



Property tax changes could affect couples

Guest Opinion

by Alma Soongi Beck

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(Photo: Courtesy Beck Law Group)

With so much attention on same-sex marriage, couples may be missing two crucial changes in property tax rules, one of which could require immediate action before October 2013.

The issue is property tax reassessment, which has often been bad news for same-sex couples. California state property taxes have been governed by Proposition 13 since 1978, which in most cases sets property taxes based on the acquisition value, increasing the taxes only 2 percent a year until the property undergoes a change of ownership. Upon change of ownership (e.g. sale), the new owners are reassessed based on the current market value. This means that when the property has appreciated faster than 2 percent a year, reassessment can result in a huge increase in the property taxes, depending on how large the increase.

Change in ownership also occurs at death, which is where same-sex couples have been burned in the past. In fact, reassessment can be one of the most serious issues for same-sex couples who inherit real property from each other. Reassessment can result in such a large increase in the property tax that the surviving partner can no longer afford to keep the home.

Thankfully, exemptions from reassessment were extended to state-registered domestic partners in 2006 under SB 565, and to same-sex married couples in 2008 when same-sex marriages were recognized and then upheld.

However, for couples who are not married or registered with the state as domestic partners, the issue of possible future reassessment still looms. In these situations, two options to avoid reassessment are still

available:

1. The 2013 Co-tenancy Rule, AB 1700 (effective January 2013). Under AB 1700, which amended Section 62.3 of the Revenue and Taxation Code, a surviving co-owner can avoid reassessment if all of the following conditions are met:

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A D V E R T I S E M E N T

Only two owners (or co-tenants) had owned the property before death, and together they had owned 100 percent of the property either as joint tenants or tenants in common.

Both co-tenants had lived in the property as primary residence for at least one year prior to the death of an owner.

Transfer of property is due to death of an owner, and after transfer, the remaining co-tenant owns 100 percent of the property.

The remaining co-tenant signs an affidavit proving that he/she consistently lived in the property as primary residence at least one year prior to death of the first owner.

2. The 2003 Joint Tenancy Transfer Rule 462.040 – partly expiring in October. While AB 1700 will help many same-sex couples who are not married or state-registered domestic partners, for those cases not addressed by AB 1700, the 2003 Joint Tenancy Transfer Rule might be the only other option for same-sex couples to avoid reassessment upon death of a co-owner (other than getting married or registering with the state as domestic partners).

Rule 462.040 was expanded in October 2003 in a way that allowed unmarried and same-sex couples the ability to avoid reassessment upon death of a co-owner for the first time ever in California history. Specifically, in 2003, the rule was expanded to allow two additional ways to qualify for exemption: (A) transfer from co-owners as non-joint tenants (e.g., tenancy in common) to joint tenancy; and (B) transfer from joint tenancy into trusts (e.g., revocable trusts) where the other owner is named as beneficiary of the property upon death.

When couples properly understand the rule (usually upon consultation with legal counsel), they can qualify for Part A directly upon acquisition of a new property. Specifically, they can acquire the property as tenants in common and then immediately transfer to themselves as joint tenancy.

In many cases, however, Part A is not possible, such as when the property is already in joint tenancy. In fact, most couples are still completely unaware of the 2003 rule expansion, as are many of their real estate agents, mortgage brokers, title officers, and in some cases, their attorneys. In these cases, the opportunity to qualify for Part A can be easily missed upon purchase of a new property.

So basically, on the one hand, the passage of AB 1700 is great news for same-sex couples who co-own primary residences, with no other people other than themselves. But, on the other hand, the repeal of Part B of 462.040 will severely limit options for other same-sex couples whose situation falls outside the scope of AB1700.

Thankfully, Part B does not technically expire until October 2013, which means that couples can still qualify for Part B of the rule, but only if they act fast. People who might be interested could include:

Couples who own real property that is not a primary residence for one or both;

Couples who own with other people, even if it is their primary residence (e.g., tenancy-in-common ownership of multi-unit buildings);

Couples who have owned real property for less than one year, where one person may be terminal and possibly passing away before the one year mark;

Couples who may have relied on Part B in previous years, and who removed the property from trust (e.g., during a refinance), but may not have put it back.

In some cases, the best option for avoiding future reassessment will be setting up trusts and transferring the property before October, or transferring property into existing trusts. But be careful, if you do not already have trusts, the set-up time can be at least one to two months, which means starting the work July or August at the absolute latest.

Don't be caught unaware. The consequences could be dire for you or your partner.

Alma Soongi Beck is co-presenting two seminars in July and August with Dan Paul, attorney for the Board of Equalization, about these rule changes. For more information, visit <http://www.becklawgroup.com/seminars>. Special thanks to David T. Yu, Esq., Yvette Borja, and Gianne Carlo Nalangan for their assistance with this column. This column is not intended as legal advice and people should consult with their attorneys.