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TO COUNTY ASSESSORS:

QUESTIONS AND ANSWERS REGARDING CHANGES TO
PROPERTY TAX RULE 462.240 - EXCLUSION FOR
REGISTERED DOMESTIC PARTNERS

In 2003, the Board approved amendments to Property Tax Rules 462.040, *Change in Ownership—Joint Tenancies*, and 462.240, *The Following Transfers do not Constitute a Change in Ownership* (Title 18, sections 462.040 and 462.240, California Code of Regulations). The Office of Administrative Law approved and filed the amendments with the Secretary of State on October 14, 2003, resulting in an effective date of November 13, 2003.

Letter To Assessors (LTA) 2003/077 explained the changes to Rules 462.040 and 462.240. This letter is posted on the Board's Web site at www.boe.ca.gov/proptaxes/2003.htm. The amended versions of Rules 462.040 and 462.240 are posted at ~~www.boe.ca.gov/proptaxes/ptrules.htm~~ **The updated URL as of 3/19/2025 is <https://boe.ca.gov/proptaxes/prop-tax-rules.htm>.** As a follow-up to LTA 2003/077, this letter contains a series of questions and answers on the implementation of the changes to Rule 462.240 as interpreted by the Board's Legal Department. A separate Letter To Assessors will be issued on the changes to the joint tenancy rule (Rule 462.040).

If you have any questions regarding this rule change, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

CHANGE IN OWNERSHIP – DOMESTIC PARTNERS

1. What are the changes to Rule 462.240?

The amendment to Rule 462.240 adds subsection (k), which provides that change in ownership does not include "Any transfer of separate property inherited by a surviving domestic partner, as defined in subdivision (b) of section 37 of the Probate Code, by intestate succession upon the death of a registered domestic partner."

2. What is the effective date for the new "domestic partner" exclusion?

The amendments to Probate Code sections 6401 and 6402 made by Assembly Bill 2216 (Chapter 447 of the Statutes of 2002) constituted a change in existing law regarding transfers between registered domestic partners upon death and became effective on July 1, 2003. Newly added subsection (k) of Rule 462.240 became effective on November 13, 2003, but is declaratory of these pre-existing statutory amendments, and therefore has a *retroactive effective date of July 1, 2003*. Thus, subsection (k) applies to all transfers between registered domestic partners resulting from the death of a registered domestic partner that occurs on or after July 1, 2003.

3. Does this exclusion apply to all transfers of real property between registered domestic partners?

No. This exclusion applies *only* to transfers between registered domestic partners that result from the *death* of one of the partners. Even though transfers that occur while both are still living are not excluded under this rule, such transfers may qualify under another exclusion (e.g., joint tenancy).

4. What does the term "separate property" mean?

"Separate property" is all property owned by an individual that is not "community property." "Separate property" is defined in Family Code section 770(a) as (1) all property owned by the person before marriage; (2) all property acquired by the person after marriage by gift, bequest, devise, or descent; and (3) the rents, issues, and profits of the property described in this section. Under Family Code section 760, all property acquired by married persons during the marriage is presumed to be community, not separate. Thus, when a person is married, unless the deed or other title instrument expressly states that a person holds title as his/her "separate" property, it is presumed to be "community" property. When a person is single or unmarried, unless the deed or other title instrument states that title is held as "community" property, it is presumed to be "separate."

All property owned by registered domestic partners pursuant to Family Code section 297 or owned by individuals who are not married is presumed to be "separate" property, unless it was retained under joint ownership as community property with an ex-spouse. In rare situations where the deceased registered domestic partner was previously married and they did not "settle" their respective community property rights in the divorce, the "ex" may be able to claim a right to half of the property acquired during the term of the marriage.

5. What does the term "registered domestic partner" mean?

For purposes of this rule, "domestic partner" is defined in Probate Code section 37 as "one of two persons who have filed a *Declaration of Domestic Partnership* with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code, provided that the domestic partnership has not been terminated pursuant to Section 299 of the Family Code."

