

M e m o r a n d u m

To: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice-Chair
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: August 3, 2007

From: Kristine Cazadd 
Chief Counsel

Subject: **Report on Life Estates: Property Tax Rule 462.060**
Change in Ownership – Life Estates and Estates for Years
August 14 Board Meeting – Other Chief Counsel Matters – Item M3

At the April 25, 2007 Board meeting, the Board considered and denied Mr. Stephen Bennett's first petition to amend Property Tax Rule¹ 462.060, *Change in Ownership - Life Estates and Estates for Years*, to add an exclusion from change in ownership for the creation of certain life estates based upon a proposed value equivalency test that takes into consideration both the age and actuarial life expectancy of the new life tenant. At the meeting, the Board directed staff to provide additional information regarding life estates generally and to survey the counties with respect to the change-in-ownership reassessment of life estates. This memorandum is in response to that request.²

This memorandum sets forth: (1) general real property law background information on life estates and the property tax treatment of life estates; (2) an update on the pending appeal of *Steinhart v. County of Los Angeles et al.*;³ (3) the results of an informal survey of county assessors regarding life estates; and (4) a discussion of certain less-than-fee-simple-absolute or partial interests in real property and how they are treated for change-in-ownership purposes.

I. Life Estates – General Background

A life estate is a freehold estate measured in duration by the life or lives of one or more persons. The measuring life may be that of the life tenant or some other third person or persons. A life estate may be granted or reserved by a deed, or it may be created by a will. If created by deed, it is created on delivery of the deed; if created by will, it is created on the death of the decedent. (Miller & Starr, California Real Estate (3rd Ed. 2000), §§ 9:19, 9:20 at 26-28.)

¹ All "Property Tax Rule" or "Rule" references are to title 18 of the California Code of Regulations.

² After the April 25, 2007 Board meeting, Mr. Bennett filed two additional petitions, which the Board considered and denied on June 1, 2007 and June 18, 2007, respectively.

³ *Steinhart v. County of Los Angeles et al.* (B190957, app. pending).

As to the change-in-ownership consequences of the creation, reservation, transfer, or termination of life estates, Revenue and Taxation Code⁴ section 60 defines “change in ownership” as a single test with three elements: “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.” The third element, known as the “value equivalence” test, ensures that only transfers of property interests that represent the primary value of the real property are considered changes in ownership. Section 61 et seq. provides examples of transfers that result in a change in ownership and examples of transfers that do not. As relevant herein, section 62, subdivision (e), excludes from change in ownership:

[a]ny transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) [transfers involving trusts] and in Section 63 [interspousal exclusion]. [Parentheticals added.]

In establishing the section 62, subdivision (e) exclusion, the Legislature placed no qualifications on the nature or anticipated duration of the life estate.⁵ To interpret sections 60 and 62, subdivision (e) consistently and harmoniously, the Board promulgated Property Tax Rule 462.060, subdivision (a), which states:

The creation of a life estate in real property is a change in ownership at the time of the transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor’s spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor’s spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right to possession or enjoyment of a remainderman (other than the transferor or the transferor’s spouse) is a change in ownership.

Thus, as stated above, Rule 462.060 consistently applies the plain language of section 62, subdivision (e): that the creation of a life estate is a change in ownership unless that life estate is retained by the transferor or the transferor’s spouse.⁶

⁴ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

⁵ The California Legislature recently considered legislation (Sen. Bill No. 333 (2005-2006 Reg. Sess.)) that would have excluded from change in ownership the purchase of a life estate by a person 55 years or older if: (1) the life estate interest consisted solely of the right to occupy the property for life; and (2) the life tenant was prohibited from transferring the interest. The proposed legislation included a provision declaring the Legislature's determination that such a life estate was not substantially equivalent to the value of a fee interest for purposes of section 60. The bill, however, failed to pass out of its originating house. Thus, as recently as the 2005-2006 legislative session, the Legislature was made aware that life estates are considered to be equivalent to fee interests and yet failed to act to change this treatment.

⁶ Under current law, in which section 60’s definition of “change in ownership” has been modified by initiative and further clarified by the Legislature, the creation of a life estate may also be excluded from a change in ownership if any statutory exclusion applies, e.g., the parent-child or grandparent-grandchild exclusion.

II. Steinhart v. County of Los Angeles et al.

Currently before the Second District Court of Appeal is the case of *Steinhart v. County of Los Angeles et al*, case number B190957. In that case, the appellate court is considering whether the transfer of a life estate to a 73 year-old woman is a change in ownership under section 60. At the trial court, the case was dismissed after the court sustained defendant's demurrer without leave to amend. An appeal followed.

