value of \$1.3 million, allocated as follows:

23 Land = \$400,000  
 24 Improvements = \$900,000

25 X files a parent-child exclusion claim form with the county assessor. Since the \$1 million  
 26 exclusion must be allocated on a pro rata basis, the ratio of land and improvements to total  
 27 adjusted base year value is calculated as follows:

	<b>Adjusted Base Year Value</b>	<b>Ratio</b>
Land	\$400,000	$400,000/1,300,000 = 31\%$
Improvements	\$900,000	$900,000/1,300,000 = 69\%$
Total	\$1,300,000	

28 Applying the applicable exclusion percentages, the \$1 million exclusion is allocated as  
 29 follows:

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<sup>128</sup> Section 63.1(d)(2).

	<b>Excludable Value</b>	<b>Non-Excludable Value</b>	<b>Total</b>
Land (31% excluded)	1,000,000 x 31% = \$310,000	\$90,000	\$400,000
Improvements (69% excluded)	1,000,000 x 69% = \$690,000	\$210,000	\$900,000
Total	\$1,000,000	\$300,000	\$1,300,000

## DATE OF CHANGE IN OWNERSHIP

The parent-child and grandparent-grandchild exclusions apply to transfers that occur on or after the effective date of the respective exclusions. In general, the date of change in ownership is governed by the provisions of Rule 462.260. (See Chapter 1 for a discussion on date of change in ownership.) The only exception is the rule set forth in *Larson v. Duca* for the parent-child exclusion.<sup>129</sup>

### APPLICATION OF *LARSON V. DUCA*

In *Larson v. Duca*, the decedent-parent died prior to the effective date of the parent-child exclusion, November 5, 1986. However, the real property was distributed to the decedent's son pursuant to a probate decree of distribution after November 5, 1986. The Court of Appeal held that the transfer was excluded under the parent-child exclusion because the date of the transfer was the date of the probate court's decree of distribution.

The holding in *Larson v. Duca* is limited to the situation where a decedent died before November 5, 1986 and the estate is probated and thereafter distributed to the decedent's child through a decree of distribution issued after November 5, 1986. Under such circumstances, the date of the decree of distribution is considered to be the date of the transfer of the property from the parent to the child. For all other transfers resulting from death, the date of death is the date of transfer (See Chapter 11 for a discussion on date of change in ownership.)

## FILING REQUIREMENTS

No parent-child or grandparent-grandchild exclusion from change in ownership may be allowed until a timely claim form is filed with the county assessor for the county in which the property is located.<sup>130</sup> Even though the claim form is not a public document and is generally not subject to public inspection, it may be inspected by the transferee and transferor and their respective spouses, the legal representative of the transferee and the transferor, and the executor or administrator of the transferee's or transferor's estate.<sup>131</sup>

<sup>129</sup> *Larson v. Duca* (1989) 213 Cal.App.3d 324.

<sup>130</sup> Section 63.1(d).

<sup>131</sup> Section 63.1(i).

1 **FILING PERIOD**

2 To receive the exclusion as of the date of transfer of real property, a claim for the parent-child or  
3 grandparent-grandchild exclusion must be filed within three years of the date of the transfer, or  
4 before the property has been transferred to a third party, whichever is earlier.<sup>132</sup> If the three-year  
5 statute of limitations has passed, a claim form will be considered timely if it is filed within six  
6 months after the date of mailing of a notice of supplemental or escape assessment.<sup>133</sup>

7 **PROSPECTIVE RELIEF**

8 If both the three-year and six-month limitation periods (discussed above) have expired and the  
9 property has not been transferred to a third party, a claim for prospective relief may be filed at  
10 any time.<sup>134</sup> For these purposes, a transfer to a parent or child of the transferor is not considered a  
11 transfer to a third party.<sup>135</sup>

12 After a claim for prospective relief is filed, the transferee will receive relief beginning with the  
13 lien date of the assessment year in which the claim is filed.<sup>136</sup> For example, if a claim for  
14 prospective relief is filed on July 1, 2007, the claimant would receive relief for the  
15 January 1, 2007 lien date.

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<sup>132</sup> Section 63.1(e)(1)(A) and (1)(B).

<sup>133</sup> Section 63.1(e)(1)(C).

<sup>134</sup> Section 63.1(e)(2).

<sup>135</sup> Section 63.1(e)(4).

<sup>136</sup> Section 63.1(e)(2)(A).

## CHAPTER 6: LIFE ESTATES AND ESTATES FOR YEARS

A change in ownership is 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 a fee interest.<sup>137</sup> The Legislature has enacted statutes determining that the creation or termination of a life estate or estate for years for 35 years or longer is substantially equivalent to a transfer of a fee interest in the property.<sup>138</sup> The following is a discussion of these statutes as applied to life estates and estates for years.

### LIFE ESTATES

A *life estate* grants the right to use of a property or income from a property for the lifetime of a designated person. The party granted this right is commonly known as the *life tenant*. Life estates can be created by wills, trusts, or deeds of conveyance; no consideration is necessary. When a life tenant dies, the life estate terminates. The party receiving the property when a life estate terminates is the *remainderman*.

#### **Example 6-1**

A simple deed whereby X created a life estate for B with C as remainderman would state:

X transfers to B, for B's life, remainder to C.

X is the transferor of the property to B, the life tenant, and to C, the remainderman, upon B's death.

The creation of a life estate results in a change in ownership of the property unless the life estate is reserved in the transferor or the transferor's spouse, or unless the creation of the life estate itself otherwise qualifies for another exclusion.<sup>139</sup>

When a life estate terminates upon the death of a life tenant, the property transfers to the remainderman and there is a change in ownership unless the transfer to the remainderman is excluded.

#### **Example 6-2**

X deeds his property to himself, for his life; remainder to the park district.

There is no change in ownership when X reserved the life estate for himself since X is both transferor and the life tenant. A change in ownership will occur when X dies and the immediate right to possession of the property vests in the remainderman, the park district.

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<sup>137</sup> Section 60.

<sup>138</sup> Sections 61(c) and 62(e).

<sup>139</sup> Section 62(e); Rule 462.060(a).

## 1 INTER VIVOS TRANSFER BY LIFE TENANT

2 An inter vivos transfer of a life estate to a third party by the life tenant results in a change in  
3 ownership, unless an exclusion applies.<sup>140</sup> In this situation, the transferor is considered to be the  
4 life tenant, not the original grantor of the life estate.

### 5 *Example 6-3*

6 X grants to B a life estate in a property, with a remainder interest to C. During B's life, B  
7 transfers her life estate to D.

8 B's transfer of her life estate to D is a change in ownership unless an exclusion applies. B is  
9 the transferor of the life estate to D, not X.

10 Upon B's death, the property transfers to C. The transfer of the property is from X to C.

11 Thus, unless otherwise specifically excluded, there is a change in ownership at the creation of a  
12 life estate for another (not one's self or one's spouse), the transfer of a life estate by a life tenant  
13 to a third party during the life tenant's lifetime, and upon the termination of a life estate.

## 14 ESTATES FOR YEARS

15 An estate for years differs from a life estate in that it has a specified duration. The creation or  
16 transfer of an estate for years of shorter than 35 years is not a change in ownership because the  
17 transferor is not deemed to have transferred a beneficial ownership interest substantially  
18 equivalent to a fee interest in the property. The creation of an estate for 35 years or longer is a  
19 change in ownership at the time of the transfer, unless such estate is reserved in the transferor or  
20 transferor's spouse<sup>141</sup> or another exclusion from change in ownership applies.

21 The termination of an estate for 35 years or longer is also a change in ownership, unless the  
22 property reverts back to the transferor or transferor's spouse<sup>142</sup> or another exclusion applies.

### 23 *Example 6-4*

24 X transfers property to B for a term of 40 years, after which the property is to go to C. Upon  
25 the transfer to B, there is a change in ownership because the estate for years is for more than  
26 35 years, unless an exclusion applies. Upon the expiration of B's 40-year term, there is  
27 another change in ownership when the property is transferred to C, unless an exclusion  
28 applies.

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<sup>140</sup> Section 62(e); Rule 462.060(a).

<sup>141</sup> Rule 462.060(b).

<sup>142</sup> Section 62(e).

- 1 Therefore, for property tax purposes, the creation of an estate for years of 35 years or more is
- 2 considered to be the substantial equivalent of a fee interest.

## CHAPTER 7: LEASES

1

2 A *lease* is an agreement under which an owner transfers the rights to possession and use of a  
 3 property for valuable consideration for a definite term. At the end of a lease term, the owner has  
 4 the absolute right to retake, control, and use the property. This is called a *reversionary right*. For  
 5 real property, a lease gives rise to the legal relationship of landlord and tenant, or lessor and  
 6 lessee.

7 When a property owner leases real property, there is a transfer of a present beneficial use of the  
 8 property to the lessee. However, not all leases result in transfers of present beneficial ownership  
 9 interests that are substantially equivalent to the value of a fee interest. The Legislature has  
 10 determined that whether a change in ownership occurs upon the creation or transfer of a lease or  
 11 property subject to a lease depends on the duration of the lease.

12 A change in ownership of the leased property occurs in the following situations:

- 13 • Creation of a lease of 35 years or longer, including written renewal options.
- 14 • Termination of a lease which had an original term of 35 years or longer.
- 15 • Transfer, sublease, or assignment by a lessee of a leasehold interest with a remaining  
 16 term of 35 years or longer.
- 17 • Transfer by the lessor of a lessor's interest in taxable real property subject to a lease with  
 18 a remaining term of less than 35 years.<sup>143</sup>

19 The counterpart to the above rules is that the following transfers of a lessee's interest or a lessor's  
 20 interest in leased property are not a change in ownership:

- 21 • Creation of a leasehold interest in a real property for a term of less than 35 years.
- 22 • Transfer, sublease, or assignment by a lessee of a leasehold interest with a remaining  
 23 term of less than 35 years (regardless of the original term of the lease).
- 24 • Termination of a leasehold interest which had an original term of less than 35 years.
- 25 • Transfer by a lessor of his or her interest in real property subject to a lease, with a  
 26 remaining term of 35 years or longer, whether to the lessee or another party.<sup>144</sup>

27 Thus, once a lease has been created, to determine whether there is a change in ownership upon  
 28 the transfer of a lessor's or lessee's interest, the remaining leasehold period must first be  
 29 established. If the remaining term of a lease is 35 years or longer, including written renewal  
 30 options, a transfer by a lessee of the interest (for example, an assignment of the lease to another  
 31 tenant) results in a change in ownership (this is because the lessee is considered to have the  
 32 beneficial ownership of the property).

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<sup>143</sup> Section 61(c).

<sup>144</sup> Rule 462.100(b).

1 If the remaining term of a lease is 35 years or longer, including written renewal options, a  
 2 transfer by a lessor of his interest does not result in a change in ownership (this is because the  
 3 lessee, and not the lessor, is considered to have the beneficial ownership of the property). For  
 4 example, the sale of the underlying property subject to a 40-year lease does not result in a change  
 5 in ownership.

6 If there is a transfer of a lessor's interest in taxable real property subject to multiple leases, one or  
 7 more of which has a remaining term of less than 35 years, and one or more of which has a  
 8 remaining term of 35 years or longer, there is a change in ownership only of that portion of the  
 9 property subject to the lease(s) with a remaining term of less than 35 years.<sup>145</sup>

## 10 **TERM OF LEASE**

11 For change in ownership purposes, the term of a lease is measured by adding the length of the  
 12 original term and any written renewal options.<sup>146</sup> Written renewal options are options given to the  
 13 lessee stated in a lease contract authorizing the lessee to either renew or extend the stated lease  
 14 term. Such options are included as part of the lease term whether exercised or not.

15 For leased land on which homes eligible for the homeowners' exemption<sup>147</sup> are located, it is  
 16 conclusively presumed that all leases include written renewal options for at least 35 years,  
 17 whether or not such renewal options in fact exist.<sup>148</sup> Thus, the transfer of a lessor's interest in  
 18 leased land on which a home eligible for the homeowners' exemption is located never results in a  
 19 change in ownership of the leased land.

## 20 **REAPPRAISAL OF LEASED PROPERTY**

21 When a change in ownership of property subject to a lease has occurred, the entire property  
 22 subject to the lease (both the lessee's present interest and the lessor's reversionary interest) is  
 23 reappraised.<sup>149</sup>

### 24 ***Example 7-1***

25 A shopping center has large anchor stores, all with leases longer than 35 years, and smaller  
 26 retail stores, all with leases for 20 years or less.

27 At the commencement and termination of each anchor store lease, there is a change in  
 28 ownership of that portion of the property leased by the anchor store; there is no change in  
 29 ownership at the commencement or termination of the smaller retail store leases.

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<sup>145</sup> Rule 462.100(a)(2)(B).

<sup>146</sup> Rule 462.100(d).

<sup>147</sup> Section 218.

<sup>148</sup> Section 62(g); Rule 462.100(e).

<sup>149</sup> Rule 462.100(c).

1 If the entire shopping center is sold, there would not be a change in ownership of the property  
 2 leased by the anchor stores with 35 years or more remaining on their leases, but there would  
 3 be a change in ownership of all property subject to lease terms of less than 35 remaining  
 4 years, including all the smaller retail stores.

## 5 **EXEMPT GOVERNMENT-OWNED PROPERTY**

6 A lease of privately owned property to an exempt governmental entity for a term of more than  
 7 35 years results in a change in ownership. The property is assessed to the private owner-lessor,  
 8 who is deemed to be the owner of both the leasehold and reversionary interests for property tax  
 9 purposes.<sup>150</sup>

## 10 **TERMINATION OF LEASES**

11 A change in ownership occurs upon the termination of a lease if the original term, including  
 12 written renewal options, is 35 years or longer. During the leasehold period, there is no change in  
 13 ownership when the remaining lease term falls below the 35-year mark if the lessor does not  
 14 transfer the interest. Prior to the termination of such lease, when the remaining lease term falls  
 15 below the 35-year mark, the primary ownership of the property shifts from the lessee to the  
 16 lessor; however, there is no change in ownership because there has been no transfer of the  
 17 property. Thus, absent a transfer, the real property subject to such a lease will only undergo a  
 18 change in ownership when the property reverts back to the lessor when the lease expires or is  
 19 otherwise terminated.

## 20 **SUBLEASES**

21 Subleases are analyzed in the same manner as leases. A sublessee is considered to be the primary  
 22 owner for property tax purposes when a sublease is for a term of 35 years or longer.

### 23 ***Example 7-2***

24 X leases a property for 50 years, including written renewal options, to B. This results in a  
 25 change in ownership, with B becoming the present beneficial owner.

26 After 12 years (while there is 38 years remaining on the lease), the lessee B subleases the  
 27 property to C for 38 years. This results in a change in ownership because B, the present  
 28 beneficial owner, has entered into a sublease for a term of more than 35 years, thereby  
 29 transferring the present beneficial ownership interest of the property to the sublessee C.

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<sup>150</sup> *City of Desert Hot Springs v. County of Riverside* (1979) 91 Cal.App.3d 441.

# CHAPTER 8: PARTITION AND DE MINIMIS EXCLUSIONS

## PARTITION

A *partition* is any division of real property giving separate title to those who previously held undivided interests as co-owners, such as in a joint tenancy or a tenancy in common. (See Chapter 2 for a discussion of joint tenancies and tenancies in common.)

### SECTION 62(A)(1) EXCLUSION

A partition may result in a transfer of property that is excluded from change in ownership under section 62(a)(1).<sup>151</sup>

Under section 62(a)(1), a real property transfer is excluded from change in ownership if the transfer results solely in a change in the method of holding title to the property transferred without a change in the proportional interests of the co-owners. The general rule is that if a partition has resulted in a change in proportional ownership interests, the property will be reassessed to the extent of the disproportionate transfer.

### APPRAISAL UNIT

The concept of *appraisal unit* is central to a determination of whether proportional interests in a property remain the same after a partition for purposes of applying the rule in section 62(a)(1).<sup>152</sup> An *appraisal unit* is defined as that which persons in the marketplace commonly buy and sell as a unit, or that is normally valued separately.<sup>153</sup>

A single farm consisting of ten parcels would be a single appraisal unit. The partition of that single farm to two equal co-owners would not result in a change in ownership if each co-owner's interest in the partitioned property were of equal value afterward.

However, the partition of jointly held interests in two separate and distinct properties (two appraisal units) would require the comparison of the proportional interests held before and after the transfer in each separate property.

### PARTITIONS—VALUATION

In determining whether the same proportional ownership interest exists after a partition, it is necessary to establish and compare the fair market values of the separate properties post-partition. For example, if a two-acre parcel (single appraisal unit) is being partitioned into two separate one-acre parcels, the value of each individual parcel must be determined and the two values compared.

<sup>151</sup> See also Rule 462.020(b)(1).

<sup>152</sup> For a complete discussion of the concept of appraisal unit, see Assessors' Handbook Section 501, *Basic Appraisal*, January 2002, page 10.

<sup>153</sup> Section 51(d).

1 **Example 8-2**

2 X and B are equal tenants in common in a farm consisting of ten parcels, a single appraisal  
3 unit. The adjusted base year value of the appraisal unit is \$300,000 (each owner has one-half  
4 interest valued at \$150,000). The farm has a current fair market value of \$1 million. X and B  
5 partition the farm and grant to X sole ownership of six parcels and to B sole ownership of the  
6 remaining four parcels.

7 The interests held by each owner must be appraised to determine if X or B acquired more  
8 than their respective proportional interests. If X's partitioned six parcels has a current fair  
9 market value of \$600,000, and B's partitioned four parcels has a current fair market value of  
10 \$400,000, there has been a change in ownership of a 10 percent interest (X now holds  
11 60 percent and B now holds 40 percent ownership interest whereas prior to the partition each  
12 owned 50 percent).

13 Since X owns more than he did prior to the partition, X's base year value must be increased.  
14 He owned 50 percent and now owns 60 percent. His original 50 percent interest had an  
15 adjusted base year value of \$150,000, which remains intact. However, added to that would be  
16 the 10 percent interest he acquired, calculated at 10 percent of the current fair market value  
17 of the entire farm. His new base year value would be \$250,000 [ $\$150,000 + \$100,000$   
18 (10 percent of partition date fair market value of \$1,000,000)].

19 Since B now owns less than he did prior to the partition, B's base year value must be reduced.  
20 B's new base year value would be \$120,000 (40 percent of \$300,000 adjusted base year value  
21 of the appraisal unit).

22 **Example 8-3**

23 X and B are equal tenants in common in two residential vacant lots. Each lot is the same size  
24 and each has a \$5,000 adjusted base year value and a fair market value of \$10,000. X and B  
25 partition their tenancies, resulting in X owning one lot and B owning the other.

26 If each lot is a separate appraisal unit, this transfer would cause a change in ownership of the  
27 50 percent transferred for each lot. The reasoning is that X and B began with each owning  
28 one-half of each lot (an undivided one-half interest in each appraisal unit) and after, each  
29 owned 100 percent of one lot. Therefore, one-half of each lot must be reassessed. The new  
30 base year value of each lot would be \$7,500 [ $\$2,500$  (one-half of the original adjusted base  
31 year value) + \$5,000 (one-half of partition date fair market value of \$10,000)].

32 For the section 62(a)(1) exclusion to apply, X and B would need to each receive one-half of  
33 each lot by way of a lot split, thereby receiving one-half of each appraisal unit.

34 In some cases, the partition of property is legally challenged and the partition may take more  
35 than one assessment year to be fully executed. The section 62(a)(1) exclusion from change in  
36 ownership still applies even though the partition takes more than one assessment year to fully  
37 execute.

## 1 PARTITIONS—CONVERSION TO CONDOMINIUMS

2 A partition is the method used when co-owners of an apartment building wish to convert their  
3 units to condominiums. In this case, the timing of the partition will determine whether there has  
4 been a change in ownership requiring a reappraisal.

5 If the partition occurs before the condominium conversion, the entire apartment complex would  
6 be regarded as one appraisal unit. In that case, if after the partition the interests of each co-owner  
7 are in proportion to the interest held prior to the partition, no reappraisal occurs.

8 On the other hand, if the condominium conversion and the sale of at least one unit precede the  
9 partition of the entire complex, then each condominium would be regarded as a separate  
10 appraisal unit and a comparison of the proportional interests held before and after the transfer of  
11 each condominium would be required.

## 12 5 PERCENT/\$10,000 (DE MINIMIS) EXCLUSION

13 A transfer of an interest with a fair market value of less than 5 percent of the fair market value of  
14 the total property and a total market value transferred less than \$10,000 during a single  
15 assessment year<sup>154</sup> (whether accomplished through one or more transfers) is excluded from  
16 change in ownership.<sup>155</sup> Section 65.1(a) states, in part, that:

17 ...when an interest in a portion of real property is purchased or changes  
18 ownership, only the interest or portion transferred shall be reappraised. A  
19 purchase or change in ownership of an interest with a market value of less than  
20 5 percent of the value of the total property shall not be reappraised if the market  
21 value of the interest transferred is less than ten thousand dollars (\$10,000),  
22 provided, however, that transfers during any one assessment year shall be  
23 cumulated for the purpose of determining the percentage interests and value  
24 transferred.

25 If the percentage or the fair market value of property transferred in a single assessment year  
26 exceeds these thresholds, the percentage of the property previously excluded under section 65.1  
27 must be reappraised (unless the transfer is otherwise excluded from change in ownership, such as  
28 an interspousal transfer).<sup>156</sup>

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<sup>154</sup> Section 118.

<sup>155</sup> Section 65.1(a).

<sup>156</sup> Rule 462.020(b)(2).

1 ***Example 8-4***

2 During an assessment year, the value of the accumulated interests transferred equals  
3 3 percent of the fair market value of the total property and the dollar value of these interests  
4 is \$12,000.

5 There will be a reappraisal of the transferred interests because their total value exceeds  
6 \$10,000.<sup>157</sup>

7 ***Example 8-5***

8 During an assessment year, the fair market value of the accumulated interests transferred  
9 equals 7 percent of the fair market value of the total property and the dollar value of these  
10 interests is \$9,000.

11 There will be a reappraisal of the transferred interests because they exceed 5 percent of the  
12 fair market value of the total property.<sup>158</sup>

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<sup>157</sup> Rule 462.020, Example 2.

<sup>158</sup> Rule 462.020, Example 3.

# CHAPTER 9: LEGAL ENTITIES

## OVERVIEW

A *legal entity* is any business organization that is legally permitted to enter into a contract, including a contract for the purchase, sale, or lease of real property. Legal entity interests may be owned individually, may be owned by another legal entity, and may be held in trust. Some of the most common legal entities holding title to real property in California and discussed in this handbook include:

- Corporations (both for-profit and non-profit)
- Limited liability companies (LLC's)
- Partnerships (both general and limited)
- Joint ventures
- Massachusetts business trusts
- Stock cooperatives and cooperative housing corporations

In this handbook, the use of the term *entity* refers to any such legal entity.

## OWNERSHIP OF LEGAL ENTITIES

### CORPORATIONS

A *corporation* is an entity distinct from its owners, called shareholders or stockholders. The significant primary characteristics of a corporation are transferable shares of stock, a perpetual existence, and limited liability, including shareholder limited responsibility for corporate debt, shareholder insulation from judgments against the corporation, and shareholder amnesty from criminal actions of the corporation.

For Proposition 13 and change in ownership purposes, ownership in a corporation is determined by the percentage of ownership and control of a corporation's voting stock.

### LIMITED LIABILITY COMPANIES

The owners of *limited liability companies* (LLC's)<sup>159</sup> are referred to as members. For Proposition 13 and change in ownership purposes, ownership interest in an LLC is based on a member's total interest in LLC capital and profits.

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<sup>159</sup> In California, LLCs are authorized by the Beverly-Killea Limited Liability Company Act, Corp. Code sections 17000 et seq.

## 1 PARTNERSHIPS

2 A *partnership* is an unincorporated entity consisting of more than one individual, trust, or other  
 3 entity. Under California law, a partnership is defined as "an association of two or more persons  
 4 to carry on as co-owners a business for profit."<sup>160</sup> The test to determine whether or not a  
 5 partnership exists is based on the intention of the parties to carry on or conduct themselves as  
 6 partners. A partnership may own real property even if title to the property is held in the name of  
 7 the partners as individuals, with or without reference to the partnership.<sup>161</sup> A partnership  
 8 agreement may be written or oral. A partnership agreement or a partnership income tax return  
 9 may provide evidence to establish the existence of a partnership.

10 For change in ownership purposes, an ownership interest in a partnership is represented by a  
 11 partner's total interests in the partnership capital and profits.<sup>162</sup> The partnership agreement of  
 12 some validly formed partnerships may provide that certain partners have no right to share in  
 13 partnership capital or profits; in these instances, no partnership ownership interests are attributed  
 14 to such partners for change in ownership purposes.

