

Real Property Changes in Ownership

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Changes in ownership of California real property permit county assessors to reassess the property for property taxation as of the date of the ownership change. Reassessments may cause taxes to increase or decrease.

A change in ownership is any transfer of a present interest in real property or its use that is substantially equal to the fee interest in the property. Such changes commonly occur in connection with sales, gifts and inheritances. Payment or consideration for the transfer is not required.

However, the law also defines other less common transactions as changes in ownership. These include (1) creation, termination or transfer of a lease with an original term of 35 years or more; (2) creation, transfer or termination of certain joint tenancy and tenancy in common interests; (3) vesting of a remainder or reversionary interest; (4) vesting in a beneficiary when a revocable trust becomes irrevocable, and others listed in Revenue & Taxation Code § 61.

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Exclusions From Change in Ownership

Revenue and Taxation § 62 lists 15 exclusions from changes in ownership. These include (1) transfers between spouses and registered domestic partners; (2) certain transfers between parent and child and between grandparent and grandchild; (3) reservations of a estate for years or a life estate in the transferor; and (4) transfers that result only in a change in the method of holding title where the respective proportional interests of the transferor and transferee are the same before and after the transfer.

Trusts and Legal Entities

Some of the more interesting examples of changes in ownership relate to transfers of interests into and out of trusts and transfers of interests in an entity rather than in the property itself.

Trusts. In general, transfers into and out of trusts are changes in ownership but there are numerous exceptions because the rules look through the trust to the beneficial ownership of the property. Thus, there is no change in ownership for transfers into (1) a revocable trust; (2) an irrevocable trust if the trustor-transferor is the sole present beneficiary of the trust; (3) trusts as for which direct transfers would qualify for the interspousal, parent-child, grandparent-grandchild exclusions; and (4) trusts where the proportional interests of the beneficiaries is the same before and after the transfer. 18 Cal. Code of Regulations 462.160. That regulation also contains the rules for transfers out of trusts.

Legal Entity Interest Transfers. Transfers of interests in legal entities (rather than in the real property itself) do not result in a change in ownership of the entity's real property unless there is a (1) change in control of the entity resulting from direct or indirect acquisition of more than 50 percent of the voting stock of a corporation or of a partnership's or LLC's interests in capital and profits (R&T § 64(c)(1)); or (2) change in ownership resulting from transfers of more than 50 percent cumulative ownership of an entity by persons who originally acquired proportion-

ate interests in the entity that did not result in a reassessment (§ 64(d)). Either of these events (which may occur as multistep transactions) will result in a 100 percent reassessment of all real property owned by the entity. Exclusions for these changes may exist if they could qualify as reorganizations among affiliate companies or qualify for the proportional interest or interspousal exclusions.

Assessor Determination of Changes in Ownership and Control

Assessors determine that changes in ownership of property have occurred primarily through the preliminary change of ownership report and various change of ownership statements, available through assessors' offices. Changes of ownership or control of legal entities are reported to the State Board of Equalization on Form BOE-100-B. However, assessors may also learn of changes through review of building permits, franchise tax board information, field inspections and other methods.

Penalties for Noncompliance With Filing Requirements

Failure to notify assessors of changes in ownership of real property can result in assessment of penalties and interest. Failure to file a change in ownership statement upon written request by the assessor is \$100 or 10 percent of the new base year value resulting from the transfer but not exceeding \$5,000 if the property is eligible for the homeowner's exemption or \$20,000 if it is not. Failure to file the BOE-100-B can result in substantial penalties and are levied against all property owned by the legal entity in California. Penalties for not filing after request can occur even if no change in ownership has occurred.

Reporting requirements and penalties are contained in R&T §480 et seq. The many different forms of transactions that implicate the change in ownership and control rules cause this to be a complex area of law and care should be taken when considering the property tax impact of transfers.

Disclaimer: Nothing in this article shall be construed as giving legal advice. Practitioners are advised to consult with their individual legal advisors as to the legal effect of any item described in this article.