

Proposition 19

Parent to Child Transfers

Submission to the Assessor

Presented by:

- **Phong La** **Alameda County Assessor**
Bachelor of Science UC Davis
Juris Doctor – UC Law San Francisco (formerly UC Hastings)
- **Bradley Marsh** **Co-Managing Shareholder of the
San Francisco Office of GreenbergTraurig**
Bachelor in Education California State University, Northridge
Juris Doctor – Hasting College of Law
- **Kerry Smith** **President of Commercial Loan Corporation (CLC)**
CLC has funded over 575 Trust / Estate Loans in California

Parent to Child Transfers – Submitting to the Assessor

This presentation will focus on:

- Benefits of Proposition 19 as it relates to Parent-Child Transfers after both parents have passed
- Benefits of Proposition 19 as it relates to the transfer of one's property tax base to another property in California
- Submitting a Claim for Reassessment Exclusion to the Assessor on Parent-Child Transfers

Proposition 19 Background

Proposition 19 was passed by the California voters on November 3, 2020 and became effective February 16, 2021.

Part of Proposition 19 changes the qualifications for reassessment exclusions previously allowed through Propositions 58 and 193.

We will look at the changes and how they affect exclusions for reassessment shortly. First, let's take a look at how exclusions for reassessment help your clients.

Benefit Example

Mom and Dad owned their house for 30 years. They bought the property for \$125,000. The property is worth \$800,000 today.

Current Assessed Value is \$136,366 Property Taxes are \$1500 (1.1%)

Reassessed Value is \$800,000 Property Tax est. \$8800 (1.1%)

There is a significant difference in Annual Property Taxes when a Child is able to gain a Full Exclusion for Reassessment using the Parent-Child Transfer afforded by Proposition 19.

Additional Benefit of Proposition 19

There are really only two options available to children that inherit a property from their parents:

1. Sell the Property and Distribute the Proceeds
2. One or More Children Keep the Property and their Parents' low Proposition 13 Property Tax Base.

Proposition 19 has added a third option...

Proposition 19's Third Option

Proposition 19 allows a person 55 years of age or older (or severely and permanently disabled), who resides in property eligible for the homeowners' exemption to transfer the base year value of the property to a replacement dwelling (in California) as long as the replacement dwelling is their primary residence.

- There is no value restriction.
- Must purchase new property within two years of the sale of the original primary residence.
- This can be done up to three times.

Child Beneficiary Benefit

With the option to Transfer a Property's low Property Tax Base to another Property in California, a Child Beneficiary can move to another Primary Residence and take the Low Property Tax Base with them.

This can be done up to three times which means that most of these Child Beneficiaries will have this benefit for the rest of their lives and then they can transfer this benefit to one or all of their children.

Maximum Benefit

If the person Transferring this Benefit buys a Replacement Property that is much more Expensive, they could expect a Maximum Benefit greater than \$10,000 every year.

Maximum Exemption \$1,022,600 + the Full Base Year Value (Value on the Property Tax Statement) of the Original Primary Residence (House being Sold).

This is the amount Excluded from Taxation

Calculations

There are factors that will determine Annual Property Tax Savings including:

Base Year Value of the Original Primary Residence

Full Cash Value of the Original Primary Residence

Full Cash Value of the Replacement Primary Residence

Brad will go over some calculations later in the presentation.

A general rule of thumb on property tax savings when transferring to a property of greater value is

$(\$1,022,600 + \text{Current Base Year Value}) \times \text{the property tax rate}$

This will be over \$10,000 a year in property tax savings

How Proposition 19 Affected Parent-Child Transfers

Proposition 19 replaced Propositions 58 and 193

Proposition 193 involved Grandparent-Grandchild Transfers

Proposition 58 allowed Parent-Child Exclusions for Reassessment with no limit on a Primary Residence and a \$1,000,000 limit on all other property (Rentals, Commercial Property, Business Property)

Proposition 19 eliminated Exclusions for Rental Property, Commercial Property and Business Property.

Proposition 58 or Proposition 19?

A Parent-Child Transfer will fall under one of these two Propositions based on the transfer date of the property.

Proposition 58 – Transfer dates before February 16, 2021

Proposition 19 – Transfer dates after February 15, 2021

The Date of Death of the Surviving Spouse is the Transfer Date

Whether a Parent-Child Transfer falls under Proposition 58 or Proposition 19, there is significant value to a Child Beneficiary

Submitting an Exclusion for Reassessment to the Assessor with all of the needed Documentation is the key to making this process reach its desired conclusion effectively and efficiently.