15 For change in ownership purposes, a partner's classification as a limited or general partner is  
 16 disregarded.

## 17 MASSACHUSETTS BUSINESS TRUSTS

18 A trust is generally not considered an entity distinct from its present beneficial owners. (See  
 19 Chapter 4 for a discussion of trusts.) Some trusts, commonly known as *Massachusetts business*  
 20 *trusts*, are set up to operate as business organizations and issue transferable ownership  
 21 certificates (similar to shares of stock in a corporation) that entitle the owners to share in the  
 22 business income.

23 Rule 462.160(e) provides that the term *trust* does not include these entities, which are taxable as  
 24 separate legal entities for property tax purposes.<sup>163</sup>

## 25 COOPERATIVE HOUSING CORPORATIONS

26 A cooperative housing corporation is formed primarily so multiple shareholders can collectively  
 27 own improved real property in which each shareholder has the right of exclusive occupancy to a  
 28 portion of the property. Examples include:

- 29 • A cooperative apartment building where share ownership confers the right to exclusively  
 30 occupy a particular apartment unit.
- 31 • A vacation home where share ownership gives the owner the right to exclusively occupy  
 32 a cabin along with pro rata ownership of the common areas.

<sup>160</sup> Corporations Code section 16202(a).

<sup>161</sup> Rule 462.180(e).

<sup>162</sup> Rule 462.180(d)(1)(B).

<sup>163</sup> For rules applicable to Massachusetts business trusts or similar trusts, see section 64 and Rule 462.180.

1 A *cooperative housing corporation* is defined as "a real estate development in which  
 2 membership in the corporation, by stock ownership, is coupled with the exclusive right to  
 3 possess a portion of the real property."<sup>164</sup> The transfer of shares in the corporation also transfers  
 4 the exclusive right of occupancy to the portion of the real property that corresponds to those  
 5 shares.

6 For change in ownership purposes, ownership of shares in a cooperative housing corporation is  
 7 considered to be substantially equivalent to a fee interest in the real property. A transfer of a  
 8 stock share in a cooperative housing corporation results in a change in ownership, unless an  
 9 exclusion applies.<sup>165</sup>

10 Following a change in ownership, a new base year value is established equal to the fair market  
 11 value of the real property interest transferred, not the value of the stock.<sup>166</sup>

## 12 **NON-PROFIT CORPORATIONS**

13 The same laws that apply to for-profit entities also govern transfers to, from, or between non-  
 14 profit corporations except that non-profit corporations do not have owners in any traditional  
 15 sense. Because there are no shareholders of non-profit corporations, ownership is determined by  
 16 the persons who hold the voting rights.

17 For California non-profit public benefit corporations, the persons considered to hold the voting  
 18 rights of the corporation are the members of the board of directors. For California non-profit  
 19 mutual benefit corporations, the persons considered to hold the voting rights of the corporation  
 20 are the members of the corporation.

## 21 **CHANGE IN OWNERSHIP—LEGAL ENTITIES**

22 In general, a transfer of any interest in real property between a corporation, partnership, LLC, or  
 23 other entity and a shareholder, partner, or any other person (including another entity) is a change  
 24 in ownership, unless an exclusion applies.<sup>167</sup>

25 In contrast to that general rule, purchases or transfers of corporate voting stock, partnership  
 26 ownership interests, LLC membership interests, or ownership interests in other legal entities are  
 27 not changes in ownership of the real property owned by the entity. There are significant  
 28 exceptions to this principle:

- 29 1. A transfer of shares in a cooperative housing corporation is a change in ownership, as  
 30 discussed above.<sup>168</sup>

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<sup>164</sup> Section 61(i).

<sup>165</sup> Section 61(i).

<sup>166</sup> Section 61(i); see section 62(i) for an exclusion.

<sup>167</sup> Section 61(j).

<sup>168</sup> Section 61(i).



1 proportional ownership interests of the transferors and transferees in each and every piece of real  
 2 property transferred remain the same after the transfer, is excluded from a change in  
 3 ownership.<sup>173</sup> This is known as the *proportional transfer exclusion*.<sup>174</sup>

#### 4 **Example 9-3**

5 D and B, equal cotenants, transfer their real property to Corporation X and each take back  
 6 50 percent of the single class of voting stock.

7 No change in ownership occurs. However, if D and B each take back 49 percent of the voting  
 8 stock and C receives 2 percent of the voting stock, then there will be a change in ownership  
 9 of the entire property.<sup>175</sup>

#### 10 **Example 9-4**

11 Corporation X owns Blackacre and Whiteacre (both are of equal value). D and B each own  
 12 50 percent of the single class of voting stock of Corporation X. Corporation X transfers  
 13 Whiteacre to D and Blackacre to B.

14 There is a change in ownership of 100 percent of both Blackacre and Whiteacre because the  
 15 transfers are disproportional. However, if Corporation X transfers Whiteacre and Blackacre  
 16 to both D and B as joint tenants or as equal tenants in common, there is no change in  
 17 ownership because the transfers are proportional.<sup>176</sup>

### 18 **ORIGINAL CO-OWNER INTEREST TRANSFERS**

19 If property is transferred to an entity in a transaction that is excluded under section 62(a)(2), the  
 20 persons holding the ownership interests in the transferee entity immediately after the transfer are  
 21 original co-owners for purposes of determining whether a change in ownership occurs upon  
 22 subsequent transfers of the ownership interests in such entity.<sup>177</sup>

23 A change in ownership of the property excluded under section 62(a)(2) occurs when the original  
 24 co-owners cumulatively transfer, in one or more transactions, more than 50 percent of their  
 25 ownership interests in that entity.<sup>178</sup> In addition, if a change in control under section 64(c)(1)  
 26 occurs as a result of a transfer of original co-owner interests, all of the property held by that  
 27 entity will be reappraised under section 64(c)(1) rather than section 64(d). Thus, for property  
 28 previously excluded from reappraisal under section 62(a)(2), either the transfer of more than 50  
 29 percent of original co-owner interests or a change in control will result in a change in ownership.

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<sup>173</sup> Section 62(a)(2). Reorganizations of affiliated corporations are governed by section 64(b).

<sup>174</sup> Section 62(a)(1).

<sup>175</sup> Rule 462.180(b)(2), Example 2.

<sup>176</sup> Rule 462.180(b)(2), Example 4.

<sup>177</sup> Section 64(d). Original co-owner status is created only if the section 62(a)(2) transfer occurs on or after March 1, 1975.

<sup>178</sup> Section 64(d).

## 1 **COUNTED AND CUMULATED**

2 Most transfers of legal entity interests are *counted and cumulated* for purposes of determining  
3 when more than 50 percent of original co-owner interests have been transferred, including the  
4 following.<sup>179</sup>

- 5 1. Transfers of original co-owner interests between parents and children, and grandparents  
6 and grandchildren because the parent-child and grandparent-grandchild exclusions do not  
7 apply to transfers of legal entity interests.<sup>180</sup> (See Chapter 5 for a discussion of the parent-  
8 child and grandparent-grandparent exclusions.)
- 9 2. Transfers of original co-owner interests between original co-owners.

10 On the other hand, the following transfers are not counted:<sup>181</sup>

- 11 • Interspousal transfers excluded under section 63 and registered domestic partner transfers  
12 excluded under section 62(p).
- 13 • Transfers into or out of qualifying trusts excluded under section 62(d).
- 14 • Proportional transfers excluded under section 62(a)(2) and Rule 462.180(b)(2).
- 15 • Successive transfers of the same original co-owner interest.

### 16 ***Example 9-5***

17 K and B are equal tenants in common in Greenacre. K and B transfer Greenacre to  
18 Corporation Y and in exchange K and B each receive 50 percent of Corporation Y's single  
19 class of voting stock.

20 There is no change in ownership because the transfer is a proportional transfer.<sup>182</sup> However,  
21 K and B become original co-owners.<sup>183</sup> If K transfers 30 percent of Corporation Y voting  
22 stock to C (K's child), and B thereafter transfers 25 percent of Corporation Y voting stock to  
23 D (B's grandchild), there is a change in ownership of Greenacre after B's transfer to D. The  
24 parent-child and grandparent-grandchild exclusions are not applicable to these transfers of  
25 stock. However, if the same transfers were made by K and B to their respective spouses, no  
26 change in ownership would occur.<sup>184</sup>

27 Original co-owner status terminates once the property excluded from reassessment under  
28 section 62(a)(2) is reappraised or the property is transferred from the legal entity to an individual.

## 29 **ACQUISITION BY MAJORITY PARTNER**

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<sup>179</sup> Section 64(d).

<sup>180</sup> Section 63.1(c)(8).

<sup>181</sup> Rule 462.180(d)(2).

<sup>182</sup> Section 62(a)(2).

<sup>183</sup> Section 64(d).

<sup>184</sup> See Rule 462.180(d)(2), Example 8.

1 If a majority partner in a partnership (who owns more than 50 percent of the partnership  
 2 ownership interests) acquires all of the remaining partnership ownership interests or otherwise  
 3 becomes the sole partner (for example, upon the withdrawal from the partnership of all other  
 4 partners), the transfer of the minority interests to the majority partner is not a change in  
 5 ownership of the partnership's real property. However, the step transaction doctrine may apply.  
 6 (See Chapter 10 for a discussion of the step transaction doctrine.) This specific exclusion applies  
 7 to transfers occurring on or after January 1, 1996.<sup>185</sup>

## 8 **OTHER EXCLUSIONS INVOLVING TRANSFERS OF LEGAL ENTITY INTERESTS**

### 9 **INTERSPOUSAL AND REGISTERED DOMESTIC PARTNER EXCLUSIONS**

10 A change in ownership does not include any transfer of real property or legal entity interests  
 11 solely between spouses<sup>186</sup> or registered domestic partners.<sup>187</sup> Thus, if a spouse or registered  
 12 domestic partner acquires control of an entity due to the transfer of entity ownership interests  
 13 from his or her respective spouse or registered domestic partner, a change in control does not  
 14 occur.<sup>188</sup> (See Chapter 3 for a discussion of interspousal and registered domestic partner  
 15 exclusions.)

#### 16 ***Example 9-6***

17 The single class of voting stock of Corporation X is owned 50 percent by H, 25 percent by  
 18 his wife W, and 25 percent by his brother B. H acquires W's 25 percent interest, thereby  
 19 acquiring 75 percent ownership of the Corporation X stock.

20 Even though H obtained control of Corporation X, there is no change in control because the  
 21 interspousal exclusion does not count H's acquisition of W's shares.

22 For purposes of change in ownership, a spouse's or registered domestic partner's ownership  
 23 interest in an entity is not attributable to the other party. Furthermore, when entity interests are  
 24 held as community property, each spouse or registered domestic partner owns one-half of the  
 25 community property interest. (See Chapter 3 for a discussion of community property.)

#### 26 ***Example 9-7***

27 X owns a 48 percent interest in the capital and profits of an LLC as community property with  
 28 B, her registered domestic partner. B purchases a 10 percent membership interest in the  
 29 capital and profits of the LLC from C and this newly acquired 10 percent interest is also held  
 30 as community property. Together, X and B own 58 percent of the LLC membership interests  
 31 as community property.

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<sup>185</sup> Section 64(c)(2).

<sup>186</sup> Section 63.

<sup>187</sup> Section 62(p).

<sup>188</sup> Rule 462.220(a), (b), and (c).

1 Since the community property interests of X and B are considered for property tax purposes  
 2 as one-half owned by each of X and B, each are considered to own one-half of 58 percent (29  
 3 percent) of the LLC membership interests. Since neither has acquired more than 50 percent  
 4 of the LLC membership interests, there is no change in control of the LLC, and therefore no  
 5 change in ownership of property owned by the LLC.

## 6 OTHER EXCLUSIONS FOR LEGAL ENTITIES

7 The merging of two corporations or other entities results in a change in ownership of property  
 8 owned by the merged (disappearing) corporation, unless an exclusion applies.

### 9 AFFILIATED GROUP EXCLUSIONS

10 The following two types of reorganizations are not a change in ownership:

- 11 • A corporate reorganization where all of the corporations involved are members of an  
 12 affiliated group (and that qualifies as a reorganization under section 368 of the Internal  
 13 Revenue Code and is accepted as a nontaxable event by California statutes).
- 14 • Any transfer of real property or entity interests among members of an affiliated group.<sup>189</sup>

15 *Affiliated group* means one or more chains of corporations connected through stock ownership  
 16 with a common parent corporation if both of the following conditions are met:

- 17 • The voting stock of the corporation making the transfer and the voting stock of the  
 18 transferee corporation are each owned 100 percent by a corporation related by voting  
 19 stock ownership to a common parent; and
- 20 • The common parent corporation directly owns 100 percent of the voting stock of at least  
 21 one corporation in the chain(s) of related corporations.<sup>190</sup>

22 For the reorganization exclusion, the taxpayer must furnish proof that the transfer meets the  
 23 requirements of section 64(b). By its express language, this exclusion is limited to corporations  
 24 and therefore does not apply to other entities such as LLCs or partnerships.

### 25 NON-AFFILIATED CORPORATIONS

26 If real property is transferred between corporations that are not part of the same affiliated  
 27 group,<sup>191</sup> only the property transferred undergoes a change in ownership.<sup>192</sup>

### 28 STATUTORY MERGERS

29 There is no change in ownership when a statutory merger or conversion occurs when the law of  
 30 the jurisdiction of the converted or surviving entity provides that such entity remains the same

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<sup>189</sup> Section 64(b)(2); Rule 462.180(b)(1); Public Law 92-181; a reorganization of farm credit institutions pursuant to Federal Farm Credit Act of 1971 is also not a change in ownership.

<sup>190</sup> Section 64(b)(1) and (b)(2).

<sup>191</sup> Section 64(d).

<sup>192</sup> Rule 462.180(a).

1 entity or succeeds to the assets of the converting or disappearing entity without other act or  
 2 transfer, and the owners of the converting or disappearing entity maintain the same ownership  
 3 interest of the converted or surviving entity that they held in the converting or disappearing  
 4 entity.

5 The California Corporations Code section 16909 provides that:

- 6 • An entity that converts into another entity is for all purposes the same entity that existed  
 7 before the conversion.
- 8 • When a statutory conversion takes effect, all the rights and property, whether real,  
 9 personal, or mixed, of the converting entity remains vested in the converted entity.

10 Thus, when two legal entities undergo such a statutory merger or conversion, the surviving entity  
 11 takes title to all real property owned by the disappearing entity automatically by operation of  
 12 law. As a consequence, there has been no transfer of real property between legal entities, and  
 13 therefore, no change in ownership. The owners of the surviving entity are not original co-owners  
 14 with respect to the property received from the disappearing entity, except to the extent to which  
 15 they were original co-owners of the disappearing entity.<sup>193</sup>

16 ***Example 9-8***

17 A limited partnership (LP), which owns Blackacre and in which K and B hold equal  
 18 partnership interests, merges with a limited liability company (LLC), in which K and B hold  
 19 equal membership interests, by statutory merger.<sup>194</sup>

20 There is no change in ownership of Blackacre upon the statutory merger because there is no  
 21 transfer of property from LP to LLC.<sup>195</sup> Section 62(a)(2) does not apply. However, if K and B  
 22 were original co-owners in LP, they remain original co-owners in LLC.

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<sup>193</sup> Rule 462.180(d)(4); Corporations Code sections 15611 et seq. (California Revised Limited Partnership Act); Corporations Code sections 16100 et seq. (Revised Uniform Partnership Act of 1994); and Corporations Code sections 17000 et seq. (Beverly-Killea Limited Liability Company Act).

<sup>194</sup> Under the California Revised Limited Partnership Act (California Corporations Code section 15678.1 et seq.) and the Beverly-Killea Limited Liability Company Act (California Corporations Code section 17000 et seq.).

<sup>195</sup> California Corporations Code section 17554.

## CHAPTER 10: STEP TRANSACTION DOCTRINE

The *step transaction doctrine* is applied when a series of transfers are used to transfer real property in order to circumvent the change in ownership laws.<sup>196</sup> The general principle is that whether a transaction is a change in ownership depends upon the substance of a transaction rather than its form.<sup>197</sup> That is, the doctrine focuses on *what really occurred*, after all the steps in a transaction are completed, rather than what happened upon the completion of each step in a transaction.

When the step transaction doctrine applies, the substance of the transaction is viewed as a transfer from the owner(s) of the property prior to the first transfer to the resulting owner(s) after the last transfer. If the step transaction doctrine applies, and such theoretical direct transfer would have resulted in a change in ownership, a county assessor may collapse the steps, treating the entire series of steps as having occurred in one single direct step. As a result, the property would be subject to reassessment, unless an exclusion applies.

In *Shuwa Investments Corp. v. County of Los Angeles*,<sup>198</sup> the California Court of Appeal set forth three tests for determining the application of the step transaction doctrine for property tax purposes:<sup>199</sup>

- *End result test.* Under the end result test, if it appears that a series of transfers were really component parts of a single transaction intended from the beginning to be taken for purposes of reaching the end result, the step transaction doctrine may apply and the intermediate steps may be disregarded.
- *Interdependence test.* Under the interdependence test, if the steps or transfers taken were so interdependent that the legal relations created by one transaction or transfer would have been fruitless (apart from the parties' intention to qualify for an exclusion) without completing the entire series of steps, then the step transaction doctrine may apply and the intermediate steps may be disregarded.
- *Binding commitment test.* Under the binding commitment test, if the structure of the transactions establishes that there is an agreement that once the first step or transfer is taken, the parties are obligated to complete the remainder of the steps, the step transaction doctrine may apply and the intermediate steps may be disregarded.

The determination as to whether the step transaction doctrine should be applied is based upon all of the surrounding facts, including, but not limited to, the timing of the transfers. The same set of facts may meet the criteria for more than one of the three tests set forth above. However, only one test needs to be satisfied for the step transaction doctrine to apply.<sup>200</sup>

<sup>196</sup> *Shuwa Investments Corp. v. County of Los Angeles* (1991) 1 Cal.App.4th 1635, 1648-1649.

<sup>197</sup> *Shuwa, supra*, at p. 1648.

<sup>198</sup> (1991) 1 Cal.App.4th 1635.

<sup>199</sup> *Shuwa, supra.*, at pp. 1650-1653.

<sup>200</sup> *McMillin-BCED/Miramar Ranch North v. County of San Diego* (1995) 31 Cal.App.4th 545, 556.

1 In addition, the existence of a business purpose for any of the transfers does not prevent the step  
 2 transaction doctrine from being applied in a particular situation; however, it may be a factor,  
 3 along with all other facts and circumstances, that should be considered when analyzing the entire  
 4 transaction to determine whether or not the step transaction doctrine should be applied.<sup>201</sup>

5 ***Example 10-1***

6 X and B are 50/50 partners in partnership PS that owns ten parcels of land.

7 Step 1: X and B dissolve PS and distribute all ten parcels to themselves as equal tenants  
 8 in common.

9 Step 2: X transfers his undivided cotenancy interest in parcels 1-5 to B, and B transfers  
 10 his undivided cotenancy interest in parcels 6-10 to X. X ends up with sole ownership of  
 11 parcels 6-10 and B ends up with sole ownership of parcels 1-5.

12 If each step were respected, Step 1 would be excluded as a proportional transfer.<sup>202</sup> Step 2  
 13 would result in a 50 percent reassessment of each parcel.

14 However, if only a single step were taken, such that upon dissolution of PS X received  
 15 parcels 6-10 in liquidation and B received parcels 1-5 in liquidation, a 100 percent change in  
 16 ownership of all ten parcels would occur because a disproportionate transfer between a legal  
 17 entity and an individual is a change in ownership of the entire interests transferred.<sup>203</sup>

18 Thus, the series of steps and the surrounding circumstances should be examined to determine  
 19 whether each step should be respected for property tax purposes, or whether the two steps should  
 20 be considered component parts of the same transaction, the original intent, and ultimate result of  
 21 which were for each partner to acquire 100 percent ownership in five separate parcels.

22 **PARENT-CHILD AND GRANDPARENT-GRANDCHILD EXCLUSIONS**

23 In enacting section 63.1, the Legislature stated its intent that the step transaction doctrine should  
 24 not be applied to collapse steps involving parent-child transfers, including transfers involving  
 25 legal entities. In an uncodified note to section 63.1, the Legislature wrote, in part, that:<sup>204</sup>

26 ...it is the intent of the Legislature that the provisions of Section 63.1 of the  
 27 Revenue and Taxation Code shall be liberally construed in order to carry out the  
 28 intent of Proposition 58 on the November 4, 1986, general election ballot to  
 29 exclude from change in ownership purchases or transfers between parents and  
 30 their children described therein.

<sup>201</sup> *McMillin-BCED/Miramar Ranch North*, *supra*, at pp. 558-559.

<sup>202</sup> Section 62(a)(2).

<sup>203</sup> Section 61(j).

<sup>204</sup> Addressed in Section 2 of Chapter 48 of the Statutes of 1987.



# CHAPTER 11: COMMON INTEREST DEVELOPMENTS

## DEFINITIONS

*Common interest developments* include planned developments, condominiums, community apartments, and stock cooperatives.<sup>207</sup>

Each owner is entitled to occupy a particular unit, and certain areas are owned in common by all owners or by a private owners' association. In community apartment projects,<sup>208</sup> planned developments,<sup>209</sup> and condominiums,<sup>210</sup> ownership of the real property is direct. In stock cooperatives and cooperative housing corporations, membership in the corporation (by ownership of stock or membership interests) is coupled with the exclusive right to possess a portion of the property.<sup>211</sup> For property tax purposes, a *cooperative housing corporation* is a common interest development in which membership in the corporation (by stock ownership) is coupled with the exclusive right to possess a portion of the real property. Other types of real property held in common interest form include shopping centers and industrial parks.

A *time-share* entitles the purchaser to use a specified or unspecified unit of real property for a specified period of time. A time-share purchase that includes a fee interest in real property is known as a *time-share estate*; other time-share interests are known as *time-share uses*.

## REAPPRAISAL OF INTERESTS

When an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred is reappraised.<sup>212</sup> Where separate property interests, such as units or lots in common interest developments, are transferred along with interests in commonly owned areas, then only the unit or lot transferred and the share in the common area reserved as an appurtenance of such unit or lot is reappraised. Any increased taxes are imposed only on the owner of the reappraised unit.<sup>213</sup> An *appurtenance* is defined as:

That which belongs to something else; an adjunct; an appendage. Something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land....

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<sup>207</sup> Civil Code section 1351(c).

<sup>208</sup> Civil Code section 1351(d).

<sup>209</sup> Civil Code section 1351(k).

<sup>210</sup> Civil Code section 1351(f).

<sup>211</sup> Section 61(i).

<sup>212</sup> Section 65.1(a).

<sup>213</sup> Section 65.1(b).

1 A share of a common area is only reappraised on the sale of a separately owned interest when  
 2 there is evidence that the common area or a share is an appurtenance reserved to the separately  
 3 owned interest and is *substantially equal to the value of the fee*.<sup>214</sup>

4 In common interest developments, owners of individual units and lots may or may not be  
 5 separately assessed. Separate assessments are governed by the following provisions:

- 6 • Planned developments—Section 2188.5
- 7 • Condominiums—Sections 2188.3 and 2188.6
- 8 • Community apartment projects or housing cooperatives—Section 2188.7
- 9 • Time-share estates—Section 2188.8

10 Separate assessment of undivided areas is governed by section 2801, et seq.

## 11 **COOPERATIVE HOUSING CORPORATIONS**

12 The transfer of stock in a cooperative housing corporation is a change in ownership, unless the  
 13 corporation meets certain financing criteria and the stock is transferred to the corporation or  
 14 persons who qualify for housing cost assistance based on income. In order to qualify for this  
 15 exclusion, the transfer must meet all of the following conditions:<sup>215</sup>

- 16 • The cooperative was financed under a single mortgage, and that mortgage was insured  
 17 under, or the cooperative was purchased, financed, or assisted by funds from certain  
 18 National Housing Acts or was financed by a direct loan from the California Housing  
 19 Finance Agency;
- 20 • The applicable government insurer or lender approved the regulatory and occupancy  
 21 agreements; and
- 22 • The transfer is to a person or family that qualifies for the purchase by reason of limited  
 23 income.

## 24 **CONDOMINIUM CONVERSIONS**

25 Conversion of an apartment building, housing cooperative, or community apartment to  
 26 condominium ownership is not an automatic change in ownership. Once the conversion is  
 27 completed, however, and each unit is sold for the first time, the transfers from the former  
 28 owner(s) to the purchasers of the condominium units may be excluded from change in  
 29 ownership, depending on the circumstances. (See Chapter 8 for a discussion of partitions and  
 30 condominium conversions.)

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<sup>214</sup> Section 60.

<sup>215</sup> Section 62(i).

1 **Example 11-1**

2 The owners of the Mayflower, a 219-unit owner-owned residential complex, filed a  
3 condominium plan with the county to convert the residential complex to condominiums. No  
4 units were ever sold as a result of the conversion and the owners of the apartments continue  
5 to live there.

