

## Avoiding Property Tax Reassessment for Unmarried Couples \*Not\* Registered as California Domestic Partners



DISCLAIMER: This article contains general information about issues and should not be construed as legal advice. Every case must be analyzed independently, based on the specific facts of the case. If you have questions or concerns about your particular situation, please consult an attorney.

In the Spring 2006 newsletter issue, I discussed Senate Bill 565, the new property tax law that took effect January 1, 2006 which gives favorable property tax treatment to real property transfers between domestic partners registered with the State of California Secretary of State ("California domestic partners").

S.B. 565, however, is only for registered California domestic partners. For those of us who have, for various reasons, chosen not to register as California domestic partners, a few other options might still be available for avoiding property tax reassessment upon the death of an unmarried partner.

### I. 2002 San Francisco Domestic Partner Ruling

For many years, transfers of California real property between husband and wife, during life or at death, have been exempt from reassessment of property taxes (also known as the "spousal exemption" from property tax reassessment).

For same sex and unmarried couples with San Francisco property, this rule was extended to registered San Francisco domestic partners on October 10, 2002 when then-San Francisco Assessor Doris Ward issued Ruling 2002-001 ("**2002 San Francisco Ruling**"). This ruling concludes that couples registered with the City and County of San Francisco should be treated the same as "married heterosexuals" under California's property tax rules.

This rule carries important advantages for owners of San Francisco property:

1. Unlike S.B. 565, the 2002 San Francisco Ruling only requires registration as San Francisco domestic partners, which does not include the higher level of responsibilities and federal tax uncertainties as registered California State domestic partnership (due to state marriage and community property rules that applies to State domestic partners). The 2002 San Francisco Ruling is also available to more unmarried, opposite sex couples than S.B. 565, because the California State registry requires at least one person in the opposite sex couple to be age 62 or older, while the San Francisco County registry does not.
2. Unlike Property Tax Rule 462.040 (discussed below), the 2002 San Francisco Ruling does not require a couple to co-own property in order to qualify for the exemption.

## II. California Board of Equalization Property Tax Rule 462.040

Property Tax Rule 462.040, 18 CCR 462.040 (2006), which took effect in October 2003 by the California Board of Equalization, allows co-owners of property, regardless of California or local domestic partnership status, to avoid property tax reassessment when one or the other passes away.

The expanded rule can be met in two ways:

(1) A and B own property as tenants in common, and then transfer the property to themselves as joint tenants; or

(2) A and B own property as joint tenants, and then transfer the property to themselves as Trustees of their respective revocable living trusts, where both trusts state that the other owner inherits the property at death.

Property Tax Rule 462.040 is the expansion of a pre-existing rule where one owner (e.g., Owner A) adds another person (e.g., Owner B) to title of property as a joint tenant, thus making Owner A an "original transferor."

Then, when B passes away, A is not reassessed, because she is an "original transferor." However, if A passes away first, B is reassessed at 100% the fair market value on A's date of death, because B is not an "original transferor."

CAUTION: It is not clear whether Property Tax Rule 462.040 would apply in the situation where:

1. Only one person owns the property initially, then
2. That sole owner add his or her partner to title as a joint tenant, and then
3. Both owners subsequently transfer their interests into their respective revocable trusts, naming the other owner as a beneficiary at death.

The Board of Equalization has issued an opinion that the second transfer should not trigger a reassessment. However, because Board of Equalization opinions are not binding on the individual county assessors, a direct consultation with the assessors' office might be needed to ensure that the property taxes are not reassessed upon transfer into the revocable trust(s).

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## III. Conclusion

Couples need to discuss their own specific situation and how these rules will affect them. Understanding the application of these Property Tax Rules can spare them of potentially costly property tax reassessments.

If you would like more information about the application of these rules to your specific situation, please feel free to contact Alma directly at (415) 642-9930 or [alma@becklawgroup.com](mailto:alma@becklawgroup.com)

For more information, please visit our website at: [www.becklawgroup.com](http://www.becklawgroup.com)

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