On June 1, 2007, the Board of Equalization filed an amicus curiae brief in the court of appeal. The brief stated the Board's position that Rule 462.060, subdivision (a) – which explains that the creation of a life estate results in a change in ownership unless the life estate is retained by the grantor or created in the grantor's spouse – is consistent with sections 60 and 62, subdivision (e), and also is in accordance the decisions of the appellate court decisions in *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334 and *Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480. Responses to the brief were filed by Ms. Lorraine Steinhart and the County of Los Angeles, on June 27, 2007 and June 29, 2007, respectively. Oral argument is set for August 14, 2007.

III. Survey of the Counties

In an attempt to determine the number of change-in-ownership reassessments resulting from the creation, transfer, or termination of life estates, the County-Assessed Properties Division (CAPD) conducted an informal survey of the 58 county assessors. Responses were received from 40 counties. Of these, however, only nine reported that they could extract life estate data. Attached is a memorandum dated August 3, 2007, from Dean Kinnee, Chief, County-Assessed Properties Division, entitled, "Life Estate Changes in Ownership," that summarizes the survey findings.

Given the lack of data and the conflicting data, CAPD cautions that any conclusions drawn from this data should be accorded only limited confidence. Furthermore, given the fact that many counties do not track change-in-ownership data related to life estates and/or life estates held in trust, it appears that even a more formal survey would not disclose the actual number of life-estate related change-in-ownership reassessments.

IV. Treatment of Certain Less-Than-Fee or Partial Interests in Real Property

Section 60 et seq. provides for reassessment upon change in ownership of the fee interest in real property or a less-than-fee-interest in the real property that is substantially equivalent in value. The life estate is only one of the interests that the Legislature has deemed to undergo a change in ownership even though only a partial interest in the property has transferred. To this end, the Legislature has promulgated numerous statutes regarding the transfers of these interests.

For example, in addition to section 62, subdivision (e), the following statutes characterize other transfers of partial interests in real property as changes in ownership: (1) section 61, subdivision (f) (the creation, transfer, or termination of a tenancy-in-common interest); (2) section 65, subdivision (a) (the creation, transfer, or termination of a joint tenancy interest); (3) section 61,

subdivision (b) (the creation, renewal, extension, sublease, or assignment of a taxable possessory interest in government-owned real property for any term); (4) section 61, subdivision (c) (the creation, transfer or termination of a leasehold interest for 35 years or more and the creation, transfer or termination of a leasehold interest in property qualifying for the homeowners' exemption); and (5) section 61, subdivision (a) (the creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the period during which the right may be exercised).

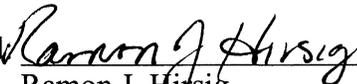
Thus, the legislature has determined that the creation, transfer, or termination of certain less-than-fee or partial interests in real property, including life estates, may constitute changes in ownership.

If you need more information or have any questions, please contact Acting Assistant Chief Counsel Robert Lambert at (916) 324-6593.

KC:jlh

Chief Counsel/Final/Rule 462.060.Life Estates.8.14.07.doc
Prop/Rules/462.060/2007

Attachment

Approved 
Ramon J. Hirsig
Executive Director *KEC*

- cc: Mr. Ramon Hirsig MIC: 73
- Mr. David Gau MIC: 63
- Mr. Robert Lambert MIC: 82
- Mr. Dean Kinnee MIC: 64
- Mr. Todd Gilman MIC: 70

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 Ms. Mengjun He MIC:71
 Mr. Larry Bergkamp MIC:71
 Mr. Steve Shea MIC:72
 Mr. Reed Schreiter MIC:72
 Mr. Mark Ibele MIC:72
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M e m o r a n d u m

To: Mr. Robert Lambert
Acting Assistant Chief Counsel
Tax and Fee Programs Division

Date: August 3, 2007

From: 
Dean Kinnee, Chief
County-Assessed Properties Division

Subject: *Life Estate Changes in Ownership*

At the April 25, 2007 meeting, the Board Members requested that staff research the creation and change in ownership treatment of life estates. County-Assessed Properties Division staff distributed a questionnaire to all county assessors to obtain data on how many changes in ownership due to life estates are being processed annually. We received responses from 40 counties.

Conclusions

- Approximately 11 percent of life estate events (creation or termination) resulted in a reappraisable change in ownership in those counties that were able to provide data.
- The life estate transfers that resulted in reappraisable changes in ownership (59) represented approximately .0139 percent of all changes in ownerships processed (425,168) for the reporting counties.