6 Upon the filing of the condominium plan, the county assessor mapped the property as a  
7 condominium complex and created 219 individual assessor's parcels. The new parcels were  
8 not subject to change in ownership reassessment.<sup>216</sup>

9 If the property is a typical apartment building and the renters purchase their units, then whether  
10 there is a change in ownership is determined by the length of the lease term remaining at the time  
11 of purchase. The transfer of a lessor's interest in real property subject to a lease with a remaining  
12 term, including renewal options, of less than 35 years is excluded from change in ownership.  
13 There is a change in ownership where the remaining term, including renewal options, is 35 years  
14 or more.<sup>217</sup>

15 If the property is a stock cooperative, there is a change in ownership when the owner sells the  
16 stock representing individual units,<sup>218</sup> unless the property and the purchaser meet the exclusion  
17 criteria set forth in section 62(i).

18 If the project is a community apartment where each tenant owns an undivided interest in the  
19 entire project, there is no change in ownership if the proportional interests of the owners remain  
20 the same before and after the transfer.<sup>219</sup> This is usually accomplished when the persons purchase  
21 the units they occupy.

22 County assessors are prohibited from assigning parcel numbers or making separate assessments  
23 or valuations of previously undivided unit interests unless a subdivision final map or parcel map  
24 has been recorded. If the requirement for a parcel map is waived, the applicant must provide a  
25 copy of the finding made by the appropriate legislative body or advisory agency.<sup>220</sup>

26 **TIME-SHARES**

27 A *time-share* entitles the purchaser to use a specified or unspecified unit of real property for a  
28 particular period of time. There are two categories of time-share interests: time-share estates and  
29 time-share uses.

30 *Time-share interest* is defined to mean and include either of the following:<sup>221</sup>

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<sup>216</sup> Section 62(a)(1).

<sup>217</sup> Section 61(c)(2).

<sup>218</sup> Section 61(i).

<sup>219</sup> Section 62(a).

<sup>220</sup> Section 327.5.

<sup>221</sup> Business and Professions Code section 11212(x).

1 (1) A "time-share estate," which is the right to occupy a time-share property,  
 2 coupled with a freehold estate or an estate for years with a future interest in a  
 3 time-share property or a specified portion thereof.

4 (2) A "time-share use," which is the right to occupy a time-share property, which  
 5 right is neither coupled with a freehold interest, nor coupled with an estate for  
 6 years with a future interest, in a time-share property.

7 Each time-share estate is, for property tax purposes, a separate estate or interest in real  
 8 property.<sup>222</sup> The valuation of time-shares must be limited to the value of the real property  
 9 interests, whether fee or leasehold, and exclude the value of any services and other rights not  
 10 related to real property.<sup>223</sup>

### 11 **TIME-SHARE ESTATE**

12 A *time-share estate* consists of the right to use a time-share unit and an undivided fractional  
 13 ownership of the underlying fee interest in the real property. The duration of the time-share  
 14 interest may be into perpetuity, as in a fee simple co-ownership of a time-share unit, or it may be  
 15 for a limited term, as in a life estate or an estate for years in a time-share unit. The time-share  
 16 estate purchaser receives all the rights inherent in undivided co-ownership of real estate, such as  
 17 the right to sell, lease, or bequeath his or her interest. Fee time-shares may be termed *undivided*  
 18 *interest time-shares* or *interval ownership time-shares* (for example, a tenancy for years plus a  
 19 vested remainder as tenant-in-common with other owners of a time-share unit).

20 Generally, transfer of a time-share estate is a change in ownership that requires the reappraisal of  
 21 the interest transferred, unless another exclusion applies<sup>224</sup> (for example, the  
 22 5 percent/\$10,000,<sup>225</sup> interspousal,<sup>226</sup> or parent-child<sup>227</sup> exclusions).

### 23 **TIME-SHARE USE**

24 Purchasers of *time-share uses* receive only those rights specifically granted to them by the  
 25 developer of the time-share project, which usually means the right to occupy a unit and the  
 26 related time-share premises. The duration of this right may range from 15 years or fewer to as  
 27 long as 99 years; the time-share developer remains the fee owner of the real estate. Time-share  
 28 uses may be referred to as *leasehold interest time-shares*, *vacation licenses*, *club memberships*,  
 29 or *rights to use*.

30 If a contract gives exclusive possession of the premises as against all others, it is considered a  
 31 lease.<sup>228</sup> As with other leases, the transfer of a time-share use having an original term, including

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<sup>222</sup> Business and Professions Code section 11213.

<sup>223</sup> Section 998(a).

<sup>224</sup> Section 65.1(b).

<sup>225</sup> Section 65.1(a).

<sup>226</sup> Section 63.

<sup>227</sup> Section 63.1.

<sup>228</sup> *Cal-Am Corporation v. Department of Real Estate* (1980) 104 Cal.App.3d 453, 457.

- 1 renewal options, of 35 years or more is usually a change in ownership that requires the
- 2 reappraisal of the interest transferred.<sup>229</sup>

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<sup>229</sup> Section 61(c).

## CHAPTER 12: MANUFACTURED HOMES AND MOBILEHOME PARKS

Homes subject to local property taxation under the Manufactured Home Property Tax Law<sup>230</sup> are referred to as manufactured homes and mobilehomes. The Manufactured Home Property Tax Law does not pertain to commercial coaches, factory-built housing, recreational vehicles,<sup>231</sup> or park trailers. It also does not apply to manufactured homes that have been affixed to land on a permanent foundation system and are taxed as real property,<sup>232</sup> or to manufactured homes that are subject to the vehicle license fee.<sup>233</sup>

### CHANGE IN OWNERSHIP OF MANUFACTURED HOMES

When a manufactured home that is subject to local property taxation experiences a change in ownership, the home is reassessed.<sup>234</sup> Most of the same change in ownership provisions apply to manufactured homes as to traditional structures.<sup>235</sup> Base year values are determined for manufactured homes on the dates they change ownership or upon completion of new construction.<sup>236</sup>

A manufactured home may qualify as a principal place of residence for purposes of the parent-child or grandparent-grandchild exclusions<sup>237</sup> and the over 55/disabled persons transfer of base year value exclusion.<sup>238</sup> (See Chapters 5 and 15, respectively, for a discussion of these exclusions.)

### CHANGE IN OWNERSHIP OF MANUFACTURED HOME PARKS

Certain transfers of manufactured home parks are excluded from change in ownership if the park is ultimately purchased by at least 51 percent of the tenants renting the individual spaces of the park.<sup>239</sup> Qualifying conversion to resident ownership under these exclusions permits the residents of the park to retain the base year value of the previous park owner, rather than causing a reassessment of the park to current market value. In some instances, prior to the transfer to the residents directly or to an entity owned by the residents, there is an interim transfer of the park to a non-resident-owned entity. This entity helps facilitate the purchase and conversion to a resident-owned park.

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<sup>230</sup> Section 5800 et seq.

<sup>231</sup> Section 5801(a).

<sup>232</sup> Section 5801(b)(1).

<sup>233</sup> See Assessors' Handbook Section 511, *Assessment of Manufactured Homes and Parks*.

<sup>234</sup> Section 5801(b)(1).

<sup>235</sup> Section 5814.

<sup>236</sup> Section 5802.

<sup>237</sup> Section 63.1.

<sup>238</sup> Section 69.5.

<sup>239</sup> Sections 62.1 and 62.2.

1 There are three change in ownership exclusions with respect to transfers of parks.<sup>240</sup>

- 2 1. Transfers to resident-owned entities
- 3 2. Transfers of rental spaces to the residents
- 4 3. Transfers to non-resident-owned entities

#### 5 **TRANSFERS TO RESIDENT-OWNED ENTITIES**

6 Section 62.1(a)(1) excludes from change in ownership a transfer of a manufactured home park to  
7 an entity formed by the tenants of the park, and requires that the tenants who were renting at  
8 least 51 percent of the spaces in the park prior to the transfer participate in the transaction  
9 through the cumulative ownership of at least 51 percent of the voting stock, or other ownership  
10 or membership interests, of the entity which acquires the park.

11 For transfers on or after January 1, 1998, the exclusion is available even if the resident-owned  
12 entity fails to *initially* attain the required resident participation level of 51 percent. In such  
13 instances, the entity has a period of up to one year after the date of the transfer to attain the  
14 required 51 percent participation level. Additionally, during the one-year period, transfers of  
15 ownership interests from the resident-owned entity to the individual space owners are excluded  
16 from reappraisal.

17 However, if the participation level of at least 51 percent is not attained within the one-year  
18 period, the county assessor is required to reappraise the park, as of the date of the transfer, and  
19 levy escape assessments following the transfer.

20 Additionally, any transfer of ownership interests from the resident-owned entity to individual  
21 space owners after the one-year period are not excluded from change in ownership, even if the  
22 transfer is to an individual who was renting a space in the park prior to the transfer of the park to  
23 the resident-owned entity. Such transfers are subject to a change in ownership of a pro rata  
24 portion of the real property of the park.

#### 25 **TRANSFERS OF RENTAL SPACES TO THE RESIDENTS**

26 Section 62.1(a)(2) provides an exclusion from change in ownership for the transfer, on or after  
27 January 1, 1985, of rental spaces in a park to the residents of the rental spaces, provided that:

- 28 • At least 51 percent of the rental spaces are purchased by the individual tenants renting  
29 their spaces prior to purchase;
- 30 • The rental park has been in operation for five years or more; and

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<sup>240</sup> Sections 62.1 and 62.2.

- The individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization<sup>241</sup> to operate and maintain the park.

To qualify for this exclusion, it is not necessary that all of the transfers of rental spaces to the individual residents occur on the same day. The required 51 percent participation level may be accumulated, but must occur within the one-year period that the residents have to form the resident organization. However, even after the one-year period, as long as the 51 percent requirement has been met, any purchase of a space by an individual tenant renting his or her space in the park is excluded from change in ownership.

If all the conditions<sup>242</sup> are not satisfied, the county assessor is required to reappraise the properties, as of the date of the transfers, and levy escape assessments for the spaces that were transferred.

### **TRANSFERS TO NON-RESIDENT-OWNED ENTITIES**

Section 62.2 allows an exclusion from change in ownership for certain transfers of a manufactured home park to an entity which is not formed by the residents (for example, nonprofit corporation, stock cooperative corporation, tenant-in-common ownership group, or a governmental entity). The exclusion is available for a temporary *transition* period to facilitate the ultimate transfer of the park to permanent resident ownership under one of the provisions of section 62.1.

For parks transferred between January 1, 1989 and January 1, 1993, the transition period was 18 months.<sup>243</sup> In general, for parks transferred after 1993, the transition period within which the section 62.2 requirements must be complied with is 36 months.<sup>244</sup>

Within the transition period, transfer to either a resident-owned entity<sup>245</sup> or transfer to at least 51 percent of the tenants<sup>246</sup> must occur or the exclusion is relinquished. If the county assessor is notified in writing at the time the transferee files the change in ownership statement that the transferee intends to qualify under section 62.2, the park will not be reappraised pending satisfaction of all relevant requirements. If all the requirements of section 62.2 are not met, the county assessor is required to reappraise the park, as of the date of the transfer, and levy escape and supplemental assessments.

### **DETERMINATION OF PARTICIPATION LEVEL**

To qualify for an exclusion from change in ownership under section 62.1(a)(2), at least 51 percent of the rental spaces must be purchased by individual tenants renting their spaces prior to transfer, and to qualify for exclusion under section 62.1(a)(1), the individual tenants who were

<sup>241</sup> Health and Safety Code section 50781(l).

<sup>242</sup> Section 62.1; Health and Safety Code section 50781.

<sup>243</sup> Section 62.2(a)(1).

<sup>244</sup> Section 62.2(a)(2).

<sup>245</sup> Section 62.1(a)(1).

<sup>246</sup> Section 62.1(a)(2).

1 renting at least 51 percent of the spaces prior to the transfer must participate as owners of the  
2 resident-formed organization.

3 Likewise, to qualify for an exclusion from change in ownership under section 62.2, at least 51  
4 percent of the park rental spaces must be transferred to the individual tenants of those spaces, or  
5 the tenants of 51 percent of the spaces must participate as owners, within the specified time.

6 In determining the required participation level for a park, section 62.1 requires that 51 percent of  
7 the rental spaces, or the tenants of 51 percent of the rental spaces, meaning *all of the rental*  
8 *spaces in the park*, must be purchased by the individual tenants renting their spaces prior to the  
9 purchase, or must participate as owners.

## 10 **CHANGE IN OWNERSHIP OF SPACES**

11 Generally, once a transfer of a manufactured home park has been excluded from change in  
12 ownership pursuant to one of the provisions of section 62.1, subsequent transfers of individual  
13 ownership interests are not excluded from change in ownership and are subject to reappraisal.  
14 With respect to transfers excluded by section 62.1(a)(2), since the individual residents then own  
15 their lots or spaces, subsequent transfers are treated as changes in ownership just as any other  
16 transfer of an interest in a planned unit development, condominium, or subdivision.

17 With respect to transfers excluded by section 62.1(a)(1), there is an exception to the general rule  
18 that transfers of interests in legal entities do not ordinarily constitute changes in ownership of the  
19 real property owned by the legal entity.<sup>247</sup> Section 62.1(b)(1) provides, in part:

20 If the transfer of a mobilehome park has been excluded from a change in  
21 ownership pursuant to paragraph (1) of subdivision (a) and the park has not been  
22 converted to condominium, stock cooperative ownership, or limited equity  
23 cooperative ownership, any transfer on or after January 1, 1989, of shares of the  
24 voting stock of, or other ownership or membership interests in, the entity which  
25 acquired the park in accordance with paragraph (1) of subdivision (a) shall be a  
26 change in ownership of a pro rata portion of the real property of the park unless  
27 the transfer is for the purpose of converting the park to condominium, stock  
28 cooperative ownership, or limited equity cooperative ownership or is excluded  
29 from change in ownership by Section 62, 63, or 63.1.

30 Commonly, a park is acquired by a non-profit corporation formed by the former tenants.  
31 Subsequent purchasers of the manufactured homes also pay an established price for a share in the  
32 corporation, where each share gives its holder the right to occupy a specific space in the park. A  
33 share in the corporation usually may be transferred only in combination with the purchase of a  
34 manufactured home. The purchase price for a share may represent consideration for both the  
35 manufactured home and the fractional interest in the corporation.

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<sup>247</sup> Section 64.

## 1 PRO RATA PORTION

2 The transfer of an ownership interest in the entity that acquired a park is a change in ownership  
3 of a pro rata portion of the real property of the park. A *pro rata portion of the real property* is  
4 defined to mean the total real property of the park, multiplied by the fractional interest in the  
5 park that is conveyed by the transferred share of stock or other ownership interest.<sup>248</sup> In simplistic  
6 terms, if there are 100 shares of outstanding stock, issued or unissued, a transfer of one share  
7 gives rise to a reassessment of a 1/100<sup>th</sup> interest of the real property of the park.

8 Transfer of a pro rata portion is similar to a fractional change in ownership of real property.  
9 Upon the transfer of any ownership interest in the park entity of either an originally issued share  
10 or of an unissued share to a new participant, a change in ownership of a pro rata portion of the  
11 real property of the park has occurred. A new base year value is established for that portion of  
12 the real property, the prior base year value(s) is adjusted, and appropriate supplemental  
13 assessments should be processed.

14 The total of all pro rata assessments is issued to the park as the owner of the real property. Any  
15 pro rata portion(s) of real property which changed ownership pursuant to section 62.1(b) may be  
16 separately assessed.<sup>249</sup> Initially, a written request must be made by the governing board of the  
17 park.<sup>250</sup> However, whenever a portion of the real property of a park becomes subject to separate  
18 assessment, it shall continue to be subject to separate assessment in subsequent fiscal years, and  
19 once a request for separate assessment is made, it is binding on all the future owners of the  
20 voting stock or other ownership or membership interests in the entity which owns the park.

21 As with any property type, location within a park can make a difference in the value of the space  
22 being transferred. If the purchase price was negotiated in the open market at arm's length, then  
23 the county assessor should enroll the entire amount in the combined assessments of the  
24 manufactured home and the underlying interest in the park. The most reasonable way of  
25 allocating the value between the two assessments would be to apply the land residual approach to  
26 extract from the purchase price the value of the manufactured home, using one of the recognized  
27 value guides,<sup>251</sup> and then assign the remainder of the purchase price to the interest in the park.  
28 This method of allocation will ensure that the market value attributable to the location of the  
29 space being transferred is recognized.

## 30 TRANSFERS OF MANUFACTURED HOME PARK SPACES IN ENTITIES FORMED PRIOR TO 31 1985

32 Any transfer on or after January 1, 1989 of ownership interests in a park is a change in  
33 ownership of a pro rata portion of the real property of the park if the transfer of the mobilehome  
34 park has been excluded from a change in ownership pursuant to section 62.1(a)(1).<sup>252</sup>

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<sup>248</sup> Section 62.1(b)(2).

<sup>249</sup> Sections 62.1(b)(3) and 2188.10.

<sup>250</sup> Section 2188.10.

<sup>251</sup> Section 5803.

<sup>252</sup> Section 62.1(b)(1).

1 Section 62.1(a)(1),<sup>253</sup> by its terms, applies only to transfers of parks on or after January 1, 1985.  
2 As such, only transfers of parks after that date qualify for the exclusion and trigger the pro rata  
3 change in ownership requirement.

4 Accordingly, for parks that transferred to entities prior to 1985, the provisions of section 62.1  
5 providing for pro rata changes in ownership do not apply. Since such an owner is by definition a  
6 legal entity, the statutory provisions applicable to transfers of interests in legal entities<sup>254</sup>  
7 generally would govern.

8 With certain exceptions, the purchase or transfer of ownership interests in legal entities are not  
9 deemed to constitute a transfer of the real property of the legal entity.<sup>255</sup> Therefore, unless one of  
10 the enumerated exceptions described in section 64(c) or (d) occurs (such as one person or entity  
11 obtains a majority interest in the park entity), the transfers of interests in the park entity would  
12 ordinarily not constitute changes in ownership or precipitate reassessments of the real properties  
13 of the entity.

14 However, there may be instances, analyzed on a case-by-case basis, where the transfer of an  
15 ownership interest in such legal entity is accompanied by the transfer of a present interest in real  
16 property, including the beneficial use thereof, the present value of which is substantially equal to  
17 the value of the fee interest.<sup>256</sup> This could occur, for example, where there is transferred a  
18 specific right to occupy a specific parcel of real property, coupled with the right to sell or  
19 otherwise transfer that occupancy right. Such a transfer would meet the definition of change in  
20 ownership set forth in section 60.

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<sup>253</sup> Enacted January 1, 1985.

<sup>254</sup> Section 64.

<sup>255</sup> Section 64(a).

<sup>256</sup> Section 60.

## CHAPTER 13: MISCELLANEOUS ISSUES

This chapter presents a brief overview of less common change in ownership issues.

### EMPLOYEE BENEFIT PLANS

Section 66 excludes from change in ownership the following:

(a) The creation, vesting, transfer, distribution or termination of a participant's or beneficiary's interest in an employee benefit plan.

(b) Any contribution of real property to an employee benefit plan.

(c) Any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock of the employer corporation.

The terms *employer*, *employee benefit plan*, *participant*, and *beneficiary* are as defined under federal law in the Employee Retirement Income Security Act of 1974.<sup>257</sup>

#### *Example 13-1*

A corporation transferred real property that it owned into an employee retirement plan. The corporation was wholly owned by two individuals, each having a 50 percent interest in the corporation. The two shareholders were the only beneficiaries of the retirement plan and held equal interests in it.

The transfer would be excluded from reappraisal.<sup>258</sup>

Rule 462.240(d) further explains that a change in ownership does not include:

Any contribution of real property to an employee benefit plan, any acquisition by an employee benefit plan of the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect ownership or control of more than 50 percent of the voting stock in the employer corporation, or the creation, vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan....(The term "any contribution" as used in Section 66(b) of the Revenue and Taxation Code and this section means only those contributions of real property made to an employee benefit plan by an employer, a group of employees, or both, without any consideration.)

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<sup>257</sup> Section 66.

<sup>258</sup> Section 66.

1 **Example 13-2**

2 Using the information in Example 13-1, five years later, the corporation's employee  
3 retirement plan transferred the real property by two grant deeds to the trustees of two  
4 Individual Retirement Accounts (IRA's) held by the two shareholders.

5 The transfer to IRA's is not excluded from change in ownership because an employee benefit  
6 plan must be established or maintained by an employer or an employee organization.<sup>259</sup>  
7 IRA's, however, are established and maintained by an individual employee. Accordingly, an  
8 IRA is not an employee benefit plan and transfers to an IRA would not be excluded transfers.

9 The distribution of separate parcels of real property from an employee benefit plan to its  
10 participants is excluded from change in ownership as long as the value of the parcels or property  
11 interests distributed to each of the plan participants represents the present value of the interests  
12 each held in the benefit plan. Since there is no proportionality of ownership interest  
13 requirement,<sup>260</sup> the same percentage or ownership interests in each and every piece of the  
14 property before and after distribution is not required.

15 Section 66(a) only requires that any such distribution from the benefit plan must constitute the  
16 participant's or beneficiary's interests in the benefit plan. Therefore, to be eligible for the  
17 exclusion, the benefit plan must distribute to a participant property or assets representing no  
18 more than the present value of that participant's interest in the plan. For example, if ten parcels  
19 distributed to X represent the present value of his interests in the benefit plan, and three parcels  
20 distributed to B represent the present value of his interests in the plan, then the transfers would  
21 qualify for the section 66 exclusion.

22 **FORECLOSURE**

23 *Foreclosure* is a procedure by which the beneficiary of a deed of trust or other promissory note  
24 elects to sell the property if the buyer defaults on the terms of the note. Common foreclosure  
25 actions include the following:

- 26
- A deed of trust may be foreclosed by the trustee's sale of the property.
  - 27 • A mortgage or deed of trust may be foreclosed by judicial action.
  - 28 • The trustor under a deed of trust (the property owner who is obligated on the loan) may  
29 transfer title to the property to the lender in lieu of the lender undertaking the foreclosure  
30 action.

31 The date of change of ownership depends on the specific circumstances of the foreclosure action.

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<sup>259</sup> 29 U.S.C.A section 1002(4).

<sup>260</sup> Section 66.

- 1 • If a property is sold at a trustee's sale, a change in ownership occurs on the date the right  
2 of possession vests in a new purchaser<sup>261</sup> who is a third party (including a lender or the  
3 seller of a seller-financed property). However, if the purchaser at the trustee's sale is the  
4 foreclosed-upon owner, there is no change in ownership because beneficial ownership  
5 has not changed hands during the foreclosure process, even though legal title to the  
6 property may have changed.
- 7 • If the foreclosure involves a redemption period (most commonly, judicial foreclosure  
8 actions), the change in ownership occurs after the period of redemption has passed and  
9 the property has not been redeemed, or upon redemption when title vests in the original  
10 debtor's successor in interest.<sup>262</sup>
- 11 • If a property owner transfer title to the lender in lieu of a foreclosure action, the transfer  
12 is a change in ownership, and the date of the transfer is the date of change of  
13 ownership.<sup>263</sup>

## AIR RIGHTS

14  
15 Civil Code section 659 defines *land* as:

16 ...the material of the earth, whatever may be the ingredients of which it is  
17 composed, whether soil, rock, or other substance, and includes free or occupied  
18 space for an indefinite distance upwards as well as downwards, subject to  
19 limitations upon the use of airspace imposed, and rights in the use of airspace  
20 granted, by law.

21 *Air rights* are classified as land.<sup>264</sup> Accordingly, since air rights which are located above the land  
22 surface that establishes their legal description are part of land, and thus real property, they are  
23 subject to change in ownership provisions as all other real property. Similarly, transferable  
24 development rights are taxable real property interests which, when conveyed, result in a change  
25 in ownership requiring reappraisal of the development rights.<sup>265</sup> In *Mitsui Fudosan v.*  
26 *Los Angeles County*<sup>266</sup> the court concluded:

27 ...that transferable development rights (TDR) "are appropriately viewed as one of  
28 the fractional interests in the complex bundle of rights arising from the ownership  
29 of land," in view of the fact that the "donors" of the TDRs received valuable  
30 consideration and covenants restricting development of the donor parcels were  
31 recorded. Therefore, a transfer of TDRs was a change in ownership of the TDRs,

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<sup>261</sup> Rule 462.120(b).

<sup>262</sup> Rule 462.120(a)(1) and (a)(2).

<sup>263</sup> Rules 462.120(c) and 462.260(a)(1).

<sup>264</sup> Rule 124(b)(1).

<sup>265</sup> In *Mitsui Fudosan v. Los Angeles County* (1991) 219 Cal.App.3d 525.

<sup>266</sup> *Mitsui Fudosan* at p.528.

1 resulting in their reappraisal, while the assessed value of the donor parcels should  
2 be reduced commensurately.

