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May 19, 1980

Mr. J :

Dear Mr. J :

You recently posed some rather important questions concerning the treatment of time-sharing type of ownership under the property tax change in ownership legislation and rules. You pointed out three forms of transfers and our analysis below applies to all three forms.

The use of the terms divided and undivided may lead to confusion. Although your letter seems to distinguish between them sufficiently, I would like to review the meaning of the two terms to put their relationship in proper focus. To the layman, divided and undivided are opposite sides of the same coin. Something that is undivided is single or whole and something that is divided is split into different parts. In law, there are two basic theories of ownership, sole ownership (also called ownership in severalty) and joint ownership. To apply the layman's meaning to the two terms, one would think that undivided ownership means sole ownership (no division of ownership) and divided ownership means joint ownership. However, the meaning the law applies to these terms does not result in this conclusion.

The term "undivided ownership" applies primarily to joint ownership of property. In this context, the term undivided does not refer to the split of ownership between two or more persons, but the right of each of the co-owners to possess the entire property. That is, the right of each to possess the entire estate means that there is no physical division of the property between the co-owners, except upon partition. Of course, a sole owner of a property also has such an undivided right, but it is so obvious that the law does not

speak in these terms for sole ownership. The term undivided ownership or interest, therefore, relates to the form of ownership for a specific property of which there may be ownership.

In this context the term divided has no meaning. There is no such thing as divided ownership in the same sense as undivided ownership. Because there are only two methods of ownership, sole and joint, and because the concept of undivided applies to both, there is no room for the concept of divided to come into play. The term "divided" does not describe a type or form of ownership but derives its meaning from the commonly used term "subdivided". It does not refer to a form of ownership, as undivided does, but to the physical property of which there may be ownership. In law, the terms "divided" and "undivided" are not opposite sides of the same coin, but refer to different real property concepts. Under this scheme, the first inquiry must be whether there is "divided" property and the second inquiry is what form and incidents of ownership apply to that divided property.

To determine if the property is divided, in the sense that it is subject to ownership in that divided state, we look to two possible definitions:

1. The technical definition of subdivision in Business and Professions Code Section 11000, and

2. Not within the technical meaning, but coming within the commonly accepted meaning of the term. For example, a person who owns 40 acres sells 20 of the 40 acres to another. In this sense the 20 acres may be regarded as divided or subdivided.

Time-sharing probably can't be discussed in the second sense above because it is a new concept relatively esoteric to the layman. Therefore, we must concern ourselves with the question whether a time-sharing concept is a subdivision within the meaning of the Business and Professions Code and the incidents of ownership for that property.

It is relatively easy for us to conclude that a time-share agreement is a subdivision within the meaning of the Business and Professions Code. Although Section 11000 of the Code speaks in terms of lands and physical real estate in defining subdivision, it has been held that the term encompasses rights of ownership as well as the physical estate or property. See 17 Ops.

AG 79 at page 82. We conclude that whenever there is a split of specific rights to use property paralleling those of ownership rights, it is a subdivision within the meaning of the Business and Professions Code. It seems to us that the time-share concept fits this concept. The real estate commissioner concurs in this conclusion, at least partially, by regulating some time-share property. As you pointed out in your letter, there is legislation (SB 1736) now before the Legislature to make it clear that time-sharing is a form of subdividing the property.

However, the fact that the time-sharing concept is a subdivided use of the property does not resolve the total problem. We also must determine the incidents of ownership of this time-share "lot". It doesn't follow automatically that because it is a subdivision or because the real estate commissioner regulates the development that there is fee ownership of each time period instead of undivided ownership of the whole. For example, Section 11000.1 of the Business and Professions Code provides that undivided interests in property are subdivisions subject to regulation and Section 11004.5 provides that community apartment projects (an undivided interest in the whole property) also come under the definition.

In the case of multiple ownership forms, such as condominiums, stock cooperatives, community apartment projects, and planned developments, the incidents of ownership are defined by statutory law. Civil Code Section 783 defines condominium ownership as an undivided interest in the land and a separate interest in space. A stock cooperative, defined in Business and Professions Code Section 11003.2, is distinguished by the fact that under the law the corporation is viewed as the sole owner of the land and buildings. As stated above, community apartment projects are defined in Section 11004.5 of the Business and Professions Code as an undivided interest in the whole property with a right to use a specific unit. As you can see, not all "subdivisions" have the same incidents of ownership.

It is our conclusion that until the Legislature defined the incidents of ownership of time-sharing as they have in other multiple ownership arrangements, general principles of law will apply. Under these general principles, it is our opinion that a court would hold that the persons having a time-shared "lot" are joint owners of the property and therefore have an undivided interest in that property. In this sense, the "property" may be either a single unit where a specific unit is the subject of the time-share agreement, or the total project, as in the case of the "class or unit" for a "seasonal time frame".

In either case, there will be undivided ownership in the land. We see little difference between a time-share right to use

and a community project right to use a specific unit. As you know, the Legislature has told us what to reappraise in a community apartment project and cooperative apartment. In the absence of such direction for time-sharing, it is our opinion that Section 65(b) governs the reappraisal of this form of ownership.

Very truly yours,

Robert D. Milam
Tax Counsel

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