

The Move Away From Property Tax Protection for San Francisco City/County Domestic Partners

As discussed in previous newsletters (“*San Francisco County Assessor, 2002 Opinion*,” Volume 1, Issue 1, Spring 2006; “*2002 San Francisco Domestic Partnership Ruling*,” Volume 1, Issue 2, Summer 2006), the San Francisco County Assessor issued an opinion in 2002 that was favorable to domestic partners registered in either the City and County of San Francisco or the

State of California. According to this opinion (hereinafter the “**2002 San Francisco Assessor Opinion**”), the San Francisco Assessor stated that it would consider transfers of San Francisco property between either San Francisco or California domestic partners as equivalent to inter-spousal transfers under the inter-spousal exemption.



Reasoning Behind the 2002 Opinion

Under the inter-spousal exemption from property tax reassessment, married couples have long been able to avoid reassessment of their property when the first spouse dies, or otherwise comes off-title of the property (e.g., upon dissolution). However, until 2002, no exemption was available to unmarried or same sex partners in any county, in any situation, regardless of how long the couple had been together. Thus, for example, when one partner passed away, the surviving partner would usually get hit with a big property tax reassessment. In fact, the longer an unmarried or same sex couple had been together

and owned their property together, the bigger the increase in property taxes for the survivor. And so, after losing one's partner, many surviving partners found themselves unable to afford to keep living in the home the couple had built together, and surviving partners were frequently losing their homes not long after losing their partners.

With this backdrop, Assessor Doris Ward's 2002 Opinion was a bold effort to equalize the property tax protections for registered domestic partners owning property in San Francisco County.

Legal Developments Since 2002

Since the 2002 San Francisco Assessor Opinion was issued, two significant legal changes have taken place statewide.

The first one was the passage of A.B. 205, effective January 1, 2005, which expanded the rights and responsibilities of California domestic partners to the same as those applying on the state level to married couples. A.B. 205 did not include any federal rights, which most California domestic partners understood. However, what many couples did not realize is that A.B. 205 also explicitly excluded state rights passed by statewide initiative, which included under Proposition 13, the original law that prevents property taxes from getting reassessed to fair market value each year. See “Background,” Volume 1, Issue 1, Spring 2006 for more complete discussion of Proposition 13.

This gap in protection around property tax reassessment was remedied in the following year

when S.B. 565 took effect on January 1, 2006. S.B. 565 extended protection from property tax reassessment to all California-state registered domestic partners in all counties. See Volume 1, Issue 1, Spring 2006.

The background is important for understanding the San Francisco Assessor's recent move away from permitting property tax protections for domestic partners registered only with the City and County of San Francisco, and not with the State of California. The basic premise is that, now, since 2006, if California domestic partners are extended property tax relief statewide, the City and County of San Francisco does not need to extend special protections to remedy the situation, as it did back in 2002. The reasoning that supported the original 2002 Opinion is not longer relevant to the same extent and with the same intensity as it was originally.

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.

What Should San Francisco Property Owners Do?

First, make a distinction between the San Francisco registry and the California registry, and determine which one, if any, applies to you and your partner.

If you and/or your partner own San Francisco property and can confirm that you are registered as California State domestic partners, you will be protected from property tax reassessment under S.B. 565, regardless of whether you are also registered in the City and County of San Francisco.

If you are not registered as California State domestic partners, you may need to see an

attorney to discuss whether you would qualify for any other property tax protection.

For instance, some couples might be able to qualify for property tax protection under Property Tax Rule 462.040, which is available to joint tenancy owners under specific circumstances, and may require that you and your partner both set up revocable living trusts. See "*California Board of Equalization Property Tax Rule 462.040*," Volume 1, Issue 2, Summer 2006. You may also want to visit or revisit with an attorney the pros and cons of registering as California domestic partners, depending on how concerned you might be able the possible reassessment.

For more information, please visit our website at:

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