### 3 **MINERAL PROPERTIES**

4 Transfers of mineral property leases or properties subject to such leases are not subject to the  
5 provisions of section 61(c) which places the primary economic ownership in the lessee if the  
6 term of the lease is 35 years or more. Rather, section 61(a) governs the transfer of mineral rights  
7 exclusively and states that a change in ownership includes:

8 The creation, renewal, sublease, assignment or other transfer of the right to  
9 produce or extract oil, gas, or other minerals, regardless of the period during  
10 which the right may be exercised....

11 Thus, even if a mineral property lease is for only one year or less, the creation or transfer of that  
12 lease is a change in ownership. Ownership changes of mineral properties must be studied  
13 carefully in order to determine the percentage of the property interest transferred or conveyed.<sup>267</sup>

### 14 **TAXABLE POSSESSORY INTERESTS**

15 A *taxable possessory interest* is defined as an interest in real property that exists as a result of  
16 possession, exclusive use, or a right to possession or exclusive use of land and/or improvements  
17 unaccompanied by ownership of a fee simple or life estate in nontaxable, publicly owned real  
18 property.<sup>268</sup> The possession must be:

- 19 • Independent—The use is independent when the private party's authority and control is  
20 separate from the public owner, and use of the property or improvements by a private  
21 party or parties is more than a mere agency.
- 22 • Durable—A possessory interest is durable when there is a reasonable certainty that the  
23 use and enjoyment of the property will continue for a determinable period of time.
- 24 • Exclusive—Exclusive use of a property gives the private party the right to take legal  
25 action against anyone who interferes with the enjoyment of the beneficial use conferred  
26 by the agreement. This does not mean that there cannot be concurrent use of the property  
27 by more than one possessory interest owner (for example, two persons who are making  
28 qualitatively different uses of the same property each have an exclusive possessory  
29 interest).

30 Thus, a taxable possessory interest exists when any person or entity has a durable, exclusive,  
31 independent right to use tax-exempt, government-owned property for private benefit. A  
32 possessory interest may be created by contract, lease, concession agreement, permit, license, or

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<sup>267</sup> See Assessors' Handbook Section 560, *Assessment of Mining Properties*.

<sup>268</sup> Section 107; Rule 20(a).

1 simple occupation.<sup>269</sup> Taxpayers are liable for payment of any property tax levied against such  
2 interests.<sup>270</sup>

### 3 **CHANGE IN OWNERSHIP OF TAXABLE POSSESSORY INTERESTS**

4 The legal provisions that relate to a change in ownership of a taxable possessory interest are  
5 contained in sections 61 and 62 and Property Tax Rule 462.080. The following table summarizes  
6 the taxable possessory interest change in ownership provisions.

CONSTITUTES A CHANGE IN OWNERSHIP	EXCLUDED FROM A CHANGE IN OWNERSHIP
The creation, renewal, extension, or assignment of a taxable possessory interest for any term, with the following exception.	A renewal or extension does not constitute a change in ownership until the end of the reasonably anticipated term of possession used by the county assessor to establish the existing base year value of the interest. [Section 61(b)(1)]
	The creation of an interest by reservation in an instrument that deeds the interest to a tax exempt government entity, regardless of whether the interest created is an estate for years or an estate for life. [Property Tax Rule 462.080(b)(1)]
The sublease of a taxable possessory interest for a contract term (including any renewal options) that exceeds half the length of the remaining contract term (including any renewal options) of the master taxable possessory interest. [Section 61(d)(1)(A)]	The sublease of a taxable possessory interest for a term (including renewal options) that does not exceed half the length of the remaining contract term of the master taxable possessory interest (including renewal options). [Property Tax Rule 462.080(b)(3)]
The termination of a sublease of a taxable possessory interest with an original contract term (including any renewal options) that exceeds half the length of the remaining contract term (including any renewal options) of the master taxable possessory interest when the sublease was entered into. [Section 61(d)(1)(B)]	The termination of a sublease of a taxable possessory interest with an original contract term (including renewal options) that did not exceed half the length of the remaining contract term of the master taxable possessory interest (including renewal options) when the sublease was entered into. [Property Tax Rule 462.080(b)(4)]
The transfer of a sublessee's interest in a taxable possessory interest with a remaining contract term (including any renewal options) that exceeds half the remaining contract term of the master taxable possessory interest. [Section 61(d)(1)(C)]	The transfer of a sublessee's interest in a taxable possessory interest, with a remaining term (including any renewal options) that does not exceed half of the remaining contract term of the master taxable possessory interest. [Property Tax Rule 462.080(b)(5)]

<sup>269</sup> Rule 462.080(b)(1).

<sup>270</sup> See Assessors' Handbook Section 510, *Assessment of Taxable Possessory Interests*.

CONSTITUTES A CHANGE IN OWNERSHIP	EXCLUDED FROM A CHANGE IN OWNERSHIP
The transfer of a taxable possessory interest subject to a sublease with a remaining contract term (including any renewal options) that does not exceed half the contract term of the master taxable possessory interest. [Property Tax Rule 61(d)(2)]	The transfer of a taxable possessory interest subject to a sublease with a remaining contract term (including any renewal options) that exceeds half the length of the remaining contract term of the master taxable possessory interest (including any renewal options). [Property Tax Rule 462.080(b)(6); section 62(o)]

## 1    **SUBLEASES OF TAXABLE POSSESSORY INTERESTS**

2    Most of the above provisions pertain to the change in ownership implications of a sublease of a  
3    taxable possessory interest. The sublease provisions regarding taxable possessory interests are  
4    similar to those contained elsewhere in statute that pertain to changes in ownership concerning  
5    leasehold interests in privately owned real property. The guiding principle behind them is that a  
6    change in ownership occurs when the primary economic interest in a property is transferred. In  
7    the case of privately owned property held in fee simple, this is deemed to occur with the creation  
8    of a leasehold interest of 35 years or more. In the case of a taxable possessory interest, this is  
9    deemed to occur with the creation of subleasehold interest in the taxable possessory interest that  
10   is greater than half the remaining term of the taxable possessory interest itself.<sup>271</sup>

11   For example, for privately owned real property held in fee, a change in ownership occurs when a  
12   lease of 35 years or more is created; but a change in ownership does not occur when there is a  
13   transfer of an underlying fee interest that is subject to a leasehold interest of 35 years or more. In  
14   the first case, the primary economic interest in the property transfers; in the second, it does not.

15   Similarly, a change in ownership occurs when a sublease of a taxable possessory interest is  
16   created that has a contract term that is greater than half the remaining term of the taxable  
17   possessory interest; but a change in ownership does not occur when there is a transfer of the  
18   taxable possessory interest subject to a subleasehold interest with a contract term greater than  
19   half the remaining term of the taxable possessory interest.

20   When a change in ownership of a taxable possessory interest occurs because of a sublease  
21   transaction, and the sublease involves a portion rather than all of the taxable possessory interest,  
22   only the subleased portion of the taxable possessory interest changes ownership, not the entire  
23   taxable possessory interest. That is, only a portion of the existing taxable possessory interest  
24   should receive a new base year value. In this case, establishing the new assessed value of the  
25   subject taxable possessory interest involves removing the portion of its base year value that  
26   corresponds to the newly subleased portion and adding the value of the newly subleased portion  
27   that results from the change in ownership.

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<sup>271</sup> Section 61(d)(1).

## BASE YEAR VALUE TRANSFERS

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Under certain circumstances, an eligible claimant may transfer the base year value from an original property to a newly acquired or constructed replacement property. The effect of an eligible base year value transfer is that the replacement property is assessed at the adjusted base year value of the claimant's original property rather than establishing a new base year value based on the current fair market value as required under section 110.1. (See Chapter 1 for a discussion of reassessment under Proposition 13.)

This handbook discusses the following base year value transfers:

- An owner of a principal residence original property (or claimant's spouse who resides with claimant) is over the age of 55 or is severely and permanently disabled. (See Chapter 14 for a discussion of base year value transfers for persons over age 55.)
- An original property is substantially damaged or destroyed. (See Chapter 15 for a discussion of base year value transfers for property damaged or destroyed by a disaster.)
- An original property is taken by governmental action such as eminent domain. (See Chapter 16 for a discussion of base year value transfers for property taken by governmental action.)
- An original property was environmentally contaminated. (See Chapter 17 for a discussion of base year value transfers for contaminated property.)

# CHAPTER 14: OVER 55 OR SEVERELY AND PERMANENTLY DISABLED PERSONS

## OVERVIEW

Propositions 60, 90, and 110 amended section 2 of article XIII A of the California Constitution to allow persons who are over the age of 55 or are severely and permanently disabled to sell their principal residence (original property) and transfer its base year value to a qualifying principal residence (replacement dwelling). A *principal residence* is the true, fixed, and permanent home and principal establishment where one intends to return.

These propositions were implemented by section 69.5, which allows an eligible claimant to transfer the base year value of an original property to a replacement dwelling if, within specified time periods, all of the following requirements are satisfied:

1. The original property is sold;
2. The replacement dwelling is purchased or newly constructed;
3. The replacement dwelling is located in the same county as the original property or in a county accepting base year value transfers from other counties;
4. The replacement dwelling is of equal or lesser value than the original property; and
5. A claim is filed with the assessor of the county where the replacement dwelling is located.

## ELIGIBLE CLAIMANT

At the time that an original property is sold, the *claimant*, or the claimant's spouse who resides with the claimant, must be at least 55 years of age or must be severely and permanently disabled.<sup>272</sup> If a spouse of a person claiming the property tax relief is a record owner of a replacement dwelling, that spouse is also considered to be a claimant.<sup>273</sup>

A *person* means any individual and does not include a partnership, association, corporation, company, or other legal entity or organization of any kind.<sup>274</sup> If a legal entity wholly owns an original property or acquires a replacement dwelling, relief under section 69.5 is unavailable. So long as the claimant is a co-owner or sole owner of the original property and the replacement dwelling, the claimant may be eligible for relief.

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<sup>272</sup> Section 69.5(g)(9).

<sup>273</sup> Section 69.5(g)(9).

<sup>274</sup> Section 69.5(g)(11).

1 Additionally, a person may qualify as a claimant if he or she is the present beneficial owner of an  
 2 original property and the replacement dwelling held in trust. (See Chapter 4 for a discussion of  
 3 trusts.)

#### 4 **ONE-TIME BENEFIT**

5 In general, each claimant is eligible to transfer his or her base year value only once.<sup>275</sup> If a  
 6 claimant makes a transfer under section 69.5 and his spouse is the record owner of the  
 7 replacement dwelling, she will also be a claimant who has previously received relief under this  
 8 section. As a consequence, she would also be prevented from making a future claim.

9 There is one exception to this general rule of a one-time benefit. If a claimant or his or her  
 10 spouse becomes severely and permanently disabled after having already used the one-time  
 11 benefit on the basis of age (being 55 or over), the claimant is eligible for a second base year  
 12 value transfer for severely and permanently disabled persons.<sup>276</sup>

#### 13 **REGISTERED DOMESTIC PARTNERS**

14 Registered domestic partners are not married persons and therefore each partner is an individual  
 15 claimant under section 69.5. Because of this, an unqualified registered domestic partner cannot  
 16 make a claim based on the eligibility of his or her registered domestic partner who is qualified to  
 17 make a claim. For example, a registered domestic partner, who is not yet aged 55, may not make  
 18 a claim based on the fact that his or registered domestic partner is over age 55.

#### 19 **SEVERELY AND PERMANENTLY DISABLED REQUIREMENT**

20 A base year value may be transferred if a claimant or his or her spouse who resides with the  
 21 claimant is severely and permanently disabled. Section 74.3(b) provides that a:

22       ... "severely and permanently disabled person" is any person who has a physical  
 23 disability or impairment, whether from birth or by reason of accident or disease,  
 24 that results in a functional limitation as to employment or substantially limits one  
 25 or more major life activities of that person, and that has been diagnosed as  
 26 permanently affecting the person's ability to function, including, but not limited  
 27 to, any disability or impairment that affects sight, speech, hearing, or the use of  
 28 any limbs.

#### 29 **OWNERSHIP REQUIREMENTS**

30 To qualify for relief under section 69.5, a claimant must be both an owner or co-owner and a  
 31 resident of both the original property and the replacement dwelling.<sup>277</sup>

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<sup>275</sup> Section 69.5(b)(7).

<sup>276</sup> Section 69.5(b)(7).

<sup>277</sup> Section 69.5(b)(1) [original property] and (b)(4) [replacement dwelling].

1 The original property must be eligible for the homeowners' or disabled veterans' exemption as a  
2 result of the claimant's ownership and use of the property as a principal residence, either:<sup>278</sup>

- 3 1. At the time of the sale;
- 4 2. At the time when the original property was substantially damaged or destroyed; or
- 5 3. Within two years of the purchase or new construction of a replacement dwelling.

6 Unless otherwise indicated, references in this chapter to *substantial damage* or *destruction* of an  
7 original property refers to damage or destruction that occurred as a result of misfortune or  
8 calamity as provided in section 69.5(b)(2).

9 The replacement dwelling must be eligible for the homeowners' or disabled veterans' exemption  
10 as a result of the claimant's ownership and use of the property as a principal place of residence at  
11 the time that the claim is filed.<sup>279</sup>

12 A homeowners' or disabled veterans' exemption does not need to actually have been granted. The  
13 claimant must only prove that the property is eligible for such exemption. As long as the  
14 property owner can prove that the original property and the replacement dwelling were owned  
15 and occupied as a principal place of residence, the base year value of the original property may  
16 be transferred to the replacement dwelling (assuming all other requirements are met).

## 17 **ELIGIBLE PROPERTY**

18 *An original property and replacement dwelling* are defined as:<sup>280</sup>

- 19 • A building, structure, or other shelter constituting a place of abode, whether real property  
20 or personal property;
- 21 • Owned and occupied by a claimant as his principal place of residence; and
- 22 • Any land owned by the claimant on which the building, structure, or other shelter is  
23 situated, but only "that area of reasonable size that is used as a site for a residence."

## 24 **TYPES OF ELIGIBLE PROPERTY**

25 Many types of property, not just single-family homes, will qualify as an original property or  
26 replacement dwelling. An eligible property includes a unit or lot within a cooperative housing  
27 corporation, a community apartment project, a condominium project, or a planned unit  
28 development.<sup>281</sup> Additionally, a manufactured home may also qualify as an eligible property.<sup>282</sup>  
29 (See below for a discussion of manufactured homes.)

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<sup>278</sup> Section 69.5(b)(2) and (g)(3).

<sup>279</sup> Section 69.5(b)(4).

<sup>280</sup> Section 69.5(g)(3) and (g)(4).

<sup>281</sup> Section 69.5(c)(1).

<sup>282</sup> Section 69.5(c)(2).

1 Each unit of a multi-unit dwelling is considered to be a separate property.<sup>283</sup> Thus, the base year  
 2 value from one-half of a duplex may be transferred to a replacement dwelling if the fair market  
 3 value of the replacement dwelling is equal to or less than the fair market value of one unit of the  
 4 duplex. The same would be true of any multiple-unit residences, like a condominium.  
 5 Furthermore, a property may have a separate living unit that is used as a rental property. A  
 6 separate living unit is not considered part of the principal residence.

7 However, where a separate living unit is used in a manner that is compatible with the  
 8 homeowners' or disabled veterans' exemption, the unit may be considered to be a part of the  
 9 eligible property. For example, an apartment on the same property that is not rented but is instead  
 10 used as guest quarters may be considered to be part of a principal residence.

### 11 **LAND**

12 An eligible property includes the land owned by the claimant of a reasonable size on which the  
 13 dwelling is situated. Land owned by the claimant includes:

- 14 1. Land for which the claimant holds a leasehold interest under section 61(c);
- 15 2. A land purchase contract; or
- 16 3. An ownership interest in a resident-owned mobile home park that is assessed pursuant to  
 17 section 62.1(b).

### 18 **WILLIAMSON ACT LAND**

19 Land that is enforceably restricted by a Williamson Act Contract (open-space lands) is assessed  
 20 under article XIII, section 8, of the California Constitution, and sections 421 et seq. These  
 21 restricted valuation provisions disqualify a residence, or land of reasonable size, from qualifying  
 22 as an original property or replacement dwelling under section 69.5.

### 23 **TIMBERLAND PRODUCTION ZONE LAND**

24 Property restricted to timberland use (Timberland Production Zone or TPZ) is excluded from the  
 25 provisions of article XIII A and instead is valued under the Timber Yield Tax Law.<sup>284</sup> Properties  
 26 so restricted are not eligible for the section 69.5 benefits.

27 However, property not within a TPZ—such as a residence and land of reasonable size that is  
 28 used as a site for a residence and other specified compatible uses—are valued according to the  
 29 provisions of Proposition 13. Thus, if TPZ property is sold which includes a residence, the  
 30 residence and its underlying land are eligible for the base year value transfer under section 69.5.

### 31 **SALE OF ORIGINAL PROPERTY REQUIREMENT**

32 To qualify for a base year value transfer, an original property must be sold within two years of  
 33 the purchase or new construction of a replacement property.<sup>285</sup> *Sale* is defined as any change in

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<sup>283</sup> Section 69.5(g)(4).

<sup>284</sup> Sections 38101 through 38908.

1 ownership of the original property for consideration.<sup>286</sup> *Consideration* is something of value that  
 2 is exchanged for the property. Consideration is not limited to the payment of cash; it could  
 3 include the exchange of other property, the assumption of a debt, the cancellation of an  
 4 outstanding debt, or the creation of a debt. Further, nothing requires that the consideration be  
 5 equivalent to the fair market value of the property transferred. While the transfer of property for  
 6 nominal value may be questioned, the term purchase could include a transfer for some  
 7 substantial consideration even though the amount is less than the full cash value of the property  
 8 received.

9 The sale must be a transaction constituting a change in ownership resulting in either:

- 10 1. A reappraisal at its current full cash value in accordance with sections 110.1 or 5803; or
- 11 2. A base year value transfer determined under the provisions of section 69 (intracounty  
 12 disaster relief) or section 69.3 (intercounty disaster relief) because the original property  
 13 qualified as a replacement dwelling under sections 69, 69.3 or 69.5.

14 However, the claimant may have acquired the original property by gift, inheritance, or devise or  
 15 in a transaction excluded from change in ownership. In other words, the original property that  
 16 must be sold may not have been purchased by the claimant and may have been excluded from  
 17 reappraisal at the time the claimant acquired it because the transfer to the claimant was excluded  
 18 from change in ownership. For instance, there is no disqualification of the original property if the  
 19 claimant received it in a transfer excluded from change in ownership under the parent-child  
 20 exclusion.

21 Similarly, a replacement property must be purchased or newly constructed. Thus, relief under  
 22 section 69.5 is unavailable for the purchase or other acquisition of a replacement dwelling that:

- 23 1. Is excluded from change in ownership; or
- 24 2. Is received by gift, inheritance, or devise.

25 Examples of transfers that are excluded from change in ownership, and thus are ineligible for  
 26 section 69.5 relief include:

- 27 1. Transfers between spouses and registered domestic partners. (See Chapter 3 for a  
 28 discussion of transfers between spouses and registered domestic partners.)
- 29 2. Transfers between parent-child and grandparent-grandchild. (See Chapter 5 for a  
 30 discussion of parent-child and grandparent-grandchild transfers.)

31 Furthermore, section 69.5 requires a claimant to sell the entire property. However, it does not  
 32 require the sale to occur in a single transaction, so multiple sales of fractional interests

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<sup>285</sup> Section 69.5(b)(5).

<sup>286</sup>Section 69.5(g)(8).

1 comprising all the interests in a property would qualify as a sale of an original property. For  
2 multiple sales of fractional interests to qualify:

- 3 1. The two-year rule discussed above must be satisfied so all fractional sales must take place  
4 within two of the purchase of the replacement dwelling; and
- 5 2. Each fractional interest must be subject to reappraisal.

## 6 **NEW CONSTRUCTION**

7 A replacement dwelling must be purchased or newly constructed within two years of the sale of  
8 the original property. For newly constructed property, the full cash value of the land and the new  
9 structure must be determined as of the date of completion.<sup>287</sup> (See Chapter 14 for the date of  
10 completion for newly constructed property.)

11 If the replacement dwelling is purchased, in part, and newly constructed, in part, and the new  
12 construction is completed on the replacement dwelling (such as a room addition, garage, or  
13 pool), the new construction can be excluded from reappraisal after the filing and granting of a  
14 claim for base year value transfer if:

- 15 • The new construction is completed within two years of the date of sale of the original  
16 property;
- 17 • The owner notifies the county assessor in writing within 30 days after completion of the  
18 new construction; and
- 19 • The full cash value of the new construction on the date of completion, plus the full cash  
20 value of the replacement dwelling on the date of acquisition, is not more than the  
21 adjusted base year value of the original property (the base year value at the time of sale  
22 of the original property factored forward to the date the new construction is completed)  
23 determined when the claim is granted.<sup>288</sup>

24 However, if the replacement dwelling is demolished and a new home is built in its place, the new  
25 home should be reassessed under section 70 as new construction.

26 Furthermore, no extensions can be granted if construction cannot be completed within the two-  
27 year period, even if the delays are due to unforeseen circumstances beyond the claimant's  
28 control.

## 29 **EQUAL OR LESSER VALUE REQUIREMENT**

30 A replacement dwelling must be of *equal or lesser value* than the original property. To make this  
31 determination, the full cash value of the original property as of the date of its sale must be  
32 compared with the full cash value of the replacement property as of its date of purchase or

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<sup>287</sup> Section 69.5(g)(5) and (g)(6).

<sup>288</sup> Section 69.5(h)(4).

1 completion of new construction. The full cash value of the original property includes any  
 2 inflationary factoring that occurs between the sale of the original property and the purchase of  
 3 the replacement dwelling, if the replacement dwelling is purchased or newly constructed after the  
 4 sale of the original property.<sup>289</sup>

### 5 **FULL CASH VALUE OF ORIGINAL PROPERTY**

6 The *full cash value of the original property* is defined as:

- 7 1. The new base year value determined under subdivision (e) of section 69.5; or
- 8 2. Where an owner chooses not to rebuild on the original property after it has been  
 9 substantially damaged or destroyed by misfortune or calamity, the property's full cash  
 10 value determined under section 110 (fair market value) immediately prior to such damage  
 11 or destruction.<sup>290</sup>

### 12 **FULL CASH VALUE OF REPLACEMENT DWELLING**

13 The *full cash value of a replacement dwelling* is its full cash value, determined in accordance  
 14 with section 110.1, as of date of purchase or the date of completion of new construction.<sup>291</sup>

### 15 **VALUE COMPARISON**

16 Section 69.5 provides that a replacement dwelling is of *equal or lesser value* if its full cash value  
 17 does not exceed.<sup>292</sup>

- 18 • 100 percent of the full cash value of the original property if the replacement dwelling is  
 19 purchased or newly constructed *prior to* the date of the sale of the original property.
- 20 • 105 percent of the full cash value of the original property if the replacement dwelling is  
 21 purchased or newly constructed *within the first year* following the date of the sale of the  
 22 original property.
- 23 • 110 percent of the full cash value of the original property if the replacement dwelling is  
 24 purchased or newly constructed *within the second year* following the date of the sale of  
 25 the original property.

26 The relief granted under section 69.5 is all or nothing. If the full cash value of the entire  
 27 replacement dwelling does not satisfy the equal or lesser value test, a claimant cannot receive a  
 28 partial base year value transfer.

29 Furthermore, if the sale of an original property and the purchase of a replacement dwelling are  
 30 both recorded on the same day, the full cash value of replacement dwelling must meet the  
 31 100 percent or less standard.<sup>293</sup> The 105 percent provision requires that the replacement dwelling

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<sup>289</sup> Section 110.1(f).

<sup>290</sup> Section 69.5(g)(7).

<sup>291</sup> Section 69.5(g)(6).

<sup>292</sup> Section 69.5(g)(5)(A) through (5)(C).

<sup>293</sup> Section 69.5(g)(5)(A).

1 be purchased within the first year *following* the date of the sale of the original property,  
 2 indicating that the replacement dwelling must be purchased at least one day after the sale of the  
 3 original property to qualify.<sup>294</sup>

4 If the replacement dwelling is purchased, in part, and newly constructed, in part, the date the  
 5 replacement dwelling is purchased or newly constructed is the date of purchase or the date of  
 6 construction completion, whichever is later.<sup>295</sup>

## 7 **FRACTIONAL INTERESTS IN PROPERTY**

8 Where a claimant owns only a partial interest in an original or replacement dwelling, the equal or  
 9 lesser value requirement is tested by comparing the values of the entire properties. In addition,  
 10 the entire original property must be sold within the applicable time limits in order to qualify for  
 11 the base year value transfer. A transfer that results in only a partial reappraisal of the original  
 12 property is ineligible for the base year value transfer.