Assessors' Offices

Each Assessor's Office will handle these submissions a little differently

Our goal is to make the process as efficient as possible and have each Assessor's Office handle these transactions the same way

In order to do that, it is important to understand the challenges of Assessors, Attorneys and Lenders in this process

The Assessor

We are lucky to have the Alameda County Assessor, Phong La, to help us understand transactions from an Assessor's Point of View

PHONG LA, ASSESSOR

OFFICE OF ASSESSOR

OFFICE OVERVIEW & PROPOSITION 19

July 2023

Disclaimer

This information has been prepared by the Alameda County Office of the Assessor for information purposes only and does not constitute legal advice.

It is not legal advice or a substitute for obtaining legal advice from an attorney. It is not tax advice or a substitute for obtaining tax advice from a CPA or accountant.

Any person who reviews the information should not rely upon it or act on it in any manner without first engaging professional counsel.

The information is intended to communicate general information.

What goes into property taxes?

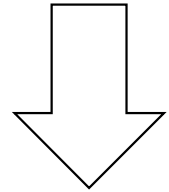
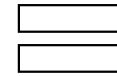
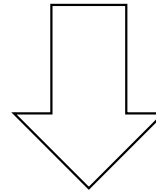
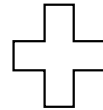
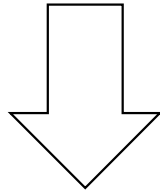
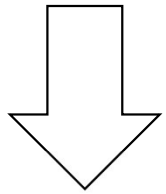
The Assessor, Auditor-Controller,
and Treasurer-Tax Collector

**ASSESSED
VALUE**

**TAX
RATE**

**SPECIAL
ASSESSMENTS/
FEES/LIENS**

**PROPERTY
TAX DUE**



**Phong La
Assessor**



**Melissa Wilk
Auditor-Controller**



**Special Tax
Districts**



**Henry C. Levy
Treasurer-
Tax Collector**

Property Tax Distribution

42%
SCHOOLS



18%
CITIES



15%
COUNTY



13%
SPECIAL
DISTRICTS



12%*
REDEVELOPMENT &
SUCCESSOR AGENCIES



*OVER TIME, REDEVELOPMENT AGENCIES' SHARE OF PROPERTY TAXES SHOULD BE DISTRIBUTED TO OTHER ENTITIES.

Proposition 19

Proposition 58 (and 193) – to understand Prop 19

- Proposition 58 became effective on November 6, 1986. It is a constitutional amendment which excludes from reassessment transfers of real property between parents and children. Up to \$1 million (non-primary residence)
- Proposition 193 became effective on March 27, 1986. It is a constitutional amendment which excludes from reassessment transfers of real property from grandparents to grandchildren, providing that all the parents of the grandchildren who qualify as children of grandparents are deceased as of the date of transfer.
- Both Proposition 58 and 193 are effective for changes in ownership made on or before February 15, 2021.

Proposition 13 gives property tax benefits for long-term ownership

My parents buy a house in Union City, CA for \$100,000 in 1980.

They are assessed \$100,000 and pay about \$1,250 in property taxes in 1980.

The property is now worth \$1,000,000 in 2022

But the property is assessed at about \$200,000 (\$100,000 plus 2% a year for 40 years compounded) – property taxes are about \$2,500 **per year in 2022** for my parents.

Under Prop 58, it does not matter if they live there or rent it out. I keep the low basis when transferred to me.

New owners of the same house

Properties are re-assessed when there is a “change in ownership”, assessments are increased with new construction.

New family buys my parents’ house in Union City, CA for \$1,000,000 in 2022.

They are assessed \$1,000,000 and pay about \$12,500 in property taxes in 2022.

Proposition 13 restricts the increases in assessments to 2% a year and caps the property tax amount to 1% of the assessed value (with special assessments added such as school bonds, vector control, etc. that voters approve)

Prop 13: Previous law until 2/15/2021

- **Which transfers are excluded?**
 - Transfers of primary residences (no limit on value)
 - Transfers of the first \$1 million (assessed value not market value) of real property other than the primary residence (applies separately to each eligible transferor)
 - Transfers may result in a sale, gift or inheritance
- **What value of the transferred property is counted?**
 - The Proposition 13 value (factored base year value) just prior to the date of transfer)
- **Eligible children/grandchildren**
 - Child born of parents, stepchild, son or daughter in law, adopted child; any child of parents who qualify as children of grandparents



Prop 13: Previous law until 2/15/2021

- My parents bought a house in Union City, CA for \$100,000 in 1980.
- They are assessed \$100,000 and pay about \$1,250 in property taxes in 1980.
- The property is now worth \$1,000,000 in 2022
- Current Assessed value of \$200,000
- Parents transfer the house to me (gift, sale, or inheritance)
- If child timely files a Claim for Reassessment Exclusion Between Parent and Child, assessed value remains at \$200K (must be filed within 3 years)
- If done properly, property taxes stay at about \$2,500 per year... and increase about \$50 per year. Otherwise the property is re-assessed and property taxes become about \$12,500 per year.



