

California Senate Bill 565 Offers Greater Tax Protection for California State Domestic Partners



California State domestic partners are now treated the same as married couples under California's property tax laws.

Other tax rules favorable to unmarried, same-sex couples and others

Effective January 1, 2006, the California state legislature has taken a step towards equality for same sex couples by granting property tax reassessment exclusions to California State domestic partners ("California domestic partners"). We welcome this new change.

Practically speaking, what Senate Bill 565 means for same sex couples is that California domestic partners are now treated the same as married couples under California's property tax laws. The legislation prevents the reassessment of homes when ownership passes from one registered California domestic partner to another, not just when couples meet the limited circumstances of Property Tax Rules 462.020 and 462.240. (See descriptions below).

Specifically, Senate Bill 565, covers five explicit situations related to domestic partners:

1. Transfers to a trustee of a trust for the beneficial use of a registered California domestic partner, or the surviving registered California domestic partner of a deceased transferor, or by a trustee of such a trust to the registered California domestic partner of the trustor;

2. Transfers that take effect upon the death of a registered California domestic partner;

3. Transfers to a registered California domestic partner in connection with a property settlement agreement or dissolution of a registered California domestic partnership;

4. The creation, transfer, or termination, solely between registered California domestic partners, or any co-owner's interest;

5. The exchange of a legal entity's property of one California domestic partner for the others interest in that legal entity in connection with a property settlement agreement or a decree of dissolution.

IMPORTANT NOTE: This exemption applies only to California domestic partners registered with the California Secretary of State and not locally California State domestic partners, such as the City and County of San Francisco Registry.

Background

In 1978, California voters approved a new system of property taxation. Proposition 13 required property to be reassessed to current fair market value only when real property underwent a "change of ownership." As such, the new taxes on that property often resulted in a substantial property tax increase. Because Proposition 13 failed to define 'change in ownership', the legislature created exceptions from property tax reassessment for certain types of transfers. For example, the interspousal exclusion allowed married couples to transfer property to each other avoiding property tax reassessment. Parent-Child transfers were also excluded from reassessment under a subsequent proposition.

Until now, no such state-wide protection was afforded to same sex couples. A transfer of property between same sex couples was often considered a "change of ownership," triggering a full reassessment of that property except in limited circumstances involving San Francisco Domestic Partners, some joint tenancy property and intestate succession between California Domestic Partners. Consequently, many long-term gay and lesbian couples, including registered California Domestic Partners, were left with the concern that when their domestic partner died, the surviving partner could potentially lose his or her home because the newly reassessed property became too much of a tax burden.

California Board of Equalization Property Tax Rule 462.040 and 462.240

Property Tax Rule 462.040, 18 CCR 462.040 (2006), provides that, in the case where property is co-owned by persons, including California State domestic partners, and then transfers to the same owners, creating a joint tenancy interest, the property will not be considered a "change in ownership" when one owner passes away or otherwise transfers the property to the other owner. This rule could be met in two ways; (1) a transfer from tenancy in common to joint tenancy; (2) a transfer from joint tenancy to trust where the trust language stated that the other owner inherits the property at death.

Additionally, under Property Tax Rule 462.240, 18 CCR 462.240 (2006), any transfer of property inherited by a surviving California domestic partner by intestate succession (without a will) upon the death of registered California domestic partner does not constitute a change in ownership. This rule was essentially superseded by Senate Bill 565, which is broader in scope.

San Francisco County Assessor, 2002 Opinion

The San Francisco County Assessor issued an opinion in 2002 favorable to San Francisco and California State domestic partners. According to this opinion, the San Francisco Assessor stated that it would consider transfer of San Francisco property between California State domestic partners, either during their lives or at one of their deaths, as equivalent to an inter-spousal transfer under the interspousal exemption.

IMPORTANT NOTE: The Assessor's opinion is based on an interpretation of the term "spouse" to include domestic partners.

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