220.0582

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
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Executive Secretary

March 16, 1988

Dear Mr. :

This is in response to your request that we review a proposed transfer of title which would reflect the true ownership interests of the parties in order to determine if such proposed transfer would result in a change in ownership. The deeds which you have forwarded for our review show the following transfers:

Lots 2 and 3

1. March 1964 Grant Deed from Werner and Eleanor to Werner and Alexandra , husband and wife. At this point the properties are owned 100 percent by Werner Scharff and Alexandra Scharff.

2. April 1964 Grant Deed from Werner Scharff and Alexandra Scharff to Eleanor of one-sixth undivided interest in Lots 1 and 2. The properties are now owned five-sixths by Werner and Alexandra and one-sixth by Eleanor .

3. June 1971 Alexandra Quitclaims Lots 2 and 3 to Werner as his sole and separate property. Werner now owns five-sixths of Lots 2 and 3 as his separate property and Eleanor owns one-sixth.

4. July 3, 1979 Grant Deed, recorded July 12, 1979. Werner to Kurt a one-third interest in Lots 2 and 3. Werner now owns three-sixths; Eleanor , one-sixth; and Kurt , two-sixths of Lots 2 and 3.

5. June 19, 1979 Grant Deed, recorded July 12, 1979. Geo to Werner and Alexandra a one-sixth interest of Lots 2 and 3.

   June 21, 1979, recorded July 12, 1979. Scharff to Geo one-sixth interest in Lots 2 and 3. The dates of the

4

deeds in these two transactions are out of order but it appears that Kurt granted one-sixth of the properties to Geo who then granted them to Werner . At this point title appears to be held as follows: Werner , three-sixths; Werner and Alexandra , one-sixth; Eleanor , one-sixth; and Kurt , one-sixth.

6. July 26, 1979 Grant Deed, recorded August 13, 1979. Kurt to A Corporation, a Nevada corporation, one-sixth interest in Lots 2 and 3.

   July 30, 1979 Deed from A Corporation to K , one-sixth interest in Lots 2 and 3. This is the last deed in the series of transactions. At this point title appears to be held three-sixths by Werner , one-sixth by Werner and Alexandra ; one-sixth by Eleanor ; and one-sixth by K . A title search by Ticor Title Insurance Company shows the property is presently held by Werner four-sixths, Werner and Alexandra one-sixth, and K one-sixth. (This differs from our conclusion with respect to Eleanor 's one-sixth interest. No document was submitted to us which shows that she ever transferred her one-sixth interest. If however, she transferred her interest to Werner , then our conclusion would be in accord with the report submitted by Ticor.)

Lots 5, 7 and 8

1. On June 20, 1967, Eleanor quitclaimed her interests in Lots 6, 7 and 8 to Werner .

2. On June 29, 1971, Alexandra quitclaimed all her interests in Lots 6 and 7 to Werner as his sole and separate property.

3. By Grant Deed dated July 9, 1979, recorded July 12, 1979, Werner granted to Kurt , Werner , and K an undivided one-third interest each in Lots 6 and 7. At this point Lots 6 and 7 appear to be owned one-third each by Kurt , Werner , and K .

4. By Grant Deed dated July 9, 1979, recorded July 12, 1979, Werner and K granted to Kurt , Werner , and K an undivided one-third interest each in Lot 8.

5. By Grant Deed June 19, 1979, recorded July 12, 1979, Geo grants to Werner and Alexandra a one-sixth interest in Lots 6, 7 and 8.

   By Grant Deed dated June 21, 1979, recorded July 12, 1979, Kurt grants to Geo a one-sixth interest in Lots 6, 7 and 8. These deeds are dated out of order, however, it appears that Kurt granted a one-sixth interest to Geo in Lots 6, 7 and 8; Geo then granted that one-sixth interest to Werner and Alexandra . At this point the property appears to be owned as follows: Werner , one-third; K , one-third; Kurt , one-sixth; Werner and Alexandra , one-sixth.

6. By Grant Deed dated July 26, 1979, recorded August 13, 1979, Kurt grants to A Corporation, a Nevada corporation, a one-sixth interest in Lots 6, 7 and 8.