The following are the questions posed to county assessors and their responses:

Question 1: Can you extract data from your system on changes in ownership due to the creation or termination of life estates?

Yes 9 counties [Fresno, Los Angeles, Orange, Placer, Sacramento,
San Francisco, San Luis Obispo, Santa Clara, Siskiyou]
No 31 counties

Question 2: Can you extract data from your system on changes in ownership due to the creation or termination of a life estate within a trust?

Yes 1 county [Siskiyou]
No 39 counties

Question 3: During the 2006 calendar year, approximately how many life estate events (i.e., creation or termination) were processed?

530 [Fresno, Los Angeles, Monterey, Orange, Placer, Sacramento,
San Francisco, San Luis Obispo, Santa Clara, Siskiyou, Sutter]

Question 4: How many life estate events resulted in reappraisable changes in ownership?

59 [Fresno, Los Angeles, Monterey, Orange, Placer, Sacramento,
San Francisco, San Luis Obispo, Siskiyou, Sutter]

Question 5: During the 2006 calendar year, approximately how many life estates were created or terminated through a trust?

12 [Napa, Placer]

Question 6: How many trust life estates resulted in reappraisable changes in ownership?

6 [Monterey]

DRK:sk

County _____

LIFE ESTATE CHANGE IN OWNERSHIP QUESTIONNAIRE

1. Can you extract data from your system on changes in ownership due to the creation or termination of life estates?

No Yes

2. Can you extract data from your system on changes in ownership due to the creation or termination of a life estate within a trust?

No Yes

If no to both questions, please fill in name and phone number and return. If yes to either question, please continue.

3. During the 2006 calendar year, approximately how many life estate events (i.e., creation or termination) were processed? _____

4. How many life estate events resulted in reappraisable changes in ownership? _____

5. During the 2006 calendar year, approximately how many life estates were created or terminated through a trust? _____

6. How many trust life estates resulted in reappraisable changes in ownership? _____

Contact Person

Phone Number

If you have any questions, please contact Glenna Schultz at 916-324-5836.

Please return by **Monday, July 23, 2007**, by e-mail to glenna.schultz@boe.ca.gov.

LIFE ESTATE QUESTIONNAIRE RESULTS

		Extract Life Estate Data?	Life Estate Data?	# Life Estate Events	# Life Estate CIO	# Trust Life Estate Events	# Trust Life Estate CIO
1	Alameda	N	N				
2	Alpine	N	N				
3	Amador	N	N				
4	Butte						
5	Calaveras						
6	Colusa	N	N				
7	Contra Costa						
8	Del Norte						
9	El Dorado	N	N				
10	Fresno	Y	N	97	11	---	---
11	Glenn						
12	Humboldt	N	N				
13	Imperial	N	N				
14	Inyo						
15	Kern	N	N				
16	Kings	N	N				
17	Lake	N	N				
18	Lassen	N	N				
19	Los Angeles	Y	N	90	5	N/A	N/A
20	Madera						
21	Marin	N	N				
22	Mariposa	N	N				
23	Mendocino	N	N				
24	Merced	N	N				
25	Modoc	N	N				
26	Mono						
27	Monterey	N	N	4	2	10	6
28	Napa	N	N				
29	Nevada						
30	Orange	Y	N	60	10	N/A	N/A
31	Placer	Y	N	30	5	2	0
32	Plumas	N	N				
33	Riverside	N	N				
34	Sacramento	Y	N	150	7	very few	N/A
35	San Benito						
36	San Bernardino						
37	San Diego	N	N				
38	San Francisco	Y	N	8	1	N/A	N/A
39	San Joaquin	N	N				
40	San Luis Obispo	Y	N	52	13	---	---
41	San Mateo						
42	Santa Barbara						
43	Santa Clara	Y	N	12	N/A	N/A	N/A
44	Santa Cruz	N	N				
45	Shasta	N	N				
46	Sierra	N	N				
47	Siskiyou	Y	Y	21	2	0	0
48	Solano	N	N				
49	Sonoma	N	N				
50	Stanislaus						
51	Sutter	N	N	6	3	---	---
52	Tehama	N	N				
53	Trinity						
54	Tulare	N	N				
55	Tuolumne	N	N				
56	Ventura						
57	Yolo	N	N				
58	Yuba						
	41	N-31 Y-9	N-39 Y-1	530	59	12	6

70.69%

11.13%

50.00%