Family Code section 297 defines domestic partners as two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring. Such persons may enter into a domestic partnership when both persons file a Declaration of Domestic Partnership with the Secretary of State and all of the following requirements are met:

- Both persons have a common residence.
- Neither person is married or a member of another domestic partnership that has not been terminated, dissolved, or annulled.
- The two persons are not related by blood in a way that would prevent them from being married to each other.
- Both persons are over the age of 18 and are capable of consenting to the partnership.
- Either of the following:
 - Both persons are members of the same sex, or
 - Both persons are members of the opposite sex and at least one of the persons is over the age of 62 and meets the federal requirements for either old-age insurance benefits¹ or for aged individuals.²

The term "registered domestic partner" does not apply to legal entities, including a single-member limited liability company. Even though a single member limited liability company is disregarded for federal tax reporting purposes, it is still treated as a separate legal entity for California property tax purposes.

6. Does the term "registered domestic partner" include persons who registered in another state or were married in another jurisdiction that recognizes same sex marriage?

This rule applies only to domestic partners who registered with the California Secretary of State before the death of either partner. Rule 462.240 specifically references Probate Code section 37 which incorporates by reference the Family Code requirements in sections 298 and 298.5 for registering as a domestic partnership with the California Secretary of State. Thus, domestic partners registered in another state or same sex married persons licensed in other jurisdictions must nevertheless register with the California Secretary of State in order to be eligible for this exclusion.

¹ Title II of the Social Security Act as defined in 42 U.S.C. section 402(a).

² Title XVI of the Social Security Act as defined in 42 U.S.C. section 1381.

7. How is a registered domestic partnership terminated?

Until December 31, 2004, a registered domestic partnership may be terminated if (1) one partner gives or sends to the other a written notice that the partnership is terminated, (2) one of the domestic partners dies, (3) one of the domestic partners marries, or (4) the domestic partners no longer have a common residence. In addition, at least one former partner must file a Notice of Termination of Domestic Partnership with the Secretary of State.³ The date on which the notice is received by the Secretary of State is deemed the actual termination date of the domestic partnership, unless termination is caused by death or marriage.

As of January 1, 2005, if a registered domestic partnership terminates by filing a Notice of Termination of Domestic Partnership with the Secretary of State, the effective termination date is six months after the date of filing with the Secretary of State, provided a notice of revocation of termination has not been filed.

8. What must an assessor do to confirm that a domestic partnership is registered and current?

Assessors may require a partner to provide a copy of their registration certificate. The certificate must be current (not terminated) as of the date of death. Assessors may call the Secretary of State, Special Filings Section, at (916) 653-3984 to inquire about the status and/or the termination notice date and reason for filing such notice (e.g., date of death). If the termination notice was filed because of death, the exclusion may still apply assuming the effective date of the termination did not precede the date of death.

9. Should an assessor check for common residency as evidence of current registered domestic partnership status?

No. Since termination does not become effective until notice is filed with the Secretary of State, a call to the Secretary of State is sufficient to determine if a registry is current. Even though under current law a registered domestic partnership may be terminated if the partners no longer have the same residence, the termination does not take effect until a notice is filed with the Secretary of State.

³ Section 3, subdivision (a) of AB 2216 states, "Under existing law, your domestic partnership is automatically terminated if you or your partner married or died while you were registered as domestic partners. It is also terminated by you sending your partner or your partner sending to you by certified mail a notice terminating the domestic partnership, or by you and your partner no longer sharing a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership with the Secretary of State in order to establish the actual date of termination of the domestic partnership. You can obtain a Notice of Termination of Domestic Partnership from the Secretary of State's office. If your domestic partnership has terminated because you sent your partner or your partner sent to you a notice of termination of your domestic partnership, you must immediately file a Notice of Termination of Domestic Partnership. If you do not file that notice, your former domestic partner may inherit under the new law. However, if your domestic partnership has terminated because you or your partner married or you and your partner no longer share a common residence, neither you nor your former partner may inherit from the other under this new law."

