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TO COUNTY ASSESSORS:

CHANGE IN OWNERSHIP DETERMINATIONS INVOLVING THE COMMUNITY PROPERTY AND TITLE (DEED) PRESUMPTIONS

The purpose of this letter is to discuss change in ownership determinations involving transfers of community property held in the name of one spouse.

The Community Property Presumption

During marriage, each spouse has a present, existing, and equal interest in community property, and either spouse may exercise management and control of community property.[1] For example, each spouse is considered to hold a 50 percent ownership interest in legal entity interests purchased with community property funds.[2]

Thus, one of the most relevant factors in determining who has beneficial ownership of property in a marriage context is whether the property's character is community property or separate property. The general rule, also known as the community property presumption, is that property acquired during marriage is community property, unless evidence establishes that a specifically enumerated statutory exemption applies.[3] Married persons may effect a transmutation of community property to separate property (or vice versa) "in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected."[4] The statutes providing for such in Family Code sections 850-853 are known as the transmutation statutes.

The Title (Deed) Presumption

When, during a marriage, property is acquired in the name of only one spouse or property is transferred to a legal entity in which spouses own unequal interests, the title presumption (also known as the deed presumption), found in Evidence Code section 662 and Rule 462.200(b), may also apply. The title presumption provides that "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."[5] Rule 462.200(b) interprets this in the property tax context, providing that "[w]hen more than one person's name appears on a deed, there is a rebuttable

[1] Family Code sections 751, 1100(a), and 1102(b).
[2] See Letter To Assessors 85/33 (dated March 5, 1985).
[3] Family Code section 760.
[4] Family Code sections 850 and 852(a).
[5] Evidence Code section 662.

presumption that all persons listed on the deed have ownership interests in property, unless an exclusion from change in ownership applies."

When both the community property presumption and the title presumption apply, we previously opined that in certain circumstances, the title presumption prevailed over the community property presumption. This opinion was based on the court case *In re Marriage of Brooks & Robinson* (2008) 169 Cal.App.4th 176 (*Brooks*). However, the *Brooks* case was recently overruled in part by *In re Marriage of Valli* (2014) 58 Cal.4th 1396, dated May 15, 2014 (*Valli*).

Law and Analysis

Valli involved a husband, who, during his marriage, used community property funds to buy and pay the premiums on a life insurance policy, naming his wife as the policy's only owner and beneficiary.[6] During the couple's marital dissolution proceeding, the trial court ruled that the insurance policy was community property because it was acquired during the marriage with community funds. After subsequent appeals, the California Supreme Court affirmed that decision because the property was never formally transmuted to separate property in compliance with the transmutation statutes.

While the property in *Valli* was a life insurance policy, the court's findings on whether it is community property has application in property taxation especially when determining changes in ownership involving transfers to and from legal entities.

Prior to *Valli*, *Brooks* and our subsequent annotation based on *Brooks* (Annotation 220.0044, C 10/27/2010) limited the statutory transmutation requirements by excluding one spouse's acquisition of property from a third party with community funds from those requirements. However, the court wholly rejected this interpretation in *Valli*.[7] Thus, it may no longer be said that "the act of taking title to property in the name of one spouse during marriage with the consent of the other spouse effectively removes that property from the general community property presumption" as was stated in *Brooks*.[8] Even if one spouse "consents" to such an action, the transmutation statutes require that there must be a writing, signed by the adversely affected spouse, that "expressly state[s] that the character or ownership of the property at issue is being changed." Thus, as the California Supreme Court stated clearly in *Valli*, in cases solely involving spouses' interests, the title presumption "does not apply when it conflicts with the transmutation statutes." As such, we intend to delete Annotation 220.0044.[9]

However, other than the principle stated in Annotation 220.0044 regarding the characterization of property acquired by one spouse with community funds, which was based on *Brooks* (now overruled in part by *Valli*), our position regarding the proper assessment of community property has not substantively changed. We have long held that each spouse is considered to have a 50 percent ownership interest in legal entity interests when husband and wife acquire 100 percent of

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[6] *Valli*, *supra*, 58 Cal.4th at p. 1399.
[7] *Valli*, *supra*, 58 Cal.4th at p. 1405.
[8] *Brooks*, *supra*, 169 Cal.App.4th at pp. 186-187.
[9] We also intend to delete Annotations 220.0278 (May 14, 1993; Feb. 22, 207) and 220.0267 (May 31, 2007) as they are not clear regarding the interplay between the community property presumption and title presumption, and we believe they may cause confusion.

a legal entity as community property (see Letter to Assessors 85/33 (dated March 5, 1985); Assessors' Handbook (AH) Section 401, *Change in Ownership* (September 2010, P. 78), and that, as a general rule:

> [A]ll property acquired during marriage or during a registered domestic partnership is presumed to be community property if community assets were used to purchase or construct improvements on it, *regardless of the manner in which title to the property is held*, unless specific conditions are met or the parties otherwise agree. . . includ[ing] both real property and legal entity interests such as voting shares in a corporation or membership interests in a limited liability company (LLC).[10]

To summarize, an assessor's responsibility is to determine assessment of property based on beneficial ownership. *Valli* instructs that in determining beneficial ownership as between spouses, community property remains community property unless that property is transmuted to separate property pursuant to the transmutation statutes. In other words, when there is a conflict between the community property presumption and the title presumption, the community property presumption is controlling.

Example and Practical Application

A change in ownership does not necessarily occur when a married couple transfers community property to a legal entity created during marriage but owned solely by one spouse. For example, Husband and Wife own real property as community property. Husband and Wife record a deed to transfer the property to a limited liability company (LLC) in which Husband is the sole member and note on the *Preliminary Change of Ownership Report* that this is a transfer between parties in which proportional interests of the transferor(s) and transferee(s) in each and every parcel being transferred remain exactly the same after the transfer (i.e., the proportional ownership interest exclusion from change in ownership under Revenue and Taxation Code section 62(a)(2)). The LLC is created while Husband and Wife are married, and its operating agreement is silent on whether Husband's membership interests are community property or Husband's separate property. There is no express declaration that the LLC membership interests are Husband's separate property interests. The assessor must determine whether the transfer of community property from Husband and Wife to the LLC qualifies for an exclusion from change in ownership pursuant to section 62(a)(2).

Under the title presumption, Husband would presumptively own the LLC as his separate property unless rebutted by clear and convincing proof. Pursuant to *Valli*, however, the community property presumption is controlling. Thus, unless there exists an express written declaration transmuting the community property character of the LLC ownership interests into Husband's separate property, the LLC interests should be considered owned 50 percent by each spouse. Consequently, the transfer of real property by Husband and Wife to the LLC should be excluded from change in ownership.

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[10] AH 401, p. 77, italics added.

In cases where individuals are claiming exclusion from reassessment for transfers that on their face appear to be reassessable events on the basis that the underlying property is community property (as in the above example), assessors may want to inquire further as to the following:

- When the legal entity was created (if relevant).
- When the marriage occurred.
- If the spouses were or are domiciled in California at the date of acquisition.
- Whether a written transmutation document exists to determine if the community property presumption applies.

This Letter To Assessors supersedes the advice provided in Change in Ownership Annotations 220.0044, 220.0278, and 220.0267.

If you have any questions regarding these presumptions, please contact our County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

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