## 13 **MULTIPLE OWNERS OF ORIGINAL PROPERTY AND/OR REPLACEMENT DWELLING**

14 A section 69.5 base year value transfer is available to a claimant who is a co-owner of an original  
 15 property, held as joint tenants, tenancy in common, or community property, subject to the  
 16 following limitations:

- 17 1. If all the co-owners purchase or newly construct a single replacement dwelling in which  
 18 each co-owner retains an interest, a claimant is eligible for relief whether or not any of  
 19 the others are eligible claimants.
- 20 2. If two eligible co-owners sell an original property and each acquire a separate  
 21 replacement dwelling, only one may qualify to transfer a base year value. The co-owners  
 22 must decide by mutual agreement which one of them will receive the property tax relief.
- 23 3. If spouses who owned the original property as community property separately purchase  
 24 or newly construct two or more replacement dwellings, only the spouse who is 55 or  
 25 older, or who is severely and permanently disabled, is eligible for the base year value  
 26 transfer. If both spouses are over 55 years of age, they must mutually agree which one of  
 27 them will receive the relief.<sup>296</sup>

28 In the case of co-owners of a multiple-unit original property, the limitations imposed by  
 29 paragraphs (2) and (3) above only apply to those co-owners who live in the same dwelling  
 30 unit.<sup>297</sup> However, when co-owners of a multiple-unit original property qualify for separate  
 31 homeowners' exemptions (they reside in different units, like each occupy one-half of a duplex  
 32 owned jointly), each unit is to be treated separately<sup>298</sup> and each portion of the base year value of

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<sup>294</sup> Section 69.5(g)(5)(B).

<sup>295</sup> Section 69.5(g)(5)(C).

<sup>296</sup> Section 69.5(d)(1) through (d)(3).

<sup>297</sup> Section 69.5(d)(3).

<sup>298</sup> Section 69.5(g)(3) and (g)(4).

1 the original property may be transferred to a different qualified replacement dwellings. Thus,  
 2 when two otherwise eligible co-owners sell a duplex in which each person occupies one side,  
 3 each may acquire a replacement dwelling and qualify for relief. The value comparison is made  
 4 between their respective portions of the original property (each side of the duplex) and their  
 5 respective replacement dwellings.

## 6 **TIMING AND FILING REQUIREMENTS**

7 A replacement dwelling must be purchased or newly constructed within two years of the sale of  
 8 the original property.<sup>299</sup> If a timely claim is filed for an eligible base year value transfer, the  
 9 adjustment for the new base year value of the replacement dwelling is made as of the *latest* of the  
 10 following dates:

- 11 • The date the original property is sold;
- 12 • The date the replacement dwelling is purchased; or
- 13 • The date the new construction of the replacement dwelling is completed.<sup>300</sup>

### 14 **CLAIM FORM**

15 The property tax relief provided by section 69.5 is not automatic. To transfer a base year value, a  
 16 claimant must submit to the assessor of the county in which the replacement dwelling is located a  
 17 timely claim that contains the following information.<sup>301</sup>

- 18 1. The name and Social Security number of each claimant and of any spouse of the claimant  
 19 who is a record owner of the replacement dwelling.
- 20 2. Proof that the claimant or the claimant's spouse who resided in the original property with  
 21 the claimant was, at the time of its sale, at least 55 years of age or severely and  
 22 permanently disabled. Severely and permanently disabled claimants must also submit  
 23 either:
  - 24 • A certification signed by a licensed physician or surgeon that (a) states claimant is  
 25 severely and permanently disabled; (b) identifies specific reasons why the disability  
 26 necessitates a move to the replacement dwelling; and (c) sets forth the disability related  
 27 requirements of the replacement dwelling, along with a substantiation by claimant that  
 28 the replacement dwelling meets those requirements and that the primary reason for the  
 29 move is to satisfy such requirements; or
  - 30 • Proof that substantiates that the primary purpose of the move to the replacement dwelling  
 31 is to alleviate financial burdens caused by the disability. A declaration under penalty of  
 32 perjury by the claimant, claimant's spouse, or claimant's guardian can be used to establish  
 33 a rebuttable presumption of the primary purpose of the move.

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<sup>299</sup> Section 69.5(b)(5).

<sup>300</sup> Section 69.5(h)(1).

<sup>301</sup> Section 69.5(f).

- 1        3. The address and the assessor's parcel number of the original property.
- 2        4. The date of the claimant's sale of the original property and the date of the claimant's
- 3            purchase or completion of new construction of a replacement dwelling.
- 4        5. A statement by the claimant that the replacement dwelling is occupied as a principal place
- 5            of residence on the date of filing the claim.<sup>302</sup>

## 6        **TIME OF FILING**

7        In general, a claimant is not eligible for full property tax relief under section 69.5 unless a claim  
8        is filed within three years of the date a replacement dwelling was purchased or the completion  
9        date of new construction of a replacement dwelling.<sup>303</sup>

10       If the replacement dwelling is purchased, in part, and newly constructed, in part, and the new  
11       construction is completed after the base year value is transferred, the county assessor must be  
12       notified in writing within 30 days of the construction completion date.

## 13       **PROSPECTIVE RELIEF**

14       Effective January 1, 2007, if the three-year claim filing requirement is missed, base year value  
15       transfers may be granted on a prospective basis if all other requirements are satisfied and the  
16       replacement dwelling has not been transferred to a third party.<sup>304</sup>

17       The prospective relief provision applies only to the three-year claim filing period. It does not  
18       apply to a missed 30-day notice period for the completion of new construction after a transfer of  
19       base year value for a replacement dwelling that was purchased.

20       If a claim for prospective relief is filed in a county that no longer has an ordinance allowing  
21       intercounty transfers of base year values, the claim for prospective relief should still be granted if  
22       the ordinance was in effect at the time the base year value transfer occurred.

## 23       **CALCULATION OF PROSPECTIVE RELIEF VALUE**

24       A claimant is eligible for prospective relief beginning with the lien date of the assessment year in  
25       which the claim is filed.<sup>305</sup> For example, if a claim is filed in 2008, the claimant will get relief  
26       beginning January 1, 2008 for the 2008-09 fiscal year. No refunds or cancellation of taxes paid  
27       for prior years are available.

28       If a claim is filed after the assessment roll has closed (from July 1 to December 31), the roll must  
29       be corrected and taxes for that year refunded or cancelled. The value of the replacement property  
30       for the assessment year in which the claim is filed is the adjusted base year value of the original  
31       property on the roll when it was sold, factored forward for inflation to the claim year.<sup>306</sup> The

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<sup>302</sup> Section 69.5(f)(1)(A) and (1)(E).

<sup>303</sup> Section 69.5(f)(1)(F).

<sup>304</sup> Section 69.5(f)(1)(F)(2).

<sup>305</sup> Section 69.5(f)(1)(F)(2)(A).

<sup>306</sup> Section 69.5(f)(1)(F)(2)(B).

1 factored base year value of any new construction on the replacement property completed  
2 between the date of purchase and the date of prospective relief is granted must also be added.

### 3 **DENIAL OF A CLAIM AND PURCHASE OF ANOTHER REPLACEMENT DWELLING**

4 If a claim is denied, a taxpayer may file a claim for the transfer of a base year value to another  
5 replacement dwelling that meets all the criteria of section 69.5 if all other requirements are  
6 satisfied.<sup>307</sup>

### 7 **RESCINDING A CLAIM**

8 There are two circumstances under which a claim may be rescinded, thereby allowing the base  
9 year value of an original property to be transferred to a different replacement dwelling. Effective  
10 September 30, 1990, a section 69.5 claim may be rescinded if the following conditions have been  
11 met.<sup>308</sup>

- 12 1. A written notice of rescission, signed by the original claimant(s), is given to the county  
13 assessor's office where the claim was filed; and
- 14 2. If the original claim would have resulted in a refund, the notice is delivered to the county  
15 assessor's office *before* the date the county first issues a refund check. If a refund is not  
16 applicable, the notice must be delivered *before* any property taxes are paid on the new  
17 transferred base year value. If taxes have not been paid, the notice must be delivered  
18 *before* any property taxes on the new transferred base year value become delinquent.

19 If either of these conditions is not met, then the claim cannot be rescinded, and the base year  
20 value will remain with the first replacement dwelling.

21 Effective January 1, 2001, a section 69.5 claim may also be rescinded if *both* of the following  
22 conditions have occurred.<sup>309</sup>

- 23 1. The claimant vacated the replacement dwelling as the his or her principal place of  
24 residence within 90 days after the original claim was filed regardless of whether the  
25 property continues to receive the homeowners' or disabled veterans' exemption; and
- 26 2. A notice of rescission, signed by the original claimant(s), is delivered to the office of the  
27 county assessor within six years after relief was granted.

28 If either of these conditions is not met, the transferred base year value remains with the first  
29 replacement dwelling.

30 If a claim is successfully rescinded, the taxpayer may purchase or construct another replacement  
31 dwelling and file a claim to transfer the base year value to that property. However, the second

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<sup>307</sup> See the Board's *Assessment Appeals Manual*, and Publication 30, *Residential Property Assessment Appeals*, for further information on assessment appeals.

<sup>308</sup> Section 69.5(i)(2)(A).

<sup>309</sup> Section 69.5(i)(2)(B).

1 replacement dwelling must also meet all the requirements of section 69.5 (for example, it must  
2 be purchased within two years of the sale of the original property). There are no exceptions or  
3 time extensions for extenuating circumstances.

4 **CLAIM IS NOT A PUBLIC RECORD**

5 A claim for transfer of base year value under section 69.5 is not a public document and not  
6 subject to public inspection. A claim may only be inspected by:<sup>310</sup>

7         ...the claimant or the claimant's spouse, the claimant's or the claimant's spouse's  
8         legal representative, the trustee of a trust in which the claimant or the claimant's  
9         spouse is a present beneficiary, and the executor or administrator of the claimant's  
10         or the claimant's spouse's estate.

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<sup>310</sup> Section 69.5(n).

## CHAPTER 15: DAMAGED OR DESTROYED BY DISASTER

This chapter discusses sections 69 and 69.3 which authorize the transfer of base year values from property that has been substantially damaged or destroyed in a disaster.<sup>311</sup> Base year value transfer is also authorized for persons who are over age 55 or who are severely and permanently disabled after their principal residences are damaged or destroyed by misfortune or calamity.<sup>312</sup> (See Chapter 14 for a discussion of base year value transfers for persons over age 55 or disabled.)

Sections 69(c)(3) and 69.3(b)(5) define *disaster* as a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity.

### INTRACOUNTY TRANSFER

When a property is substantially damaged or destroyed in a Governor-declared disaster, its base year value may be transferred to a comparable replacement property located in the same county if the owner acquires or newly constructs the replacement property within five years after the disaster.<sup>313</sup> For damage or destruction caused by disasters occurring before July 1, 2003,<sup>314</sup> the replacement period was three years.<sup>315</sup> If the base year value of the original property is transferred under section 69, and the original property is reconstructed, then no exclusion from change in ownership of the new construction under the disaster relief provision of section 70(c) is available for the original property.

Property is *substantially damaged or destroyed* if it sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. The damage includes diminution in value because the disaster caused permanent, restricted access to the property.<sup>316</sup>

### COMPARABLE REPLACEMENT PROPERTY

The general rule is that replacement property for substantially damaged or destroyed property is comparable if it is similar in function, utility, and size.<sup>317</sup> Property is similar in *function* if it subject to similar governmental restrictions, such as zoning. Replacement property is similar in *utility* if it is, or is intended to be, used in the same manner as the damaged or destroyed property. If a replacement property (or any portion thereof) is used or is intended to be used for a substantially different purpose than the way the damaged or destroyed property was used, it will be considered not similar in utility to the extent of that dissimilar use.

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<sup>311</sup> See also section 70(c).

<sup>312</sup> Section 69.5(b)(1).

<sup>313</sup> Section 69.

<sup>314</sup> Except for the Northridge earthquake.

<sup>315</sup> Section 69(d)(3).

<sup>316</sup> Section 69(c)(1).

<sup>317</sup> Section 69(c)(2).

1 Replacement property is similar in *size* if its full cash value is not more than 120 percent of the  
 2 full cash value of the damaged or destroyed property. If a replacement property (or any portion  
 3 thereof) is similar in utility but has a full cash value over 120 percent of the full cash value of the  
 4 damaged or destroyed property, it will be considered not similar in utility and size to the extent  
 5 of that excess.<sup>318</sup>

6 If replacement property (or any portion thereof) is not similar in function, utility, and size, the  
 7 property (or the portion thereof) has undergone a change in ownership at the time the  
 8 replacement property is acquired or newly constructed.<sup>319</sup>

## 9 **BASE YEAR VALUE OF REPLACEMENT PROPERTY**

10 To determine the adjusted base year value of comparable replacement property, a county  
 11 assessor must use the following rules and procedures:

12 1. If the full cash value of the replacement property is not more than 120 percent of the full  
 13 cash value of the damaged or destroyed property, the adjusted base year value of the  
 14 damaged or destroyed property is the new base year value of the replacement property.

15 2. If the full cash value of the replacement property exceeds 120 percent of the full cash  
 16 value of the damaged or destroyed property, then the amount of the full cash value over  
 17 120 percent of the full cash value of the damaged or destroyed property shall be added to  
 18 the adjusted base year value of the damaged or destroyed property. The sum of these  
 19 amounts shall become the replacement property's base year value.

20 3. If the full cash value of the replacement property is less than the adjusted base year value  
 21 of the damaged or destroyed property, then the full cash value of the replacement  
 22 property will become its new base year value.

23 4. The full cash value of the damaged or destroyed property is the assessed value  
 24 immediately prior to the damage or destruction, as determined by the county assessor.<sup>320</sup>

## 25 **OWNERSHIP REQUIREMENT**

26 The base year value transfer relief afforded by section 69 is only available to the owner or  
 27 owners of the damaged or destroyed property who take title to the replacement property. The  
 28 owner can be one or more individuals or legal entities. Acquiring an interest in a legal entity that  
 29 in turn directly or indirectly owns replacement property does not qualify as an acquisition of title  
 30 to replacement property.<sup>321</sup>

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<sup>318</sup> Section 69(c)(2)(A) and (2)(B).

<sup>319</sup> Section 69(c)(2)(C).

<sup>320</sup> Section 69(b)(1) through (b)(4).

<sup>321</sup> Section 69(e).

## INTERCOUNTY BASE YEAR VALUE TRANSFER

The transfer of a base year value of an original property that is substantially damaged or destroyed as a result of a Governor-declared disaster may be transferred to a replacement property located in another county that accepts such base year value transfers.<sup>322</sup> The base year value transfer requirements under this section are similar, but not identical, to those in section 69.5 (involving transfers of base year value for persons over age 55 or severely and permanently disabled). The requirements to obtain relief under this section are more restrictive than those discussed above with respect to base year value transfers under section 69. The provisions are as follows:

1. Both the original property and the replacement property must be owned and occupied by the claimant as his or her principal places of residence; the criteria regarding land size, ownership of leased land, and treatment of multi-unit dwellings are the same as under section 69.5.<sup>323</sup>
2. Only individuals who own the original property can be claimants.<sup>324</sup> There is no requirement that the claimant sell the original property. However, if the claimant reconstructs the original property, the property is ineligible for new construction exclusion provided by section 70(c).<sup>325</sup>
3. The replacement property must be acquired or newly constructed within three years after the damage or destruction of the original property.<sup>326</sup>
4. The replacement property must be of equal or lesser value than the original property, which means that the full cash value of the replacement property cannot exceed the following percentages of the adjusted base year value of the original property:
  - 105 percent if the replacement property is purchased or newly constructed within the first year following the date of the damage or destruction of the original property.
  - 110 percent if the replacement property is purchased or newly constructed within the second year following the date of damage or destruction of the original property.
  - 115 percent if the replacement property is purchased or newly constructed within the third year following the date of damage or destruction of the original property.<sup>327</sup>

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<sup>322</sup> Section 69.3.

<sup>323</sup> Section 69.3(b)(9) [original property] and (b)(11) [replacement property].

<sup>324</sup> Section 69.3(b)(10).

<sup>325</sup> Section 69.3(c).

<sup>326</sup> Section 69.3(a)(1).

<sup>327</sup> Section 69.3(b)(6)(A)-(C).

- 1           5. If a replacement property is purchased, in part, and newly constructed, in part, the date  
2           the replacement property is purchased or newly constructed is the date of the purchase or  
3           the date of completion of new construction, whichever is later.<sup>328</sup>
- 4           The claim must be filed with the county assessor within three years after the acquisition or new  
5           construction of the replacement property.<sup>329</sup>

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<sup>328</sup> Section 69.3(b)(6)(C).

<sup>329</sup> Section 69.3(e).

## CHAPTER 16: GOVERNMENT ACQUISITION OF PROPERTY

Under specified circumstances, if a person's real property is taken by governmental action, the person may transfer the base year value of that property to a comparable replacement property. Section 68 authorizes the transfer of a base year value for:

...the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from property in this state by eminent domain proceedings [instituted by any entity authorized by statute to exercise the power of eminent domain], by acquisition by a public entity, or by governmental action which has resulted in a judgment of inverse condemnation.

Comparable replacement property may be located in any California county and does not require a local authorizing ordinance.

*Real property* includes land, land improvements, living improvements, manufactured homes, and fixed machinery and equipment. This base year value transfer does not apply to personal property.<sup>330</sup>

*Award or purchase price* means the amount paid by the acquiring entity for the property taken. The amount does not include payment for relocation assistance or amounts paid for property other than the replaced real property. The award or purchase price may not reflect the full cash value of the property taken.<sup>331</sup>

*Property taken* is defined as the real property taken or acquired by:

- Eminent domain proceedings instituted by an entity so authorized,
- A public entity, or
- Governmental action resulting in an inverse condemnation judgment.<sup>332</sup>

*Displaced* means a property owner is removed, expelled, or forced from property due to a taking by eminent domain, an acquisition by a public entity in lieu of eminent domain proceedings, or a governmental action that results in an inverse condemnation judgment.<sup>333</sup>

### COMPARABILITY

Replacement property acquired by a person displaced by government action is deemed to be comparable to the property taken if it is similar in size, utility, and function.<sup>334</sup>

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<sup>330</sup> Rule 462.500(b)(5).

<sup>331</sup> Rule 462.500(b)(3).

<sup>332</sup> Rule 462.500(b)(1).

<sup>333</sup> Rule 462.500(b)(4).

<sup>334</sup> Rule 462.500(c).

1 The *size* of the property focuses on value, not acreage. Property is similar in size if its full cash  
2 value is not more than 120 percent of the award or purchase price paid for the property taken.<sup>335</sup>

3 A replacement property or any portion of it that has a full cash value over 120 percent of the  
4 award or purchase price is not similar in size, but only to the extent of the excess.<sup>336</sup>

5 Replacement property is similar in *function* and *utility* if it either is, or is intended to be, used in  
6 the same manner as the property taken.<sup>337</sup> Property is similar in function and utility if the  
7 property taken and the replacement property both fall into the same following categories:

8 1. *Category A, Single-Family Residence or Duplex*: Small miscellaneous buildings may be  
9 included when used with the residence.

10 2. *Category B, Commercial, Investment, Income, or Vacant Property*: Upon the provision of  
11 sufficient evidence to the county assessor, a single-family residence or duplex used as an  
12 investment property may be considered income property. Evidence may include, but is  
13 not limited to, rental or lease agreements, cancelled checks, income tax returns, and other  
14 investment records.

15 3. *Category C, Agricultural Property*: Agriculture includes farming in all aspects, including,  
16 but not limited to soil cultivation and tillage; dairy farming; agricultural or horticultural  
17 commodity production, cultivation, growing, and harvesting; livestock, bee, furbearing  
18 animal, or poultry raising; forestry and lumber operations; and any other ancillary or  
19 incidental practices performed with such operations, including market preparation and  
20 storage, market delivery, or delivery to carriers for transport to market.<sup>338</sup>

21 If property does not fall within Category A or Category C, it falls within Category B.<sup>339</sup>

22 Agricultural property that is in transition may be considered similar to Category B property if  
23 property in its vicinity has been changing from historically agricultural use to another use. In  
24 determining whether agricultural property is in transition, factors to consider include, but are not  
25 limited to:

- 26 • Restrictions such as a general plan, community plan, or special plan prohibiting the  
27 property taken from converting to Category B property. Current zoning restrictions are  
28 not such a restriction if the general plan, community plan, or special plan contemplate a  
29 zoning change.
- 30 • The highest and best use of the property taken.

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<sup>335</sup> Rule 462.500(c)(1).

<sup>336</sup> Rule 462.500(c)(1).

<sup>337</sup> Rule 462.500(c)(2).

<sup>338</sup> Rule 462.500(c)(2).

<sup>339</sup> Rule 462.500(c)(2).





- 1 1. The date the acquiring entity makes the initial written offer for the property;
- 2 2. The date the acquiring entity takes final action to approve a project resulting in an offer  
3 for or the acquisition of the property taken;
- 4 3. The date the "Notice of Determination," "Notice of Exemption," or similar notice, as  
5 required by the California Environmental Quality Act, is recorded by the public entity  
6 acquiring the taxpayer's property and the public project has been approved; or
- 7 4. The date the property was taken as declared by a court.<sup>345</sup>

8 No base year value transfer relief under section 68 is available for replacement property acquired  
9 before the date of displacement. The date of displacement is the *earliest* of the following dates:

- 10 1. The date the property taken is conveyed to the acquiring entity or the date the final  
11 condemnation order is recorded;
- 12 2. The date the acquiring entity actually possesses the property taken; or
- 13 3. The date on or after which the acquiring entity may take possession of the property taken  
14 as authorized by an order for possession.<sup>346</sup>

## 15 ADMINISTRATION

16 When a taxpayer files a claim for relief under section 68, a county assessor may consider any of  
17 the following documents as proof of actual displacement:

- 18 1. A certified, recorded copy of the final condemnation order. If the final order has not yet  
19 been issued, a certified, recorded copy of the order for possession which shows the  
20 effective date on or after which the acquiring entity is authorized to take possession of the  
21 property taken;
- 22 2. A copy of a recorded deed showing a public entity acquired the property taken; or
- 23 3. A certified copy of a final judgment of inverse condemnation.<sup>347</sup>

24 After receiving a taxpayer's claim for relief and proof of actual displacement, a county assessor  
25 must forward the information, including the identification of the displaced property, to the State  
26 Board of Equalization (Board). The Board must review this information and determine whether

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<sup>345</sup> Rule 462.500(g)(3)(A)-(D).

<sup>346</sup> Rule 462.500(g)(4)(A)-(C).

<sup>347</sup> Rule 462.500(h)(1)(A)-(C).

- 1 there have been multiple requests for relief as a result of a single taking or governmental
- 2 acquisition. If there have been, the Board must advise the appropriate county assessor(s).<sup>348</sup>

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<sup>348</sup> Rule 462.500(h)(2).

## CHAPTER 17: ENVIRONMENTAL CONTAMINATION

Sections 69.4 and 74.7 provide property tax relief to owners of contaminated property when qualifying replacement property is acquired or newly constructed on or after January 1, 1995. Sections 69.4 and 74.7, respectively, provide two choices for relief:

1. Transfer of base year value to a new property; or
2. Exclusion from new construction for reconstructed property.

Owners may transfer their base year values to replacement properties of equal or lesser value that are acquired or newly constructed within five years after the sale or transfer of the qualified contaminated properties.<sup>349</sup> Intercounty transfers are only eligible if the county board of supervisors where the replacement property is located has voted to accept such transfers. Section 69.4 provides that:

- The contaminated property must be designated as a toxic or environmental hazard or environmental cleanup site by a California or federal agency.<sup>350</sup> The owner or any related party may not have participated or acquiesced in the act or omission that caused the original property to become uninhabitable or unusable.<sup>351</sup>
- The contaminated property must be sold or transferred so that it is either reappraised to fair market value, or receives a base year value as a replacement property under sections 69, 69.3, 69.4, or 69.5.<sup>352</sup> Its base year value may not be retained as a result of a parent-child transfer under section 63.1.<sup>353</sup>
- Any reconstruction may not be excluded from the definition of *new construction* under section 74.7.<sup>354</sup>
- The replacement property must be acquired or newly constructed within five years after the original property is sold or transferred.<sup>355</sup>
- The replacement property must be comparable in terms of size, utility, and function to the property that it replaces.<sup>356</sup>
- The replacement property must be of equal or lesser value than the original property,<sup>357</sup> meaning that the full cash value of the replacement property cannot exceed the following percentages of the inflation-adjusted full cash value of the original property as follows:

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<sup>349</sup> Section 69.4.

<sup>350</sup> Section 69.4(f)(2)(B).

<sup>351</sup> Section 69.4(f)9(2)(A).

<sup>352</sup> Section 69.4(c)(2)(A) and (2)(B).

<sup>353</sup> Section 69.4(d)(2).

<sup>354</sup> Section 69.4(d)(1).

<sup>355</sup> Section 69.4(b).