10. How does the assessor identify a "surviving domestic partner"?

A question is being added to the Preliminary Change of Ownership Report to help assessors identify surviving domestic partners. The definition of "surviving domestic partner" in Probate Code section 37 is patterned after the Probate Code definition of "surviving spouse." Therefore, just as a marriage certificate is sufficient to prove "spousal status," proof of a current Declaration of Domestic Partnership filed with the Secretary of State is sufficient to prove "surviving domestic partner" status.

11. Must the domestic partner have died intestate to qualify?

No. The exclusion in subsection (k) applies to all property transferred on the date of death of the decedent to the surviving domestic partner whether taken by will, trust, estate plan, joint tenancy, or by intestate succession.

The Board's rulemaking action recognizes amendments made by AB 2216 governing transfers of separate property to surviving registered domestic partners, which includes the express intent that a deceased domestic partner's separate property transfers upon death to the surviving registered domestic partner in the same manner as a transfer between spouses. Under section 3(a) of AB 2216, if the deceased registered domestic partner dies with a trust or will, and the surviving domestic partner is the named beneficiary therein, the survivor already has parity in and inherits the property in the same manner as a surviving spouse. AB 2216 was needed, according to the Legislature, to guarantee the same "surviving spouse rights" to surviving registered domestic partners who were not named in a trust, will or estate plan because the deceased domestic partner died intestate.

Specifically, section 3(a) mandated that the Secretary of State notify and inform registered domestic partners of this addition of intestate succession rights and benefits, as follows:

On or before March 1, 2003, the Secretary of State shall send the following letter to the mailing address on file of each registered domestic partner who registered prior to January 1, 2003:

"Dear Registered Domestic Partner: This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner. As of July 1, 2003, California's law of intestate succession will change. The intestate succession law specifies what happens to a person's property when that person dies without a will, trust, or other estate plan. Under existing law, if a domestic partner dies without a will, trust, or other estate plan, a surviving domestic partner cannot inherit any of the deceased partner's separate property. Instead, surviving relatives, including, for example, children, brothers, sisters, nieces, nephews, or parents may inherit the deceased partner's separate property. Under the law to take effect July 1, 2003, if a domestic partner dies without a will, trust, or other estate plan, the surviving domestic partner will inherit the deceased partner's separate property in the same manner as a surviving spouse. This change will mean that the surviving domestic partner would inherit a third, a half, or all of the deceased partner's separate property, depending on whether the deceased domestic

partner has surviving children or other relatives. This change does not affect any community or quasi-community property that the deceased partner may have had. This change in the intestate succession law will not affect you if you have a will, trust, or other estate plan. If you do not have a will, trust, or other estate plan and you do not wish to have your domestic partner inherit your separate property in the manner provided by the revised law, you may prepare a will, trust, or other estate plan, or terminate your domestic partnership."

Since the Legislature enacted AB 2216 to ensure that any surviving registered domestic partner would not suffer economic hardship from succeeding to the property interests of his/her deceased partner, regardless of whether the partner died testate or intestate, subdivision (k) should be applied in a manner that carries out the Legislature's intent of affording all surviving registered domestic partners the same protections as surviving spouses. This is accomplished by excluding from change in ownership the transfer of separate property upon the death of a registered domestic partner to the surviving registered domestic partner – whether by intestate succession, trust, will, or estate plan⁴ such as a joint tenancy.

For example, A and B are registered domestic partners and acquired real property as joint tenants. If B died on December 1, 2003, A acquired B's share by operation of law. Since this is a transfer between registered domestic partners as a result of the death of a registered domestic partner, this may be excluded under Rule 462.240(k).

⁴ Joint tenancy is an estate plan often used in lieu of a trust or will; as such, the transfer of an estate in joint tenancy to the surviving domestic partner may, depending upon the facts, be eligible for the exclusion with regard to property acquired from the deceased joint tenant.