

(916) 445-8485

505.0025

September 21, 1978

Mr. E. C. Williams
San Diego County Assessor
1600 Pacific Highway
San Diego, CA 92101

Attention: Mr. Roy Wayne, Chief
Assessment Records

Dear Mr. Wayne:

This is in response to your August 23, 1978, letter to Mr. Marvin Goforth wherein you asked whether the homeowners' exemption is available to Mr. and Mrs. Adrian Morrisette under the following circumstances:

By a February 1, 1978, Agreement For Sale And Purchase Of Real Estate, Mr. and Mrs. Raymond W. Angel agreed to sell and Xcel Properties, Inc. agreed to buy a residence in El Cajon, California, for the sum of \$57,000. After paying \$2,000, Xcel agreed to pay monthly installments of \$440 for the next 29 years and 2 months, and it could pay the Angels the outstanding balance at any time.

Paragraph 6 of the agreement provided:

“Upon receiving payment in full of the remaining balance at the time and in the manner herein set forth, Seller shall within thirty (30) days thereafter execute and deliver to Buyer and grant deed sufficient to convey title to said realty free and clear of all encumbrances excepting those enumerated in paragraph 1 hereof (other than the presently existing deed(s) of trust).”

Paragraph 15 of the agreement provided:

“This agreement is not a transference of title; Buyer and Seller each agree that this agreement and the various documents concurrently executed, do not in themselves transfer, grant, or convey title of the said realty to the Buyer, and that the Buyer will not acquire title to the said realty until all terms and considerations for the same have been met by the Buyer. Providing this agreement is not in default, the Buyer does acquire an interest in the said realty which is known as a vendee's equitable interest.”

That same day, by Agreement For Sale And Purchase Of Real Estate, Xcel Properties, Inc. agreed to sell and Mr. and Mrs. Morrisette agreed to buy that same residence for the sum of \$65,000. After paying \$4,000, the Morrisette's agreed to pay monthly installments of \$513 for the next 30 years, and they could pay Xcel the outstanding balance at any time. Paragraphs 6 and 16 of the Agreement were identical, in pertinent part, to paragraphs 6 and 15 of the Angel-Xcel Agreement set forth above.

A contract for the purchase and sale of real property is, in effect, a grant of the whole beneficial interest in the land and hence, is a conveyance or transfer of real property (Central Construction Company v. Hartman, 7 Cal. App. 2d 703). On the execution of such a contract, the purchaser acquires a conditional equitable title to the property, and the seller retains legal ownership of the property until conveyance to the purchaser is finally accomplished, that is, until the purchaser has completed his title by paying the balance of the purchase price, subject to the conditions of the contract. At the time, the purchaser is entitled to receive the legal title from the seller.

From the inception of the homeowners' exemption, we have been of the opinion that an equitable owner for real property may qualify as an owner for purposes of the exemption. This is in accord with California Supreme Court's holding in Sherman v. Quinn, 31 Cal. 2d 661, that a vendee in possession under an installment contract is an owner for purposes of property tax exemption.

Accordingly, as the Morrisettes acquired equitable title to the property, as expressly set forth in paragraph 16 as explained above, we believe that the Morrisettes are entitled to receive the homeowners' exemption, assuming all the requirements for exemption have been met.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr
bc: Mr. Verne Walton (W. Grommet)
Legal Section