<sup>356</sup> Section 69.4(e)(7).

<sup>357</sup> Section 69.4(e)(2).

- 1           ○ 105 percent if the replacement property is purchased or newly constructed within the  
2           first year following the date of the damage or destruction;
- 3           ○ 110 percent if the replacement property is purchased or newly constructed within the  
4           second year following the date of damage or destruction;
- 5           ○ 115 percent if the replacement property is purchased or newly constructed within the  
6           third year following the date of damage or destruction.
- 7           ○ 120 percent if the replacement property is purchased or newly constructed within the  
8           fourth year following the date of damage or destruction.
- 9           ○ 125 percent if the replacement property is purchased or newly constructed within the  
10          fifth year following the date of damage or destruction.

# APPENDIX 1: PROPERTY TAX RULES

## Title 18, Public Revenues California Code of Regulations

### RULE 462.001. CHANGE IN OWNERSHIP – GENERAL

Reference: Sections 60-67, Revenue and Taxation Code.  
Section 15606 Government Code.

A "change in ownership" in real property occurs when there is a transfer of a present interest in the property, including the transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a "change in ownership" shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means. A change in the name of an owner of property not involving a change in the right to beneficial use is excluded from the term "transfer" as used in this section.

History: Adopted June 29, 1978, effective July 3, 1978.  
Amended September 26, 1978, effective October 2, 1978.  
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
Amended November 13, 1979, effective December 6, 1979.  
Amended May 5, 1981, effective August 12, 1981.  
Amended March 31, 1982, effective June 10, 1982.  
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(a).  
Amended February 4, 1997, effective June 11, 1997.

### RULE 462.020. CHANGE IN OWNERSHIP – TENANCIES IN COMMON

Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1, and 67, Revenue and Taxation Code.  
Section 15606, Government Code.

**(a) General Rule.** The creation, transfer, or termination of a tenancy in common interest is a change in ownership of the undivided interest transferred.

**(b) EXCEPTIONS.** The following transfers do not constitute a change in ownership:

(1) The transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional ownership interests of the co-owners, such as:

(A) a partition,

(B) a transfer from a co-tenancy to a joint tenancy, or

(C) a transfer from a co-tenancy to a legal entity which results solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" of the property for purposes of determining whether a change in ownership has occurred upon the subsequent transfers of the ownership interests in the property.)

Example 1: A and B own a parcel of real property as tenants in common each owning a 50% interest. They transfer the property to a newly formed corporation each receiving 50% of the stock. Such a transfer would not be regarded as a change in ownership.

(2) The transfer is of an undivided interest of less than five percent of the value of the total property and has a value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage

1 interest and value transferred. When the value of the accumulated interests transferred during any assessment year  
 2 equals or exceeds five percent of the value of the total property or \$10,000, then that percentage of the property  
 3 represented by the transferred accumulated interests shall be reappraised. For purposes of this subsection, the  
 4 "accumulated interests transferred" shall not include any transfer of an interest that is otherwise excluded from  
 5 change in ownership.

6 Example 2: At the end of the assessment year the value of the accumulated interests transferred equals 3 percent  
 7 of the value of the total property and the dollar value of these interests is \$12,000. There will be a reappraisal of the  
 8 transferred accumulated interests because their value exceeds \$10,000.

9 Example 3: At the end of the assessment year the value of the accumulated interests transferred equals 7 percent  
 10 of the value of the total property and the dollar value of these interests is \$9,000. There will be a reappraisal of the  
 11 transferred accumulated interests because they exceed 5 percent of the value of the total property.

12 (3) The transfer is one to which the interspousal exclusion applies.

13 (4) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a  
 14 timely claim has been filed as required by law.

15 History: Adopted June 29, 1978, effective July 3, 1978.  
 16 Amended September 26, 1978, effective October 2, 1978.  
 17 Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
 18 Amended May 5, 1981, effective August 12, 1981.  
 19 Amended March 31, 1982, effective June 10, 1982.  
 20 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(b).  
 21 Amended October 9, 1997, effective February 20, 1998.

## 22 **RULE 462.040. CHANGE IN OWNERSHIP – JOINT TENANCIES**

23 Authority Cited: Section 15606, Government Code.  
 24 Reference: Sections 60, 61, 62, 63, 63.1, 65, 65.1, 67, Revenue and Taxation Code; Section 662, Evidence Code.

25 (a) The creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest  
 26 transferred.

27 Example 1: The purchase of property by A and B, as joint tenants, is a change in ownership of the entire  
 28 property.

29 Example 2: The transfer from A and B, as joint tenants, to C and D, as joint tenants, is a change in ownership of  
 30 the entire property.

31 Example 3: The subsequent transfer from C and D, as joint tenants, to C, as sole owner, is a change in  
 32 ownership of 50% of the property.

33 (b) The following transfers do not constitute a change in ownership:

34 (1) The transfer creates or transfers any joint tenancy interest, including an interest in a trust, and after such  
 35 creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is,  
 36 therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised  
 37 upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property  
 38 either during the period that the original transferor holds an interest or by means of a transfer from the original  
 39 transferor, such spouse shall also be considered to be an original transferor. Any joint tenant may also become an  
 40 original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust  
 41 if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries. All other initial and  
 42 subsequent joint tenants are considered to be "other than original transferors."

43 Example 4: A and B own property as tenants in common and transfer the property to A and B as joint tenants. A  
 44 and B are both "original transferors."

1 Example 4-1: A and B purchase property as joint tenants. Later A and B transfer their property interests to each  
 2 other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are,  
 3 therefore, considered to be "original transferors."

4 Example 5: A and B, as joint tenants, transfer to A, B, C, and D as joint tenants. No change in ownership  
 5 because A and B, the transferors, are included among the transferees and are, therefore, "original transferors." (C  
 6 and D are "other than original transferors.") Likewise, if A, as the sole owner, had transferred to A, B, C, and D as  
 7 joint tenants, no change in ownership. A would be an "original transferor" and B, C, and D would be "other than  
 8 original transferors."

9 Example 6: A and B, as joint tenants, transfer to A, B, C, D and E as joint tenants. E is B's wife. No change in  
 10 ownership because A and B, the transferors, are included among the transferees and are, therefore, "original  
 11 transferors." E is also an "original transferor." (C and D are "other than original transferors.")

12 Example 7-1: A, B, and C are joint tenants and A is an "original transferor." A dies. B and C transfer to B, C,  
 13 and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his  
 14 interest during the period that A held an interest in the joint tenancy.

15 Example 7-2: A and B, as joint tenants, transfer to B and C, as joint tenants, and C is A's spouse. C is an  
 16 original transferor because he was the spouse of an original transferor and he acquired an interest by means of a  
 17 transfer from A.

18 Example 7-3: A and B are joint tenants and A is an "original transferor." C is A's spouse. A and B as joint  
 19 tenants transfer to A, B, and C. C is an original transferor.

20 Example 8: A and B, as joint tenants, transfer to B, C and D, as joint tenants. 66 2/3% change in ownership of  
 21 the transferred interests because A is not one of the transferees.

22 Example 9: A and B purchase property as joint tenants and transfer their joint tenancy interests to each other  
 23 through their respective trusts. A and B become "original transferors." A and B sell a 50% interest to C and D, with  
 24 the deed showing A, B, C and D as joint tenants. C and D then transfer their joint tenancy interests to each other  
 25 through their trusts, so that both become "original transferors." A and B then sell their remaining 50% to C and D,  
 26 and go off title. Under circumstances where application of the step-transaction doctrine to disregard the form of the  
 27 transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C, and D do not become  
 28 "original transferors" as the result of their transfers to each other.

29 (2) The transfer terminates an original transferor's interest in a joint tenancy described in (b)(1) and the interest  
 30 vests in whole or in part in the remaining original transferor(s); except that, upon the termination of the interest of  
 31 the last surviving original transferor, there shall be a reappraisal of the property as if it had undergone a 100 percent  
 32 change in ownership.

33 Example 10: A and B transfer to A, B, C, and D as joint tenants. A dies or grants his interest to the remaining  
 34 joint tenants, B, C, and D. No change in ownership because B, an original transferor, remains as a joint tenant.

35 Example 11: Following the example set forth in Example 10 (above), B dies or grants his interest to C and D.  
 36 100 percent change in ownership because both A's and B's interests had previously been excluded from reappraisal  
 37 and B was the last surviving original transferor.

38 (3) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy  
 39 described in (b)(1) and the interest is transferred either to an original transferor, or to all the remaining joint tenants,  
 40 provided that one of the remaining joint tenants is an original transferor. The original transferor status of any  
 41 remaining joint tenants ceases when a joint tenancy is terminated.

42 Example 12: Following the example set forth in Example 10 (above), C, not an original transferor, grants his  
 43 interest to B and D. No change in ownership because C grants to the remaining joint tenants, B and D, and B is an  
 44 original transferor.

1 Example 13: A owns real property and transfers a 50% interest to B as a tenant in common resulting in a change  
 2 in ownership of that 50% interest. They subsequently transfer to themselves in joint tenancy and, as a result, become  
 3 "original transferors." A dies and A's joint tenancy interest passes to B by operation of law without a change in  
 4 ownership because B is an "original transferor." Upon A's death, the joint tenancy is terminated and B ceases to be  
 5 an "original transferor."

6 (4) For other than joint tenancies described in (b)(1), the transfer is between or among co-owners and results in  
 7 a change in the method of holding title but does not result in a change in the proportional interests of the co-owners,  
 8 such as:

9 (A) a transfer terminating the joint tenancy and creating separate ownerships of the property in equal  
 10 interests.

11 (B) a transfer terminating the joint tenancy and creating a tenancy in common of equal interests.

12 (C) a transfer terminating a joint tenancy and creating or transferring to a legal entity when the interests of  
 13 the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the  
 14 "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent  
 15 transfer(s) of the ownership interests in the property.)

16 (5) The transfer is one to which the interspousal exclusion applies.

17 (6) The transfer is of a joint tenancy interest of less than five percent of the value of the total property and has a  
 18 value of less than \$10,000; provided, however, that transfers of such interests during any one assessment year (the  
 19 period from January 1 through December 31) shall be accumulated for the purpose of determining the percentage  
 20 interest and value transferred. When the accumulated interests transferred during any assessment year equals or  
 21 exceeds five percent of the value of the total property or \$10,000, exclusive of any interest transferred to a spouse or  
 22 other exempt transfer, only that percentage of the property represented by the transferred accumulated interests shall  
 23 be reappraised. For purposes of this subsection, the "accumulated interests transferred" shall not include any transfer  
 24 of an interest that is otherwise excluded from change in ownership.

25 (7) The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a  
 26 timely claim has been filed as required by law.

27 (c) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably  
 28 presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original transferor."  
 29 This presumption is not applicable to joint tenancies created after March 1, 1975.

30 (d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in  
 31 common, to be joint tenants and "original transferors" if there is "reasonable cause" to believe that the parties  
 32 intended to create a joint tenancy and each person was a transferor among the persons holding title. "Reasonable  
 33 cause" means a deed, Affidavit of Death of Joint Tenant, a trust, will, or estate plan indicating that a joint tenant was  
 34 a transferor among the joint tenants, unless circumstances causing the application of the step transaction exist.

35 Example 14: A and B jointly purchase their primary residence and title is recorded as tenants in common. The  
 36 sales contract states that A and B intended to take title as joint tenants. Subsequently, A and B each execute  
 37 revocable living trusts transferring their respective interests in the property to their trusts for the benefit of each  
 38 other. The assessor may determine that the sales contract and trust instruments establish that A and B intended to  
 39 hold title as joint tenants upon purchase and that each subsequently became an "original transferor."

40 History: Adopted June 29, 1978, effective July 3, 1978.  
 41 Amended September 26, 1978, effective October 2, 1978.  
 42 Repealed old rule and adopted new rule August 16, 1979, effective August 22, 1979.  
 43 Amended November 13, 1979, effective December 6, 1979.  
 44 Amended May 5, 1981, effective August 12, 1981.  
 45 Amended March 31, 1982, effective June 10, 1982.  
 46 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(c).  
 47 Amended October 15, 1998, effective January 29, 1999.  
 48 Amended and effective April 3, 2001.

1 Amended July 9, 2003, effective November 13, 2003.

## 2 **RULE 462.060. CHANGE IN OWNERSHIP – LIFE ESTATE AND ESTATES FOR YEARS**

3 Reference: Sections 60, 61, 62, 63, 67, Revenue and Taxation Code.

4 (a) Life estates. The creation of a life estate in real property is a change in ownership at the time of transfer unless  
5 the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the  
6 subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in  
7 ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a  
8 remainderman (other than the transferor or the transferor's spouse) is a change in ownership.

9 (b) Estate for years. The creation of an estate for years for a term of 35 years or more in real property is a change in  
10 ownership at the time of transfer unless the instrument creating the estate for years reserves such estate in the  
11 transferor or the transferor's spouse. However, the subsequent transfer of such an estate for years by the transferor or  
12 the transferor's spouse to a third party is a change in ownership. Upon the termination of a reserved estate for years  
13 for any term, the vesting of the right to possession or enjoyment of a remainderman (other than the transferor or the  
14 transferor's spouse) is a change in ownership. The creation or transfer of an estate for years for less than 35 years is  
15 not a change in ownership.

16 History: Adopted June 29, 1978, effective July 3, 1978.  
17 Amended September 26, 1978, effective October 2, 1978.  
18 Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
19 Amended May 5, 1981, effective August 12, 1981.  
20 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (d).

## 21 **RULE 462.080. CHANGE IN OWNERSHIP – POSSESSORY INTERESTS**

22 Reference: Sections 60, 61, 62 and 67, Revenue and Taxation Code.  
23 Section 15606, Government Code.

24 (a) **General Rule.** The creation, renewal, extension, sublease, or assignment of a taxable possessory interest in tax  
25 exempt real property for any term is a change in ownership. "Renewal" and "extension" do not include the granting  
26 of an option to renew or extend an existing agreement pursuant to which the term of possession of the existing  
27 agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original  
28 agreement or subsequent thereto. "Assignment" of a possessory interest means the transfer of all rights held by a  
29 transferor in a possessory interest.

30 (b) **EXCEPTIONS.** The following do not constitute changes in ownership of taxable possessory interests:

31 (1) An interest, whether an estate for years or an estate for life, created by a reservation in an instrument  
32 deeding the property to a tax exempt governmental entity.

33 (2) Any renewal or extension of a taxable possessory interest during the reasonably anticipated term of  
34 possession used by the assessor in establishing the initial base year value of the interest, in which case, a change in  
35 ownership occurs at the end of the reasonably anticipated term of possession used by the assessor to value that  
36 interest.

37 (3) A sublease of a taxable possessory interest for a term, including renewal options, that does not exceed  
38 half the length of the remaining term of the leasehold, including renewal options.

39 (4) The termination of a sublease of a taxable possessory interest with an original term, including renewal  
40 options, that did not exceed half the length of the remaining term of the leasehold, including renewal options, when  
41 the sublease was entered into.

42 (5) Any transfer of a sublessee's interest in a taxable possessory interest, with a remaining term, including  
43 renewal options, that does not exceed half of the remaining term of the leasehold.

1 (6) Any transfer of a taxable possessory interest subject to a sublease with a remaining term, including  
2 renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

3 History: Adopted June 29, 1978, effective July 3, 1978.  
4 Amended September 26, 1978, effective October 2, 1978.  
5 Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
6 Amended May 5, 1981, effective August 12, 1981.  
7 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (e).  
8 Amended February 4, 1997, effective June 11, 1997.

## 9 **RULE 462.100. CHANGE IN OWNERSHIP – LEASES**

10 Reference: Sections 60, 61, 62, 67, Revenue and Taxation Code.

11 (a) The following transfers of either the lessee's interest or the lessor's interest in taxable real property constitute a  
12 change in ownership of such real property:

13 (1) Lessee's Interest:

14 (A) The creation of a leasehold interest in real property for a term of 35 years or more.

15 (B) The transfer, sublease, or assignment of a leasehold interest with a remaining term of 35 years or  
16 more.

17 (C) The termination of a leasehold interest which had an original term of 35 years or more.

18 (2) Lessor's Interest:

19 (A) The transfer of a lessor's interest in taxable real property subject to a lease with a remaining term of  
20 less than 35 years.

21 (B) The transfer of a lessor's interest in taxable real property subject to multiple leases, one or more of  
22 which is for a remaining term of less than 35 years and one or more of which is for a remaining term of 35 years or  
23 more, in which case there is a change in ownership of the portion of the property subject to the lease(s) with a  
24 remaining term of less than 35 years.

25 (b) The following transfers of either the lessee's interest or the lessor's interest in taxable real property do not  
26 constitute a change in ownership of such real property.

27 (1) Lessee's interest:

28 (A) The creation of a leasehold interest in real property for a term of less than 35 years.

29 (B) The transfer, sublease, or assignment of a leasehold interest with a remaining term of less than 35  
30 years (regardless of the original term of the lease).

31 (C) The termination of a leasehold interest which had an original term of less than 35 years.

32 (2) Lessor's interest:

33 (A) The transfer of a lessor's interest in real property subject to a lease with a remaining term of 35 years  
34 or more, whether to the lessee or another party.

35 (c) Once a change in ownership of taxable real property subject to a lease has been deemed to have occurred, the  
36 entire property subject to the lease is reappraised (i.e., the value of both the lessee's interest and the reversion).

37 (d) The calculation of the term of a lease for all purposes of this section shall include written renewal options.

1 (e) It shall be conclusively presumed that all homes (other than mobilehomes subject to Part 13 of Division 1 of the  
2 Revenue and Taxation Code) eligible for the homeowners' exemption which are on leased land have written renewal  
3 options on the lease of such land of at least 35 years, whether or not such renewal options in fact exist in any  
4 contract or agreement.

5 History: Adopted June 29, 1978, effective July 3, 1978.  
6 Amended September 26, 1978, effective October 2, 1978.  
7 Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
8 Amended November 13, 1979, effective December 6, 1979.  
9 Amended May 5, 1981, effective August 12, 1981.  
10 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (f).

## 11 **RULE 462.120. CHANGE IN OWNERSHIP – FORECLOSURE**

12 Reference: Sections 60, 62, Revenue and Taxation Code.

13 (a) Mortgage or deed of trust foreclosed by judicial action is a sufficient change in ownership only:

14 (1) After the period of redemption has passed and property has not been redeemed, or

15 (2) Upon redemption when title vests in the original debtor's successor in interest.

16 (b) Deed of trust foreclosed by trustee's sale shall cause a reappraisal as of the date the right of possession vests in  
17 the purchaser.

18 (c) A transfer by a trustor in lieu of a trustee's foreclosure sale constitutes a change in ownership.

19 History: Adopted June 29, 1978, effective July 3, 1978.  
20 Amended September 26, 1978, effective October 2, 1978.  
21 Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
22 Amended November 13, 1979, effective December 6, 1979.  
23 Amended May 5, 1981, effective August 12, 1981.  
24 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (g).

## 25 **RULE 462.140. CHANGE IN OWNERSHIP – TRANSFERS RESULTING FROM TAX** 26 **DELINQUENCY**

27 Reference: Section 60, Revenue and Taxation Code.  
28 Section 15606, Government Code.

29 Redemption of tax-defaulted property by the assessee shall not be considered as a change in ownership. However, a  
30 sale of tax-defaulted property by the tax collector, whether to the former assessee or to any other person, is a change  
31 in ownership requiring reappraisal as of the date of the sale.

32 History: Adopted June 29, 1978, effective July 3, 1978.  
33 Amended September 26, 1978, effective October 2, 1978.  
34 Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
35 Amended May 5, 1981, effective August 12, 1981.  
36 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (h).  
37 Amended February 4, 1997, effective June 11, 1997.

## 38 **RULE 462.160. CHANGE IN OWNERSHIP – TRUSTS**

39 References: Sections 60, 61, 62, 63, 63.1, 63.1 note, and 64, Revenue and Taxation Code.  
40 Section 15606, Government Code.

41 (a) **CREATION.** General Rule. The transfer by the trustor, or any other person, of real property into a trust is a  
42 change in ownership of such property at the time of the transfer.

43 (b) **EXCEPTIONS.** The following transfers do not constitute changes in ownership:

1 (1) Irrevocable Trusts.

2 (A) Trustor-Transferor Beneficiary Trusts. The transfer of real property by the trustor to a trust in which  
3 the trustor-transferor is the sole present beneficiary of the trust. However, a change in ownership of trust property  
4 does occur to the extent that persons other than the trustor-transferor are or become present beneficiaries of the trust  
5 unless otherwise excluded from change in ownership.

6 Example 1: M transfers income-producing real property to revocable living Trust A, in which M is the  
7 sole present beneficiary. Trust A provides that upon M's death, Trust A becomes irrevocable, M's brother B becomes  
8 a present beneficiary, and income from the trust property is to be distributed to B for his lifetime. Upon M's death,  
9 100% of the property in Trust A, representing B's present beneficial interest, undergoes a change in ownership.  
10 Where a trustee of an irrevocable trust has total discretion ("sprinkle power") to distribute trust income or property  
11 to a number of potential beneficiaries, the property is subject to change in ownership, because the trustee could  
12 potentially distribute it to a non-excludable beneficiary, unless all of the potential beneficiaries have an available  
13 exclusion from change in ownership.

14 Example 2: H and W transfer real property interests to the HW Revocable Trust. No change in ownership.  
15 HW Trust provides that upon the death of the first spouse the assets of the deceased spouse shall be distributed to "A  
16 Trust", and the assets of the surviving spouse shall be distributed to "B Trust", of which surviving spouse is the sole  
17 present beneficiary. H dies and under the terms of A Trust, W has a "sprinkle" power for the benefit of herself, her  
18 two children and her nephew. When H dies, A Trust becomes irrevocable. There is a change in ownership with  
19 respect to the interests transferred to the A Trust because the sprinkle power may be exercised so as to omit the  
20 spouse and children as present beneficiaries for whom exclusions from change in ownership may apply, and there  
21 are no exclusions applicable to the nephew. However, if the sprinkle power could be exercised only for the benefit  
22 of W and her children for whom exclusions are available, the interspousal exclusion and the parent/child exclusion  
23 would exclude the interests transferred from change in ownership, provided that all qualifying requirements for  
24 those exclusions are met.

25 Example 3: Same as Example 2 above, except that "A Trust" is without any sprinkle power. When H dies,  
26 A Trust becomes irrevocable. Since A Trust holds the assets for the benefit of W, the two children, and the nephew  
27 in equal shares, with any of W's share remaining at her death to be distributed to the two children and the nephew in  
28 equal shares, there is a change in ownership only to the extent of the interests transferred to the nephew, providing  
29 that the parent/child exclusion of Section 63.1 and the interspousal exclusion of Section 63 apply to the interests  
30 transferred to the two children and to W respectively. Upon the death of W, there is a 2 change in ownership to the  
31 extent of the interests transferred to the nephew, although the parent/child exclusion of Section 63.1 may exclude  
32 from change in ownership the interests transferred to the two children. If A Trust had included a sprinkle power,  
33 instead of specifying the beneficiaries of the trust income and principal, then as in Example 2, none of the exclusions  
34 would apply.

35 (B) 12 Year Trustor Reversion Trusts. The transfer of real property or ownership interests in a legal entity  
36 holding interests in real property by the trustor to a trust in which the trustor-transferor retains the reversion, and the  
37 beneficial interest of any person other than the trustor-transferor does not exceed 12 years in duration.

38 (C) Irrevocable Trusts Holding Interests in Legal Entities. The transfer of an ownership interest in a legal  
39 entity holding an interest in real property by the trustor into a trust in which the trustor-transferor is the sole present  
40 beneficiary or to a trust in which the trustor-transferor retains the reversion as defined in subdivision (b) (1) (B) of  
41 this rule. However, a change in ownership of the real property held by the legal entity does occur if Revenue and  
42 Taxation Code section 61 (i), 64 (c) or 64 (d) applies because the change in ownership laws governing interests in  
43 legal entities are applicable regardless of whether such interests are held by a trust.

44 Example 4: Husband and Wife, partners in HW Partnership who are not original coowners, transfer 70  
45 percent of their partnership interests to HW Irrevocable Trust and name their four children as the present  
46 beneficiaries of the trust with equal shares. Husband and Wife do not retain the reversion. Under Revenue and  
47 Taxation Code section 64 (a) the transfer of the partnership interests to HW Irrevocable Trust is excluded from  
48 change in ownership because no person or entity obtains a majority ownership interest in the HW Partnership.

1 (2) Revocable Trusts. The transfer of real property or an ownership interest in a legal entity holding an  
 2 interest in real property by the trustor to a trust which is revocable by the trustor. However, a change in ownership  
 3 does occur at the time that a revocable trust becomes irrevocable unless the trustor-transferor remains or becomes  
 4 the sole present beneficiary or unless otherwise excluded from change in ownership.