The election in November 2020

Two ballot initiatives affecting property taxes: Proposition 15 and Proposition 19

- Proposition 15 (Re-Assessing Commercial/Industrial properties every 3 years)
 - Did Not Pass
- Proposition 19 (Changes Base Value Transfer Rules and Parent/Child Exclusion Rules)
 - Did Pass
 - 51% of California Voters in favor, 49% oppose

Proposition 19 has two main components:

1. Base Value Transfers (for people 55 years old and older, Fire Victims)
2. Parent/Child Exclusion for primary homes and investment properties

In order to understand Proposition 19, we must understand Proposition 13 which was passed by California voters in 1978

Proposition 19 has two main components:

1. Parent/Child Exclusion for primary homes and investment properties
- ~~2. Base Value Transfers (for people 55 years old and older, Fire Victims)~~

We will discuss the parent/child exclusion portion of Prop 13 first

Parent/Child Transfers

So how do Proposition 13 taxes work now when a parent dies and leaves property to a child...?

Proposition 19

The Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act of 2020

- Effective February 16, 2021, Changes the Parent to Child(ren) and Grandparent to Grandchild(ren) Exclusions
- Principal residence of the parent/grandparent must remain principal resident of the child(ren)/ grandchild(ren) and capped at \$1 million plus assessed value
- Must file for homeowner's exemption within 1 year
- Transfer of other property is no longer available after February 15, 2021 (rental, commercial properties, vacation homes, etc.)

After February 15, 2021

Parent to Child/Grandchild Transfers **eliminated** for the following:

This means that your residential rentals will be *reassessed at transfer to your children (death, gift or sale)*

This means that your commercial rentals will be *reassessed at transfer to your children (death, gift or sale)*

This means your industrial rentals will be *reassessed at transfer to your children (death, gift or sale)*

This means that your family vacation home or cabin will be *reassessed at transfer to your children (death, gift or sale)*

Primary Home exception:

Parent to Child/Grandchild Transfers exclusion-

Parent to child transfer of the parent's primary home **but** child must occupy property as his/her primary home... no reassessment on the assessed value plus \$1,022,600 in market value, but reassessment over assessed value + \$1,022,600

WHAT WE KNOW ABOUT PARENT TO CHILD EXCLUSION

Example 1:

My parents buy a house in Union City, CA for \$100,000 in 1980.
The property is now worth \$1,000,000 in 2022.

But the property is assessed at about \$200,000 (\$100,000 plus 2% a year for 40 years compounded) – property taxes are about \$2,500 **per year through 2022** for my parents.

If the sum of the assessed value (base value) plus \$1,022,600 is greater than the market value, then I get to keep the current assessed value.

My parents give me the house, I get to keep the \$200,000 assessed value and the low property taxes.

WHAT WE KNOW ABOUT PARENT TO CHILD EXCLUSION

Example 2:

My parents buy a house in Piedmont, CA for \$100,000 in 1980.
The property is now worth \$2,000,000 in 2022.

But the property is currently assessed at about \$200,000 (\$100,000 plus 2% a year for 40 years compounded) – property taxes are about \$2,500 **per year through 2022** for my parents.

My parents give me the house, my new property taxes are assessed at \$1,000,000 rather than the full market value of \$2,000,000 but it's more than the \$200,000 that my parents were paying on.

Why? Calculation on next slide.

EXAMPLE 2 (cont'd)

\$200,000 current assessed value (base value)

- \$200,000 assessed value from previous slide
- Assessed value (\$200k) plus \$1M is not reassessed. But \$200k remains plus the value over \$1.2M
- Value over \$1.2M is \$800k.
- \$800k plus original assessed value of \$200k equals new assessed value of \$1M
- New property tax amount is about \$12,500
- Higher than my parent's amount of \$2,500 but lower than market value assessment of \$25,000
- Transferee must reside in principal residence within one year of transfer.
- Effective February 16, 2021 no parent to child exclusion for properties other than principal residence.

WHAT WE KNOW ABOUT PARENT TO CHILD EXCLUSION

Example 2:	<u>Property taxes each year:</u>
Parent's keep the house:	\$2,500
Parent's transfer the house to me before 2/16/21:	\$2,500
Parent's transfer to me the house after 2/15/21:	\$12,500
Parents used the house as a rental property and transfer after 2/15/21:	\$25,000

Items of Concern

(Speak to an Attorney about legal issues, speak with a CPA/accountant/Tax Attorney about tax issues)-

Transferring property:

Loss of control, subject to child's divorce, law suits and bankruptcy, loss of rental income and your child may die before you do (we don't know if child can transfer to parents anymore)

Your basis carries over to the child (capital gains tax), "Basis" is purchase price, plus improvements, minus depreciation

Sale Price – Basis = Taxable Gain

At death, property generally gets an "adjusted basis" to fair market value at date of death

Items of Concern

Transferring property:

If your kids are going to keep one or more properties as a rental, vacation home or primary home, then your plans may be different than if your kids are going to sell your real estate after you pass away. Property tax savings versus capital gains.

