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February 1, 1991

Honorable Gregory J. Smith
SAN DIEGO COUNTY ASSESSOR
1600 Pacific Highway, Room 103
San Diego, CA 92101
Attn: Mr.

Dear Mr. ():

Your letter of September 26, 1990 to Mr. Verne Walton has been referred to us for reply. You have requested an opinion as to whether or not real property should be reappraised (i.e., whether such real property has undergone a change in ownership) when it is acquired by entities such as the Resolution Trust Corporation ("RTC") or the Federal Deposit Insurance Corporation ("FDIC").

Copies of deeds submitted with your letter indicate that in some cases the RTC has acquired ownership to property and then subsequently transferred it to purchasers. In other cases, RTC has combined properties from different failed savings and loan associations, then packaged them for sale to a third party or another financial institution. A representative of the RTC has informed us that it takes over assets as conservator or receiver by operation of law so that title is not conveyed to RTC by deed.

RTC was created by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the "Act"). P.L. 101-73. Among other things, the Act established RTC to manage and dispose of the assets acquired from failed savings institutions.

Under the Act, the primary duties of RTC are to manage and resolve cases involving institutions that were once insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") (FSLIC was abolished by the Act) that are placed in receivership between January 1, 1989 and three years from the date of the enactment of the Act (August 9, 1989). The Act provides that RTC shall succeed FSLIC as conservator or receiver with respect to any institution for which FSLIC was appointed conservator or receiver between January 1, 1989 and August 9, 1989 and generally that RTC is to be appointed

receiver for institutions placed in receivership during the three year period after August 9, 1989.

Additionally, the RTC is required by the Act to conduct its operations so as to maximize recovery on sale or other disposition of failed institutions or the assets of such institutions; minimize the impact of such transactions on local real estate and financial markets; make efficient use of its funds (which are acquired in large part from the Treasury and the Resolution Funding Corporation); minimize losses incurred in resolving cases; and maximize the preservation of the availability and affordability of residential real property for low and moderate income individuals.

The Act provides that in addition to the provisions of 12 U.S.C.A., section 1441a, the RTC shall have the same rights and powers to carry out its duties with respect to failed savings and loan institutions as the FDIC has under 12 U.S.C.A. sections 1821, 1822 and 1823 with respect to insured depository institutions (as defined in 12 U.S.C.A. §1813). In general, the FDIC acts as conservator or receiver with respect to insolvent banks and administers the depositor insurance funds for both banks and savings associations. Under these provisions, the FDIC and thus, the RTC as conservator or receiver may, for example, take over the assets of and operate the failed institution with all the powers of the members or shareholders, the directors and officers of the institution and conduct all business of the institution including collecting all obligations and money due the institution; performing all functions of the institution in the name of the institution which is consistent with the appointment as conservator or receiver; and preserving and conserving the assets and property of such institution. In addition, the FDIC and the RTC may, as receiver, place the institution in liquidation and proceed to realize upon the assets of the institution.

The FDIC and the RTC, as conservator or receiver, may also exercise incidental powers necessary to carry out any specifically granted powers. The Act requires the FDIC and the RTC to maintain a full accounting of each conservatorship and receivership.

The Act provides that the FDIC is to be the exclusive manager of the RTC and shall perform all its responsibilities unless removed as provided by the Act.

Whether there is a change in ownership when the FDIC or the RTC takes over the assets of a failed savings institution or a bank depends, of course, upon whether there has been a transfer of a present interest in real property including the beneficial use

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thereof, the value of which is substantially equal to the value of the fee interest (Revenue and Taxation Code §60).

In LTA No. 88/55, we concluded that no change in ownership occurs upon the creation of a bankruptcy estate because the assets held in the estate are used to satisfy the debtor's liabilities and thus the beneficial use of the property remains with the debtor and is not transferred when the estate is created.

We believe the same is true when the RTC takes over the assets of a failed savings institution or when the FDIC takes over the assets of a failed bank in the capacity of a conservator or receiver. The conservatorship and receivership functions described above (which are illustrative only and not all-inclusive), suggest this result and the courts have so held. For example, in British Col. Inv. Co. v. Federal Deposit Ins. Corp., D.C. Cal. 1976, 420 F. Supp. 1217, 1223 the court stated:

The FDIC, as receiver of an insolvent national bank stands in the position of the insolvent bank and is required to marshal the assets of the bank for its shareholders and creditors.

To the same effect, see also Federal Deposit Ins. Corp. v. Abraham, D.C. La. 1977, 439 F. Supp. 1150; Federal Deposit Ins. Corp. v. Hatmaker, C.A. Tenn. 1985, 756 F. 2d 34.

Accordingly, since the Act gives the RTC the same conservatorship and receivership rights and powers as the FDIC, we are of the view that when either the FDIC or the RTC acquires the property of a failed institution as a conservator or receiver, there is no transfer of the beneficial use of property and thus no change in ownership.

Of course, the transfer of real property to the FDIC or the RTC for its own benefit rather than in its capacity as a conservator or receiver would be a change in ownership.

Also, if the FDIC or the RTC in any capacity forecloses on a mortgage or deed of trust, a change in ownership will occur as provided in Property Tax Rule No. 462(g)(2) (Title 18 Calif. Code Regs.) notwithstanding the fact that either may be acting in a conservatorship or receivership capacity because in such a case there would be a transfer of a present beneficial interest in the real property.

Although both the FDIC and the RTC are federal instrumentalities, both are expressly subject to property taxation on real property they hold (12 U.S.C.A. 1441a(g), 1825).

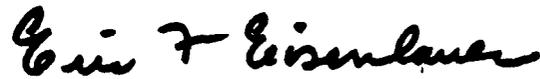
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Transfers of real property by the FDIC and the RTC to individuals or other institutions would be changes in ownership unless, of course, an exclusion is applicable.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

EFE:ta
2986D

cc: Mr. John W. Hagerty
Mr. Verne Walton
Mr. Richard E. Ball
Mr. Neil B. Van Winkle