5 (3) Interspousal Trusts. The transfer is one to which the interspousal exclusion applies. However, a change in  
 6 ownership of trust property does occur to the extent that persons other than the trustor-transferor's spouse are or  
 7 become present beneficiaries of the trust unless otherwise excluded from change in ownership.

8 (4) Parent-Child or Grandparent-Grandchild Trusts. The transfer is one to which the parent-child or  
 9 grandparent-grandchild exclusion applies, and for which a timely claim has been made as required by law. However,  
 10 a change in ownership of trust property does occur to the extent that persons for whom the parent-child or  
 11 grandparent-grandchild exclusion is not applicable are or become present beneficiaries of the trust unless otherwise  
 12 excluded from change in ownership.

13 (5) Proportional Interests. The transfer is to a trust which results in the proportional interests of the  
 14 beneficiaries in the property remaining the same before and after the transfer.

15 (6) Other Trusts. The transfer is from one trust to another and meets the requirements of (1), (2), (3), (4), or  
 16 (5).

17 (c) **TERMINATION.** General Rule. The termination of a trust, or portion thereof, constitutes a change in  
 18 ownership at the time of the termination of the trust.

19 (d) **EXCEPTIONS.** The following transfers do not constitute changes in ownership:

20 (1) Prior Change in Ownership. Termination results in the distribution of trust property according to the terms  
 21 of the trust to a person or entity who received a present interest (either use of or income from the property) when the  
 22 trust was created, when it became irrevocable, or at some other time. However, a change in ownership also occurs  
 23 when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity  
 24 other than the present beneficiary unless otherwise excluded from change in ownership.

25 Example 5: B transfers real property to Trust A and is the sole present beneficiary. Trust A provides that  
 26 when B dies, the Trust terminates and Trust property is to be distributed equally to R and S, who are unrelated to B.  
 27 B dies, Trust A terminates, and the transfers of the Trust property to R and S result in changes in ownership,  
 28 allowing for reassessment of 100 percent of the real property.

29 (2) Revocable Trusts. Termination results from the trustor-transferor's exercise of the power of revocation and  
 30 the property is transferred by the trustee back to the trustor-transferor.

31 (3) Trustor Reversion Trusts. The trust term did not exceed 12 years in duration and, on termination, the  
 32 property reverts to the trustor-transferor.

33 (4) Interspousal Trusts. Termination results in a transfer to which the interspousal exclusion applies.

34 (5) Parent-Child or Grandparent-Grandchild Trusts. Termination results in a transfer to which the parent-child  
 35 or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

36 (6) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same  
 37 proportional interests in the property as they held before the termination of the trust.

38 (7) Other Trusts. Termination results in the transfer from one trust to another and meets the requirements of  
 39 (1), (2), (3), (4), (5), or (6) of subdivision (b).

40 (e) For purposes of this rule, the term "trust" does not include a Massachusetts business trust or similar trust, which  
 41 is taxable as a legal entity and managed for profit for the holders of transferable certificates which, like stock shares  
 42 in a corporation, entitle the holders to share in the income of the property. For rules applicable to Massachusetts

1 business trusts or similar trusts, see Section 64 of the Revenue and Taxation Code and Rule 462.180, which address  
2 legal entities.

3 History: Adopted June 29, 1978, effective July 3, 1978.  
4 Amended September 26, 1978, effective October 2, 1978.  
5 Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
6 Amended November 13, 1979, effective December 6, 1979.  
7 Amended May 5, 1981, effective August 12, 1981.  
8 Amended November 16, 1994, effective December 16, 1994. Renumbered, formerly 462 (i).  
9 Amended September 10, 1997, effective February 20, 1998.

## 10 **RULE 462.180. CHANGE IN OWNERSHIP – LEGAL ENTITIES**

11 Authority Cited: Section 15606, Government Code.  
12 Reference: Sections 60, 61, 62, 63, 64 and 67, Revenue and Taxation Code; Sections 16909 and 17554, Corporations Code;  
13 Section 1351, Civil Code.

### 14 **(a) TRANSFERS OF REAL PROPERTY TO AND BY LEGAL ENTITIES.**

15 General Rule. The transfer of any interest in real property to a corporation, partnership, limited liability company, or  
16 other legal entity is a change in ownership of the real property interest transferred. For purposes of this rule, "real  
17 property" or "interests in real property" includes real property interests and fractional interests thereof, the transfer of  
18 which constitute a change in ownership under Sections 60 and following applicable sections of the Revenue and  
19 Taxation Code and under the applicable change in ownership provisions of the Property Tax Rules.

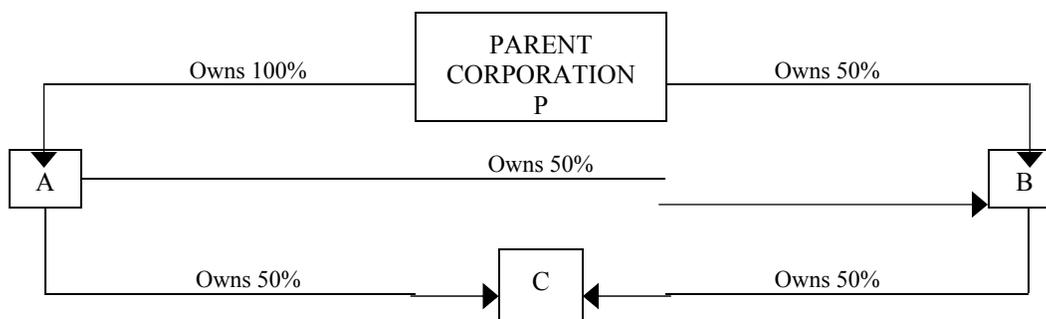
20 **(b) EXCEPTIONS.** The following transfers do not constitute changes in ownership of the real property:

21 (1) **AFFILIATED CORPORATION TRANSFERS.** Transfers of real property between or among affiliated  
22 corporations, including those made to achieve a corporate reorganization if:

23 (A) the voting stock of the corporation making the transfer and the voting stock of the transferee  
24 corporation are each owned 100 percent by one or more corporations related by voting stock ownership to a  
25 common parent, and

26 (B) the common parent corporation owns directly 100 percent of the voting stock of at least one  
27 corporation in the chain(s) of related corporations.

### 28 **SIMPLE EXAMPLE**



29 A transfer of real property by P, A, B, or C to any of the other three corporations would not be a change in  
30 ownership.

31 Example 1: Any transfer by C (wholly owned by A and B) to B (wholly owned by A and P) would not be a  
32 change in ownership because of those relationships and because P owns 100% of A.

33 If real property is transferred between non-affiliated corporations, only the property transferred shall be deemed to  
34 have undergone a change in ownership.

1 (2) **PROPORTIONAL TRANSFERS OF REAL PROPERTY.** Transfers of real property between separate  
 2 legal entities or by an individual to a legal entity (or vice versa), which result solely in a change in the method of  
 3 holding title and in which the proportional ownership interests in each and every piece of real property transferred  
 4 remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such  
 5 interests are represented by stock, partnership interests, or other types of ownership interests, shall be defined as  
 6 "original co-owners" for purposes of determining whether a change in ownership has occurred upon the subsequent  
 7 transfer of the ownership interests in the legal entity.) This subdivision shall not apply to a transfer of real property  
 8 which is also excluded from change in ownership pursuant to subdivision (b)(1) (transfers between or among  
 9 affiliated corporations).

10 Examples of Transfers of Real Property in Legal Entities:

11 Example 2: A transfer of real property from A and B, as equal co-tenants, to Corporation X, where A and B  
 12 each take back 50 percent of the stock. No change in ownership. However, if A and B each take back 49  
 13 percent of the stock and C receives 2 percent of the stock then there will be a change in ownership of the  
 14 entire property.

15 Example 3: A transfers Whiteacre to Corporation X and B transfers Blackacre (equal in value to Whiteacre)  
 16 to Corporation X. A and B each take back 50 percent of the stock. Change in ownership of 100 percent of  
 17 both Whiteacre and Blackacre.

18 Example 4: Corporation X owns Blackacre and Whiteacre (both are of equal value). A and B each own  
 19 50% of Corporation X's shares. X transfers Whiteacre to A and Blackacre to B. Change in ownership of  
 20 100% of both Blackacre and Whiteacre. However, if Corporation X transfers Whiteacre and Blackacre to  
 21 both A and B as joint tenants or as equal tenants in common, there is no change in ownership.

22 Example 5: A transfer of real property from Corporation X to its sole shareholder A. No change in  
 23 ownership, even if A is an "original co-owner," because interests in real property, and not ownership  
 24 interests in a legal entity, are being transferred.

25 **(c) TRANSFERS OF OWNERSHIP INTERESTS IN LEGAL ENTITIES.**

26 General Rule. The purchase or transfer of corporate stock, partnership interests, or ownership interests in other  
 27 legal entities is not a change in ownership of the real property of the legal entity, pursuant to Section 64(a) of the  
 28 Revenue and Taxation Code.

29 **(d) EXCEPTIONS.** The following transfers constitute changes in ownership, except as provided in (d)(4) which is  
 30 an exclusion from change in ownership:

31 (1) **CONTROL.** When any corporation, partnership, limited liability company, Massachusetts business trust or  
 32 similar trust, other legal entity or any person:

33 (A) obtains through a reorganization or any transfer, direct or indirect ownership or control of more than  
 34 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporations  
 35 as described in (b)(1), or

36 (B) obtains through multi-tiering, reorganization, or any transfer direct or indirect ownership of more than  
 37 50 percent of the total interest in partnership or LLC capital and more than 50 percent of the total interest in  
 38 partnership or LLC profits, or

39 (C) obtains through any transfer direct or indirect ownership of more than 50 percent of the total ownership  
 40 interest in any other legal entity.

41 Upon the acquisition of such direct or indirect ownership or control, which may include any purchase or transfer of  
 42 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, all of  
 43 the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in  
 44 ownership.

45 (2) **TRANSFERS OF MORE THAN 50 PERCENT.** When on or after March 1, 1975, real property is  
 46 transferred to a partnership, corporation, limited liability company, or other legal entity and the transfer is excluded  
 47 from change in ownership under Section 62(a)(2) of the Revenue and Taxation Code, and the "original co-owners"

1 subsequently transfer, in one or more transactions, cumulatively more than 50 percent of the total control or  
 2 ownership interests, as defined in subdivision (d)(1), in that partnership, corporation, limited liability company or  
 3 legal entity, there is a change in ownership of only that property owned by the entity which was previously excluded  
 4 under Section 62(a)(2). However, when such transfer would also result in a change in control under Section 64(c) of  
 5 the Revenue and Taxation Code, then reappraisal of the property owned by the corporation, partnership, limited  
 6 liability company, or other legal entity shall be pursuant to Section 64(c) rather than Section 64(d).

7 For purposes of this subdivision ((d)(2)), interspousal transfers excluded under Section 63 of the Revenue and  
 8 Taxation Code, transfers into qualifying trusts excluded under Section 62(d) of the Revenue and Taxation Code, and  
 9 proportional transfers excluded under Section 62(a)(2) of the Revenue and Taxation Code shall not be cumulated or  
 10 counted to determine a change in ownership.

11 Examples of Transfers of Interests in Legal Entities:

12 Example 6: A and B each own 50 percent of the stock of Corporation X. Corporation X acquires Whiteacre  
 13 from Corporation Y, an unaffiliated corporation in which neither A nor B has interests, and Whiteacre is  
 14 reappraised upon acquisition. A transfers 30 percent of Corporation X's stock to C, and B later transfers 25  
 15 percent of Corporation X's stock to C. Upon C's acquisition of 55 percent of Corporation X's stock, there is  
 16 a change in control of Corporation X under Section 64(c) and a reappraisal of Whiteacre.

17 Example 7: Spouses H and W acquire as community property from the current owners, who are not original  
 18 co-owners, 100% of the capital and profits interests in an LLC which owns Blackacre. Each of H and W is  
 19 treated as acquiring 50 percent of the ownership interests as defined in subdivision (c) and Revenue and  
 20 Taxation Code Section 64(a). No change in control of the LLC; no change in ownership of Blackacre.

21 Example 8: A and B, hold equal interests as tenants in common in Greenacre, a parcel of real property. A  
 22 and B transfer Greenacre to Corporation Y and in exchange A and B each receive 50 percent of the  
 23 corporate stock. No change in ownership pursuant to Section 62(a)(2). Pursuant to Section 64(d), A and B  
 24 become original coowners. A transfers 30 percent of Corporation Y's stock to C (A's child), and B then  
 25 transfers 25 percent of Corporation Y's stock to D (B's grandchild). Change in ownership of Greenacre  
 26 upon B's transfer to D. Parent/child and grandparent/grandchild exclusions are not applicable to transfers of  
 27 interests in legal entities. However, if the same transfers were made by A and B to their respective spouses,  
 28 no change in ownership pursuant to Section 63 and Rule 462.220.

29 (3) COOPERATIVE HOUSING CORPORATION. When the stock transferred in a cooperative housing  
 30 corporation ("stock cooperative" as defined in subdivision (m) of Section 1351 of the Civil Code) conveys the  
 31 exclusive right to occupancy of all or part of the corporate property, unless:

32 (A) the cooperative was financed under one mortgage which was insured under Sections 213, 221(d)(3),  
 33 221(d)(4), or 236 of the National Housing Act, as amended, or was financed or assisted pursuant to Sections 514,  
 34 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or was financed by a direct loan  
 35 from the California Housing Finance Agency, and

36 (B) the regulatory and occupancy agreements were approved by the respective insuring or lending agency,  
 37 and

38 (C) the transfer is from the housing cooperative to a person or family qualifying for purchase by reason of  
 39 limited income.

40 (4) PROPORTIONAL INTEREST TRANSFERS. Transfers of stock, partnership interests, limited liability  
 41 company interests, or any other interests in legal entities between legal entities or by an individual to a legal entity  
 42 (or vice versa) which result solely in a change in the method of holding title and in which proportional ownership  
 43 interests of the transferors and transferees, in each and every piece of property represented by the interests  
 44 transferred, remain the same after the transfer, do not constitute changes in ownership, as provided in subdivision  
 45 (b)(2) of this rule and Section 62(a)(2) of the Revenue and Taxation Code. This provision shall not apply to a  
 46 statutory conversion or statutory merger of a partnership into a limited liability company or other partnership (or a  
 47 limited liability company into a partnership) when the law of the jurisdiction of the converted or surviving entity  
 48 provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity  
 49 without other act or transfer and the partners or members of the converting or disappearing entity maintain the same

1 ownership interest in profits and capital of the converted or surviving entity that they held in the converting or  
2 disappearing entity.

3 Examples of Excluded Proportional Interest Transfers:

4 Example 9: General Partnership (GP), which owns Whiteacre and in which A and B hold equal partnership  
5 interests, converts to Limited Partnership (LP) under the Revised Uniform Partnership Act of 1994  
6 (California Corporations Code section 16100 et seq.). As a result of the conversion, A and B each hold 50  
7 percent of the LP interests in capital and profits. No change in ownership of Whiteacre upon the  
8 conversion, because, under Section 16909 of the Corporations Code, there is no transfer of Whiteacre.  
9 Section 62(a)(2) of the Revenue and Taxation Code does not apply. However, if A and B were "original  
10 coowners" in GP, they remain "original coowners" in LP.

11 Example 10: Following the conversion in Example 9, A and B each transfer 30 percent of their capital and  
12 profits interests in LP to Limited Liability Company (LLC), which is owned equally by A and B. Each  
13 retain an equal 20 percent interest in LP. No change in ownership of Whiteacre pursuant to Section 62(a)(2)  
14 because A and B own 100 percent of both LP and LLC and their respective proportional interests remain  
15 the same after the transfer. Neither section 64(c) nor section 64(d) of the Revenue and Taxation Code  
16 applies to this transfer, although A and B become "original coowners" with respect to their interests in  
17 LLC.

18 Example 11: A limited partnership (LP), which owns Blackacre and in which C and D hold equal  
19 partnership interests, changes its form to a limited liability company (LLC), in which C and D hold equal  
20 membership interests, by statutory merger under the California Revised Limited Partnership Act (California  
21 Corporations Code section 15611 et seq.) and the Beverly-Killea Limited Liability Company Act  
22 (California Corporations Code section 17000 et seq.). No change in ownership of Blackacre upon the  
23 change in form because under section 17554 of the California Corporations Code, there is not a transfer of  
24 property from LP to LLC. Section 62(a)(2) of the Revenue and Taxation Code does not apply. However, if  
25 C and D were "original coowners" in LP, they remain "original coowners" in LLC.

26 **(e) PARTNERSHIPS.**

27 (1) TRANSFERS OF REAL PROPERTY BY PARTNERSHIPS. General Rule. Except as provided by (b)(2),  
28 where the proportional ownership interests remain the same, when real property is contributed to a partnership or is  
29 acquired, by purchase or otherwise, by the partnership, there is a change in ownership of such real property,  
30 regardless of whether the title to the property is held in the name of the partnership or in the name of the partners  
31 with or without reference to the partnership. Except as provided by (b)(2) where the proportional ownership interests  
32 remain the same, the transfer of any interest in real property by a partnership to a partner or any other person or  
33 entity constitutes a change in ownership.

34 (2) Except as provided in (d)(1)(B) and (d)(2), the addition or deletion of partners in a continuing partnership  
35 does not constitute a change in ownership of partnership property.

36 History: Adopted June 29, 1978, effective July 3, 1978.  
37 Amended September 26, 1978, effective October 2, 1978.  
38 Repealed old rule and adopted new rule August 16, 1979, effective August 22, 1979.  
39 Amended November 13, 1979, effective December 6, 1979.  
40 Amended May 5, 1981, effective August 12, 1981.  
41 Amended March 31, 1982, effective June 10, 1982.  
42 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (j).  
43 Amended and effective December 19, 1995. Amended subdivision (b)(1)(b) to insert the "Simple Example" diagram, at the end of the  
44 first sentence. The "Simple Diagram" was inadvertently omitted in the renumbering amendments that previously were approved to  
45 former Rule 462.  
46 Amended December 9, 1998, effective April 8, 1999. Amended subdivisions (a), (b), (c), (d) and (e) to delete and to update outdated  
47 portions of the rule and to clarify other provisions.  
48 Amended June 25, 2003, effective October 15, 2003.

1           **RULE 462.200. CHANGE IN OWNERSHIP – MISCELLANEOUS ARRANGEMENTS**

2           Reference:     Sections 60, 62, and 67, Revenue and Taxation Code.  
 3                             Section 1105, Civil Code; Section 662, Evidence Code.  
 4                             Section 15606, Government Code.

5           **(a)** Security transactions. There are transactions that may be interpreted to be either a conveyance of the property or  
 6           a mere security interest therein, depending on the facts. There is a rebuttable presumption under Civil Code Section  
 7           1105 and Evidence Code Section 662 that a grant of title to real property is a transfer of a present interest in the real  
 8           property, including the beneficial use thereof, equal to a fee interest. In overcoming this presumption, consideration  
 9           may be given to, but not limited to, the following factors:

10           (1) The existence of a debt or promise to pay.

11           (2) The principal amount to be paid for reconveyance is the same, or substantially the same, as the amount  
 12           paid for the original deed.

13           (3) A great inequality between the value of the property and the price alleged to have been paid.

14           (4) The grantor remaining in possession with the right to reconveyance on payment of the debt; and

15           (5) A written agreement between the parties to reconvey the property upon payment of the debt. The best  
 16           evidence of the existence of any factor shall be an adjudication of the existence of the factor reflected in a final  
 17           judicial finding, order, or judgment. Proof may also be made by declarations under penalty of perjury (or affidavits)  
 18           accompanied by such written evidence as may reasonably be available, such as written agreements, canceled checks,  
 19           insurance policies, and tax returns.

20           **(b)** Deed presumption. When more than one person's name appears on a deed, there is a rebuttable presumption that  
 21           all persons listed on the deed have ownership interests in property, unless an exclusion from change in ownership  
 22           applies. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

23           (1) The existence of a written document executed prior to or at the time of the conveyance in which all parties  
 24           agree that one or more of the parties do not have equitable ownership interests. (2) The monetary contribution of  
 25           each party. The best evidence of the existence of any factor shall be an adjudication of the existence of the factor  
 26           reflected in a final judicial finding, order, or judgment. Proof may also be made by declarations under penalty of  
 27           perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written  
 28           agreements, canceled checks, insurance policies, and tax returns.

29           **(c)** Holding agreements. A holding agreement is an agreement between an owner of the property, hereinafter called  
 30           a principal, and another entity, usually a title company, that the principal will convey property to the other entity  
 31           merely for the purposes of holding title. The entity receiving title can have no discretionary duties but must act only  
 32           on explicit instructions of the principal. The transfer of property to the holder of title pursuant to a holding  
 33           agreement is not a change in ownership. There shall be no change in ownership when the entity holding title  
 34           pursuant to a holding agreement conveys the property back to the principal.

35           History:     Adopted June 29, 1978, effective July 3, 1978.  
 36                             Amended September 26, 1978, effective October 2, 1978.  
 37                             Repealed Old Rule and Adopted New rule August 16, 1979, effective August 22, 1979.  
 38                             Amended May 5, 1981, effective August 12, 1981.  
 39                             Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (k).  
 40                             Amended March 19, 1997, effective June 11, 1997.

## **RULE 462.220. CHANGE IN OWNERSHIP – INTERSPOUSAL TRANSFERS**

Reference: Sections 60, 61, 62, 63, 64, 65, 65.1, and 67, Revenue and Taxation Code.  
Section 15606, Government Code.

Notwithstanding any other provision of Rules 460 through 471, a change in ownership shall not include any interspousal transfer, including, but not limited to:

(a) Transfers of ownership interests in legal entities,

(b) Transfers of ownership interests in legal entities resulting in one spouse obtaining control as defined in Section 64(c) of the Revenue and Taxation Code,

Example 1: Husband (H) owns a 30 percent ownership interest in a partnership and wife (W) owns a 30 percent ownership interest in the same partnership. W transfers her interest to H; H now owns a 60 percent ownership interest. There is no change in ownership.

(c) Transfers of ownership interests in legal entities by "original coowners" which would otherwise be cumulated or counted for purposes of Section 64(d) of the Revenue and Taxation Code,

Example 2: Spouses H and W are "original coowners" of a partnership; each originally owned a 50 percent partnership interest. They have previously each transferred a 10 percent interest to X and to Y, leaving H and W each with a 30 percent partnership interest. W transfers a 15 percent interest to H. Although cumulatively more than 50 percent has been transferred, there is no change in ownership.

(d) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a transfer of such a trust to the spouse of the trustor,

(e) Transfers which take effect upon the death of a spouse,

Example 3: H and W each own a 30 percent interest in General Partnership (GP). H and W transfer their respective partnership interests to the HW Revocable Trust. No change in ownership. Trust provides that upon the death of the first spouse: the assets of the deceased spouse, including partnership interests in GP, shall be distributed to "A Trust", and the assets of the surviving spouse, including partnership interests in GP, shall be distributed to "B Trust." Surviving spouse is the sole present beneficiary of both A Trust and B Trust. No change in ownership upon the death of the first spouse.

(f) Transfers to a spouse or former spouse in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or legal separation, (g) The creation, transfer, or termination, solely between spouses, of any co-owner's interest, or (h) The distribution of property of a corporation, partnership, or other legal entity to a spouse or former spouse having an ownership interest in the entity, in exchange for the interest of such spouse in the legal entity in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

History: Adopted June 29, 1978, effective July 3, 1978.  
Amended September 26, 1978, effective October 2, 1978.  
Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.  
Amended May 5, 1981, effective August 12, 1981.  
Amended March 31, 1982, effective June 10, 1982.  
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (l).  
Amended September 10, 1997, effective February 20, 1998.

## **RULE 462.240. THE FOLLOWING TRANSFERS DO NOT CONSTITUTE A CHANGE IN OWNERSHIP**

Authority Cited: Section 15606, Government Code.  
Reference: Sections 60, 61, 62, 62.1, 62.2, 64, 66 and 67, Revenue and Taxation Code; Sections 37, 6401, 6402, Probate Code.

1 The following transfers do not constitute a change in ownership:

2 (a) The transfer of bare legal title, e.g.,

3 (1) Any transfer to an existing assessee for the purpose of perfecting title to the property.

4 (2) Any transfer resulting in the creation, assignment, or reconveyance of a security interest not coupled with  
5 the right to immediate use, occupancy, possession or profits.

6 (b) Any transfer caused by the substitution of a trustee.

7 (c) Any purchase, redemption or other transfer of the shares or units of participation of a group trust, pooled fund,  
8 common trust fund, or other collective investment fund established by a financial institution.