   Deed dated July 30, 1979, recorded August 13, 1979, A Corporation grants K a one-sixth interest in Lots 6, 7 and 8. Title now appears to be held by Werner , two-sixths; Werner and Alexandra , one-sixth; K , three-sixths. This is in accord with the Ticor Title Insurance Report which reports the last recorded instrument purporting to transfer title as: Werner , one-third; K , three-sixths; and Werner and Alexandra , one-sixth.

You state in your letter that the execution and recordation of the above series of deeds do not reflect the true state of title as intended by the owners of the properties. You state that since acquisition, commencing approximately in 1964, the properties have been owned in tenancy in common with K owning an undivided one-third interest, Werner et al. owning an undivided one-third interest, and Kurt owning an undivided one-third interest. The parties intended to vest title one-half in Werner and one-half in K by transferring to each one-sixth of the prior one-third interest of Kurt . You state that Werner and K were partners in an informal partnership by mutual oral agreement and that the partners operated the properties as a partnership. In support of this claim, you have enclosed copies of the 1985 and 1986 partnership tax returns.

ANALYSIS

Property tax Ruled 462(k)(2) deals with deed presumptions and states:

Deed presumption. When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property. When the presumption is not rebutted, any transfer between the parties will be a change in ownership. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

(A) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.

(B) The monetary contribution of each party. The best evidence of the existence of such factors shall be a judicial finding or order. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, cancelled checks, insurance policies, and tax returns.

Section 662 of the Evidence Code states that:

The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.

Clear and convincing proof is defined as:

"clear, explicit and unequivocal", "so clear as to leave no doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind." (1 Witkin, Calif. Evid. (3d ed. 1986) § 160, p. 137)

In Toney v. Nolder (1985) 173 Cal.App.3d 791, the plaintiff claimed an interest in real property based on his contention that he and the defendent had an oral partnership agreement. The court held that there is no exception to the standard set forth in Evidence Code section 662 and the plaintiff was required to meet the clear and convincing evidence standard. Under these legal principles, the names appearing on a deed are presumed to own not only legal title to the real property but also beneficial ownership. This presumption can be overcome only by proof that is clear and convincing, that is, evidence that is explicit, unequivocal and leaves no doubt.

You have presented partnership tax returns for 1985 and 1986 which show that Werner and K are partners in a partnership which owns Lots 2, 3, 6 and 8. Lot 7 (Street) is not listed as partnership property on

Statement 1 of the partnership returns. Schedule K-1 of the returns show that Werner and K are each fifty percent partners in the partnership. We note that neither partnership return is signed by the general partner, however, if these returns were submitted with a statement signed under penalty of perjury that they were in fact filed for the years 1985 and 1986, we would accept them as evidence that four of the five properties were owned and operated by the partnership for those years. However, no evidence has been submitted as to the ownership status of the properties for previous years.

With respect to Lots 2 and 3, you propose to record a quitclaim deed for execution by Werner to K as to an undivided one-sixth interest. With respect to Lots 6, 7 and 8, you propose to record a quitclaim deed executed by Alexandra to Werner as to her entire interest in the three parcels.

Our opinion as to whether recordation of these deeds should result in a change in ownership of the property interests transferred is advisory only and is not binding on any assessor. It is the role of the assessor to ultimately evaluate the facts to determine if he is satisfied with the sufficiency of the evidence. However, in our view, the only evidence which you have provided, the partnership tax returns for 1985 and 1986, is not sufficient to meet the "clear and convincing" standard required to rebut the presumption that the names appearing on the title reflect the ownership of the property. There is no evidence concerning operation of a Werner /K partnership prior to 1985. Further, Lot 7 is not listed as partnership property on the 1985 and 1986 tax returns. It is our opinion that additional verification is necessary in order to rebut the presumption contained in Rule 462(k)(1). If the taxpayer can provide additional evidence, such documentation may be evaluated by the assessor to see if it is sufficient to rebut the presumption described above.

Very truly yours,

Michele F. Hicks

Michele F. Hicks
Tax Counsel

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CHANGE IN OWNERSHIP

220.0585. **Reporting.** Revenue and Taxation Code sections 480–480.2 mandate that only a person or legal entity acquiring ownership or control of real property or mobile homes subject to local property taxation is required to file a change in ownership statement; therefore, state assessees are exempt from filing change in ownership statements. However, under section 480.3, county recorders may require all transferees, including state assessees, to file a preliminary change in ownership report or pay a $20 recording fee in lieu thereof. C 4/19/94.