9 (d) Any contribution of real property to an employee benefit plan, any acquisition by an employee benefit plan of  
10 the stock of the employer corporation pursuant to which the employee benefit plan obtains direct or indirect  
11 ownership or control of more than 50 percent of the voting stock in the employer corporation, or the creation,  
12 vesting, transfer, distribution, or termination of a participant's or beneficiary's interest in such a plan. The terms used  
13 herein shall have the meaning ascribed to them in the Employee Retirement Income Security Act of 1974, which is  
14 codified as United States Code annotated, Title 29, Section 1002. (The term "any contribution" as used in Section  
15 66(b) of the Revenue and Taxation Code and this section means only those contributions of real property made to an  
16 employee benefit plan by an employer, a group of employees, or both, without any consideration.)

17 (e) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public  
18 benefit corporation, and a holding corporation as defined in Section 23701h of the Revenue and Taxation Code  
19 holding title for the benefit of any of the aforementioned corporations, or any combination thereof (including any  
20 transfer from one such entity to the same type of entity), provided that both the transferee and the transferor are  
21 regulated by laws, rules, regulations, or canons of the same religious denomination.

22 (f) Any transfer, occurring on or after January 1, 1983, which results from the reformation or correction of a deed  
23 which, by mistake, inaccurately describes the property intended to be conveyed, or adds or omits some term not  
24 agreed to by the parties, or in some other manner fails to express the true intentions of the parties. Example 1: A  
25 agrees to sell one acre to B. The deed mistakenly describes a two-acre area. Reformation of the deed to describe the  
26 original acre intended to be transferred is not a change in ownership.

27 (g) Any transfer, occurring on or after January 1, 1983, of an eligible dwelling unit from a parent(s) or legal  
28 guardian(s) to a minor child or children or among minor siblings, or to a trust for the sole benefit of such persons,  
29 resulting from a court order or judicial decree due to the death of one or both of the parents. An "eligible dwelling  
30 unit" means the dwelling which was the principal place of residence of the minor child or children prior to the  
31 transfer and remains such after the transfer.

32 (h) Any transfer of property to a disabled child or ward, whether minor or adult, or to a trust for the sole benefit of  
33 such person, upon the death of a parent or guardian pursuant to Section 62(n) of the Revenue and Taxation Code.

34 (i) Any transfer, on or after January 1, 1985, of a mobilehome park or of rental spaces in a mobilehome park  
35 pursuant to Section 62.1 of the Revenue and Taxation Code.

36 (j) Any transfer of a mobilehome park or of rental spaces in a mobilehome park pursuant to Section 62.2 of the  
37 Revenue and Taxation Code.

38 (k) Any transfer of separate property inherited by a surviving domestic partner, as defined in subdivision (b) of  
39 section 37 of the Probate Code, by intestate succession upon the death of a registered domestic partner.

40 History: Adopted June 29, 1978, effective July 3, 1978.  
41 Amended September 26, 1978, effective October 2, 1978.  
42 Repealed old rule and adopted new rule August 16, 1979, effective August 22, 1979.  
43 Amended November 13, 1979, effective December 6, 1979.  
44 Amended May 5, 1981, effective August 12, 1981.  
45 Amended March 31, 1982, effective June 10, 1982.

1 Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462(m).  
 2 Amended September 10, 1997, effective February 20, 1998.  
 3 Amended August 6, 2003, effective November 13, 2003.

#### 4 **RULE 462.260. DATE OF CHANGE IN OWNERSHIP**

5 Reference: Sections 60, 61, 62, 63 and 67, Revenue and Taxation Code.  
 6 Section 15606, Government Code.

7 For purposes of reappraising real property as of the date of change in ownership of real property, the following dates  
 8 shall be used:

9 **(a) Sales.**

10 (1) Where the transfer is evidenced by recordation of a deed or other document, the date of recordation shall be  
 11 rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a  
 12 different date to be the date all parties' instructions have been met in escrow or the date the agreement of the parties  
 13 became specifically enforceable.

14 (2) Where the transfer is accomplished by an unrecorded document, the date of the transfer document shall be  
 15 rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a  
 16 different date to be the date all parties' instructions have been met in escrow or the date the agreement of the parties  
 17 became specifically enforceable.

18 **(b) Leases.** The date the lessee has the right to possession.

19 **(c) Inheritance (by will or intestate succession).** The date of death of the decedent.

20 **(d) Trusts.**

21 (1) Revocable. The date the trust becomes irrevocable.

22 Example 1: A creates an inter vivos revocable trust that becomes irrevocable upon A's death. The date of  
 23 change in ownership is the date of A's death.

24 (2) Irrevocable.

25 **(A)** The date the property is placed in trust.

26 Example 2: A's estate plan provides that upon A's death, property is transferred to an irrevocable testamentary  
 27 trust. The date of change in ownership is the date of A's death.

28 Example 3: A transfers to an irrevocable inter vivos trust. The date of change in ownership is the date of the  
 29 transfer.

30 **(B)** The effective date of the immediate right to present possession or enjoyment of a remainder or reversion  
 31 occurs upon the termination of a life estate or other similar precedent property interest.

32 Example 4: A creates an irrevocable trust, granting A's wife, B, a life estate in the beneficial use of the  
 33 property with a remainder to C and D who are unrelated to A and B. The creation of a life estate in B is a transfer  
 34 subject to the interspousal exclusion from change in ownership. Upon B's death, however, a change in ownership  
 35 occurs because on that date C and D have an immediate right to the present possession and enjoyment of the  
 36 remainder.

37 NOTE: Refer to Section 462.160 for trust transfer exceptions.

38 History: Adopted June 29, 1978, effective July 3, 1978.  
 39 Amended September 26, 1978, effective October 2, 1978.  
 40 Repealed Old Rule and Adopted New Rule August 16, 1979, effective August 22, 1979.

Amended May 5, 1981, effective August 12, 1981.  
Amended May 11, 1994, effective June 10, 1994. Renumbered, formerly 462 (n).  
Amended March 19, 1997, effective June 11, 1997.

**RULE 462.500. CHANGE IN OWNERSHIP OF REAL PROPERTY ACQUIRED TO REPLACE PROPERTY TAKEN BY GOVERNMENTAL ACTION OR EMINENT DOMAIN PROCEEDINGS**

Authority Cited: Section 15606, Government Code.  
References: Article XIII A, Section 2(d), California Constitution.  
Section 68, Revenue and Taxation Code.

(a) **GENERAL** . The term "change in ownership" shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:

(1) Eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or

(2) Acquisition by a public entity, or

(3) Governmental action which has resulted in a judgment of inverse condemnation.

(b) **DEFINITIONS**. The following definitions govern the construction of the words or phrases used in this section.

(1) "Property taken" means real property taken or acquired as provided in (a).

(2) "Replacement property" means real property acquired to replace property taken.

(3) "Award or purchase price" means the amount paid for "property taken" but shall not include amounts paid for relocation assistance or any thing other than the replaced real property. The award or purchase price may not reflect full cash value.

(4) "Displaced" means a property owner is removed, expelled, or forced from property as a result of eminent domain proceedings, acquisition by a public entity in lieu of instituting eminent domain proceedings, or governmental action resulting in a judgment of inverse condemnation.

(5) "Real property" includes land, land improvements, living improvements, manufactured homes, and fixed machinery and equipment. Personal property is not entitled to relief under this section.

(6) "Adjusted base year value" means the base year value, as determined in accordance with Revenue and Taxation Code Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1.

(c) **COMPARABILITY**. Replacement property, acquired by a person displaced under circumstances enumerated in (a), shall be deemed comparable to the property taken if it is similar in size, utility, and function.

(1) The size of property is associated with value, not physical characteristics. Property is similar in size if its full cash value does not exceed 120 percent of the award or purchase price paid for the property taken. A replacement property, or portion thereof, that has a full cash value which exceeds 120 percent of the award or purchase price shall be considered, to the extent of the excess, not similar in size.

(2) Property is similar in function and utility if the replacement property is or is intended to be used in the same manner as the property taken. Property is similar in function and utility if the property taken and the replacement property both fall into the same category:

**Category A:** Single family residence or duplex. Small miscellaneous buildings may be included when used with residence.

1           **Category B:** Commercial, investment, income, or vacant property. Single family residences and duplexes  
 2 that are used as investment property may be considered income property if sufficient proof is provided to the  
 3 assessor. Proof may include, but is not limited to, rental or lease agreements, cancelled checks, income tax returns,  
 4 or other investment records. If property does not fall within Category A or Category C, it falls within Category B.

5           **Category C:** Agricultural property. "Agriculture" includes farming in all its branches, and, among other  
 6 things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting  
 7 of any agricultural or horticultural commodities, the raising of livestock, bees, furbearing animals, or poultry, and  
 8 any practices (including any forestry or lumbering operations) performed incidental to or in conjunction with such  
 9 farming operations, including preparation for market and delivery to storage or to market or to carriers for  
 10 transportation to market. Agricultural property that is in transition may be considered similar to property described  
 11 in Category B if property in its vicinity has been changing from historically agricultural use to another use. Factors  
 12 that may be considered to determine whether agricultural property is in transition include, but are not limited to:

- 13           • Restrictions that would prohibit the property taken from converting to property described in Category B  
 14 such as the general plan, community plan, or special plan. Current zoning restrictions are not such a  
 15 restriction if the general plan, community plan, or special plan contemplate a zoning change.
- 16           • The highest and best use of the property taken.
- 17           • The type of comparable property that was used by the acquiring government body to value the property  
 18 taken.

19           (3) To the extent that replacement property, or any portion thereof, is not similar in function, size and  
 20 utility, the property, or portion thereof, shall be considered to have undergone a change in ownership.

21           EXAMPLE 1: An owner-occupied single family residence is replaced by a combination dwelling and commercial  
 22 property. Relief is applicable to only the dwelling portion of the replacement property; the commercial portion shall  
 23 be considered as having changed ownership.

24           EXAMPLE 2: A combination dwelling and commercial property is replaced with an owner-occupied single family  
 25 residence. Only the dwelling portion of the property taken shall be considered in determining the comparability and  
 26 the amount of relief. The right to relief on the commercial portion of the property taken is waived unless  
 27 replacement Category B property is acquired after the date of displacement and a timely request is made for  
 28 assessment relief.

29           EXAMPLE 3: A combination dwelling and commercial property is replaced with a Category A single family  
 30 residence, and later the displaced person also acquires a separate replacement Category B property. Pro-rata relief  
 31 shall be granted on both the replacement Category A single family residence and Category B property.

32           EXAMPLE 4: An owner-occupied single family residence is replaced with an owner-occupied single family  
 33 residence and a vacation home. Relief is applicable to both properties.

34           EXAMPLE 5: An owner-occupied single family residence that has a homeowners' exemption is replaced with a  
 35 single family residence that is to be used as a rental property. The replacement property qualifies for relief because a  
 36 Category A property is replaced by another Category A property.

37           EXAMPLE 6: A duplex in which the property owner lived in one unit and rented the other unit is replaced with two  
 38 single family residences, one of which will be owner occupied. Relief is applicable to both properties.

39           EXAMPLE 7: Three single family residences that were owned by a taxpayer and used as rental properties were  
 40 replaced by a small apartment complex. Relief is available under Category B if the taxpayer provides proof to the  
 41 assessor that the single family residences were held as income property.

42           EXAMPLE 8: A taxpayer owns a 40-acre vineyard which includes an owner-occupied single family residence. The  
 43 owner-occupied single family residence is taken along with 5 acres of grapevines. To qualify for relief, the occupied

1 single family residence must be replaced with Category A property; the vineyard must be replaced with other  
2 Category C property or, if the property is in transition to another use, it may be replaced with a Category B property.

3 **(d) BASE YEAR VALUE OF REPLACEMENT PROPERTY.** The following procedure shall be used by the  
4 assessor in determining the appropriate adjusted base year value of comparable replacement property:

5 (1) Compare the award or purchase price paid by the acquiring entity for the property taken or acquired with  
6 the full cash value of the comparable replacement property.

7 (2) If the full cash value of the comparable replacement property does not exceed 120 percent of the award or  
8 purchase price of the property taken, then the adjusted base year value of the property taken shall become the  
9 replacement property's base year value, regardless of the allocation between land and improvements.

10 (3) If the full cash value of the replacement property exceeds 120 percent of the award or purchase price of  
11 the property taken, then the amount of the full cash value over 120 percent of the award or purchase price paid shall  
12 be added to the adjusted base year value of the property taken. The sum of these amounts shall become the  
13 replacement property's base year value.

14 (4) If the full cash value of the comparable replacement property is less than the adjusted base year value of  
15 the property taken, then that lower value shall become the replacement property's base year value.

16 (5) If there is no award or purchase price paid by the acquiring entity (i.e., an exchange) for the property  
17 taken, then the full cash value of the acquired property and the full cash value of the replacement property shall be  
18 determined by the assessor of the county in which each property is located for the purpose of applying the other  
19 provisions of this subdivision. The procedure set forth in subdivision (d)(1) through (d)(4) shall then be applied to  
20 determine the replacement property's base year value.

21 (6) A base year value may be reallocated upon the transfer of the replacement property. The appraisal unit  
22 that is normally bought and sold in the market place may be used to determine the amount of base year value that is  
23 allocated to the property taken.

24 **EXAMPLE 9:** A commercial property, consisting of land and improvements, is taken and replaced with a Category  
25 B structure that was built on land that the taxpayer already owned. The land is ineligible for relief because it was  
26 previously owned. Despite the ineligibility of the land, the base year value of the property taken (land and  
27 improvements) may be transferred to the newly constructed improvements to the extent it meets the value and  
28 timing requirements.

29 **(e) OWNERSHIP REQUIREMENTS.** Only the owner or owners of the property taken, whether one or more  
30 individuals, partnerships, corporations, other legal entities, or a combination thereof, shall receive property tax relief  
31 under this section. Relief under this section shall be granted to an owner(s) of property taken who obtains title to  
32 replacement property. The acquisition of an ownership interest in a legal entity which, directly or indirectly, owns  
33 real property is not an acquisition of comparable property.

34 **EXAMPLE 10:** A and B each own an undivided 50 percent interest as joint tenants in a home which is taken through  
35 eminent domain proceedings by the state. A purchases a replacement property which is comparable to the property  
36 taken. B contributes his share of the award or purchase price to a limited partnership which owns a home which is  
37 comparable replacement property. A's relief under this section is limited to 120 percent of one-half of the award or  
38 purchase price of the property taken. B is entitled to no relief.

39 **EXAMPLE 11:** A partnership composed of two corporations owns commercial property which is taken through  
40 eminent domain proceedings. The partnership uses the award or purchase price to acquire Category B property. The  
41 partnership is entitled to relief under this section.

42 **EXAMPLE 12:** A partnership composed of two corporations owns commercial property which is taken through  
43 eminent domain proceedings. The partnership distributes the award or purchase price to the partner corporations in  
44 the same percentage as their ownership interests and the corporations separately or jointly acquire comparable  
45 replacement property retaining the same percentage of ownership interest in the partnership. No tax relief may be

1 granted under this section. For purposes of this section, owner means the fee owner or life estate owner of the real  
 2 property taken and excludes the lessee thereof unless the lessee owns improvements located on land owned by  
 3 another, in which case, the lessee shall be entitled to property tax relief for comparable replacement improvements.

4 **(f) NEW CONSTRUCTION.** Any new construction required to make replacement property comparable to the  
 5 property taken shall, to that extent, be eligible for property tax relief, if such new construction is completed on or  
 6 after the earliest of the dates listed in subdivision (g)(3), and if a timely request is made for assessment relief.

7 **(g) TIME LIMITS FOR QUALIFICATION.**

8 (1) The provisions of this section shall apply to property acquired as replacement property for property taken  
 9 by eminent domain proceedings, public acquisitions, or judgments of inverse condemnation, provided the person  
 10 acquiring replacement property makes a timely request for such assessment with the assessor. The replacement  
 11 property must be acquired before a request is made. Reassessments and refunds shall be made retroactively to the  
 12 date of acquisition of replacement property for property taken, provided a timely request is made therefor.

13 (2) For purposes of this section, a request shall be deemed timely if made within four years after one of the  
 14 following dates, whichever is applicable:

15 (A) The date final order of condemnation is recorded or the date the taxpayer vacates the property  
 16 taken, whichever is later, for property acquired by eminent domain;

17 (B) The date of conveyance or the date the taxpayer vacates the property taken, whichever is later, for  
 18 property acquired by a public entity by purchase or exchange; or

19 (C) The date the judgment of inverse condemnation becomes final or the date the taxpayer vacates the  
 20 property taken, whichever is later, for property taken by inverse condemnation.

21 (3) Replacement property shall be eligible for property tax relief under this section if it is acquired on or after  
 22 the earliest of the following dates:

23 (A) The date the initial written offer is made for the property taken by the acquiring entity;

24 (B) The date the acquiring entity takes final action to approve a project which results in an offer for or  
 25 the acquisition of the property taken;

26 (C) The date the "Notice of Determination," "Notice of Exemption," or similar notice, as required by  
 27 the California Environmental Quality Act (CEQA), is recorded by the public entity acquiring the taxpayer's property  
 28 and the public project has been approved; or

29 (D) The date, as declared by the court, that the property was taken.

30 (4) No property tax relief shall be granted to replacement property, however, prior to the date of displacement.  
 31 The date of displacement shall be the earliest of the following dates:

32 (A) The date the conveyance of the property taken to the acquiring entity or the final order of  
 33 condemnation is recorded;

34 (B) The date of actual possession by the acquiring entity of the property taken; or

35 (C) The date upon or after which the acquiring entity may take possession of the property taken as  
 36 authorized by an order for possession.

1 **(h) ADMINISTRATION.**

2 (1) The assessor shall consider any of the following documents as proof of actual displacement of a taxpayer  
3 when a request has been made for the assessment relief provisions under this section:

4 (A) A certified recorded copy of the final order of condemnation, or, if the final order has not been  
5 issued, a certified recorded copy of the order for possession showing the effective date upon or after which the  
6 acquiring entity is authorized to take possession of the property taken;

7 (B) A copy of a recorded deed showing acquisition by a public entity; or

8 (C) A certified copy of a final judgment of inverse condemnation.

9 (2) Upon receipt of a taxpayer request and proof of actual displacement, the assessor shall forward to the  
10 Board such information regarding the identification of a displaced property as the Board may require. The Board  
11 shall review such information to determine whether more than one request for assessment relief has been made as a  
12 result of a single taking or governmental acquisition and if so shall advise the appropriate assessor(s).

13 History: Adopted September 13, 1984, effective February 16, 1985.  
14 Amended November 18, 1987, effective February 14, 1988.  
15 Amended September 8, 2004, effective December 18, 2004.

## APPENDIX 2: GLOSSARY OF TERMS

<b>Term</b>	<b>Definition</b>
<b>Ad Valorem</b>	Latin phrase meaning "in proportion to the value." In California, the property tax is considered to be an ad valorem tax.
<b>Adjusted Base Year Value</b>	The base year value, as determined in accordance with Revenue and Taxation Code section 110.1, with the adjustments permitted by subdivision (b) of section 2 of article XIII A of the California Constitution and section 110.1(f).
<b>Appraisal Unit</b>	That property which persons in the marketplace normally buy and sell as a unit or which is normally valued separately.
<b>Assessed Value</b>	The taxable value of a property against which the tax rate is applied.
<b>Assessee</b>	Person who owns, claims, possesses, or controls the property on the lien date.
<b>Assessment Roll</b>	A listing of all taxable property within a county. It identifies, at a minimum: (1) the property (usually by assessor's parcel number); (2) the tax-rate area where the property is located; (3) the name (if known) and mailing address of the assessee; (4) the assessed value of the property, including separate assessed values for land, improvements, and personal property; (5) penalties (if any); and (6) the amount (if any) of specified exemptions (e.g., homeowners', church, welfare). Distinct assessment rolls include the locally assessed secured and unsecured regular assessment rolls, the locally assessed supplemental assessment roll, and the state-assessed roll (which is added to the locally assessed secured roll).
<b>Base Year Value</b>	In accordance with section 110.1, a property's base year value is its fair market value as of either the 1975 lien date or the date the property was last purchased, newly constructed, or underwent a change in ownership after the 1975 lien date.
<b>Change in Ownership</b>	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.

<b>Term</b>	<b>Definition</b>
<b>Condominium</b>	An estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include a separate interest in other portions of such real property. Such estate may be either (1) an estate of inheritance or perpetual estate, (2) an estate for life, (3) an estate for years, such as a leasehold or a sub-leasehold, or (4) any combination of the foregoing.
<b>Devise</b>	A transfer of real property by will. The term is also used as a verb to describe the transfer
<b>Displaced</b>	A property owner is displaced when removed, expelled, or forced from property as a result of eminent domain proceedings, acquisition by a public entity in lieu of instituting eminent domain proceedings, or governmental action resulting in a judgment of inverse condemnation.
<b>Eminent Domain</b>	The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character.
<b>Executor</b>	Nominated by the decedent, who files a petition to establish the will's validity.
<b>Fair Market Value</b>	The amount of cash or its equivalent that property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both with knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes. [Section 110]
<b>Fee Interest</b>	The absolute legal possession and ownership of land, property, or rights, including mineral rights. A fee interest can be sold (in its entirety or in part) or passed on to heirs or successors.
<b>Full Cash Value</b>	The fair market value as determined in section 110 for either the 1975 lien date or when purchased, newly constructed, or changes ownership after the 1975 lien date. [Section 110.1]
<b>Full Value</b>	Fair market value, full cash value, or such other value standard as is prescribed by the Constitution or in the Revenue and Taxation Code under the authorization of the Constitution.

Term	Definition
<b>Highest and Best Use</b>	The most profitable use of a property at the time of the appraisal; that available use and program of future utilization that produces the highest present land value; must be legal, physically possible, financially feasible, and maximally profitable.
<b>Improvements</b>	All buildings, structures, fixtures, and fences erected on or affixed to the land, all fruit, nut bearing, ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age.
<b>Joint Tenancy</b>	Creates undivided interests in property, with each joint tenant owning an equal fractional share; and each is entitled to simultaneous possession and enjoyment of the entire property; right of survivorship.
<b>Leasehold Interest (or Estate)</b>	The lessee's interest in property; the right to use and occupy real property during the term of a lease, subject to any contractual restrictions.
<b>Lessee</b>	One who has the right to use or occupy property under a lease agreement; a tenant.
<b>Lessor</b>	One who holds property title and conveys the right to use and occupy the property under a lease agreement; a landlord.
<b>Lien Date</b>	All taxable property (both state and locally assessed) is assessed annually for property tax purposes as of 12:01 a.m. on January 1, which is called the lien date. It is referred to as the lien date because on this date the taxes become a lien against all real property assessed on the secured roll.
<b>Partition</b>	Any division of property between coowners resulting in individual ownership of the interest of each.

<b>Term</b>	<b>Definition</b>
<b>Possessory Interest</b>	Interest in real property that exists as a result of (1) a possession of real property that is independent, durable and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with the ownership of a fee simple or life estate in the real property in the same person; or (2) a right to the possession of real property, or a claim to a right to the possession of real property, that is independent, durable and exclusive of rights held by others in the real property, and that provides a private benefit to the possessor, except when coupled with the ownership of a fee simple or life estate in the real property in the same person; or (3) possession of taxable improvements on tax-exempt land.
<b>Probate</b>	The judicial process for determining the validity of a will.
<b>Property Eligible for Homeowners' Exemption</b>	Property that is the principal place of residence of its owner and is entitled to exemption pursuant to section 205.5.
<b>Purchase Price</b>	The amount of money a buyer agrees to pay and a seller agrees to accept in an exchange of property rights; purchase price is based on a particular transaction, not necessarily on what the typical buyer would pay or the typical seller would accept.
<b>Real Property</b>	The possession of, claim to, ownership of, or right to the possession of land; all mines, minerals, and quarries in the land; all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto; and improvements; in California property tax law, the term is synonymous with "real estate."
<b>Regular Assessment Roll</b>	Roll covering period starting July 1 of the current calendar year to June 30 of the next year.
<b>Remainder Interest</b>	The property that passes to a beneficiary after the expiration of an intervening property interest.
<b>Reversion</b>	A lump-sum benefit that an investor receives or expects to receive at the termination of an investment. In a taxable possessory interest, the land and improvements that revert back to the public owner at the termination of the taxable possessory interest.
<b>Reversionary Interest</b>	The rights of the lessor at the expiration of a lease; the estate returned or due to be returned to the grantor or investor.

<b>Term</b>	<b>Definition</b>
<b>Structure</b>	An edifice or building; an improvement whose primary use or purpose is for housing or accommodation of personnel, personalty, or fixtures and has no direct application to the process or function of the industry, trade, or profession.
<b>Sublease</b>	An agreement in which the lessee in a prior lease conveys the right of use and occupancy of a property to another.
<b>Taxable Value</b>	For real property subject to article XIII A of the California Constitution, the base year full value adjusted for any given lien date as required by laws or the full cash value (market value) for the same date (whichever is less) as set forth in section 51(a). For personal property, the full cash value for the lien date each year.
<b>Tenancy in Common</b>	A form of concurrent property ownership in which multiple owners have an undivided interest in the property.