Prop 19 may or may not affect you and your family depending on the situation.

SEEK ADVICE FROM AN EXPERT (Speak to an Attorney about legal issues, speak with a CPA/accountant/Tax Attorney about tax issues)-

Proposition 19 has two main components:

- ~~1. Parent/Child Exclusion for primary homes and investment properties~~
2. Base Value Transfers (for people 55 years old and older, Disabled Individuals, Fire Victims) --- referred to as Prop 60/90

We will discuss the base value transfer under Prop 13 next

WHAT WE KNOW ABOUT BASE YEAR TRANSFER PRINCIPAL RESIDENCE ONLY

- Base year transfer expands from some counties to all counties
- Replacement property can cost more than sale price of original
- Base year transfer can be taken 3 times
- If replacement costs more than original sold for, difference between those values is added to base year of original for transfer purposes.
- Examples on the next slides.

Downsizing (in price not square footage)

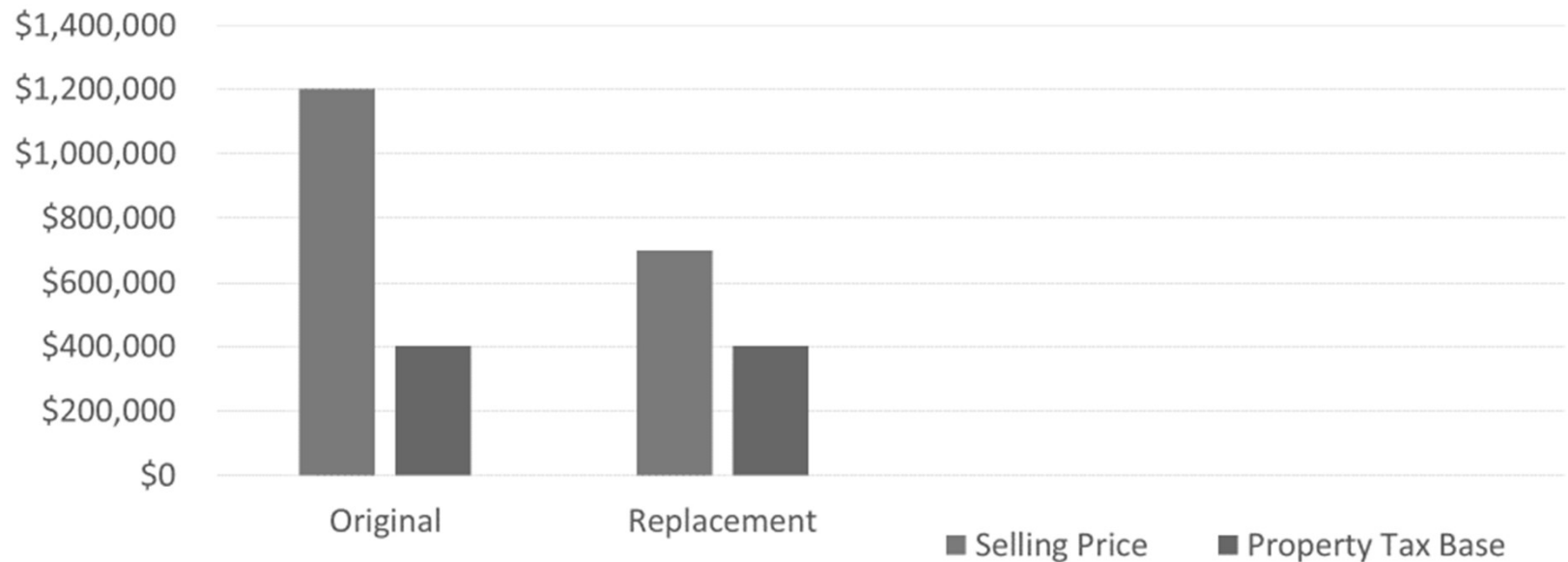
Spouses buy a home in Alameda in 1980 for \$200,000. The assessed value is about \$400,000. The property taxes are about \$5,000 a year.

Today the house is worth \$1.2M (market value)

Spouses sell the Alameda (or anywhere in CA) home and buy a home in Livermore to be closer to their daughter for \$700,000

Their new home in Livermore will maintain their \$400,000 assessment and they continue to pay just \$5,000 per year in property tax

GRAPH OF EXAMPLE



Example: original home sells for \$1,200,000. Replacement home costs \$700,000. Assessed Value of original is \$400,000. Transferred base year will be \$400,000 saving \$3,750 in property taxes a year.

Upsizing (in price not square footage)

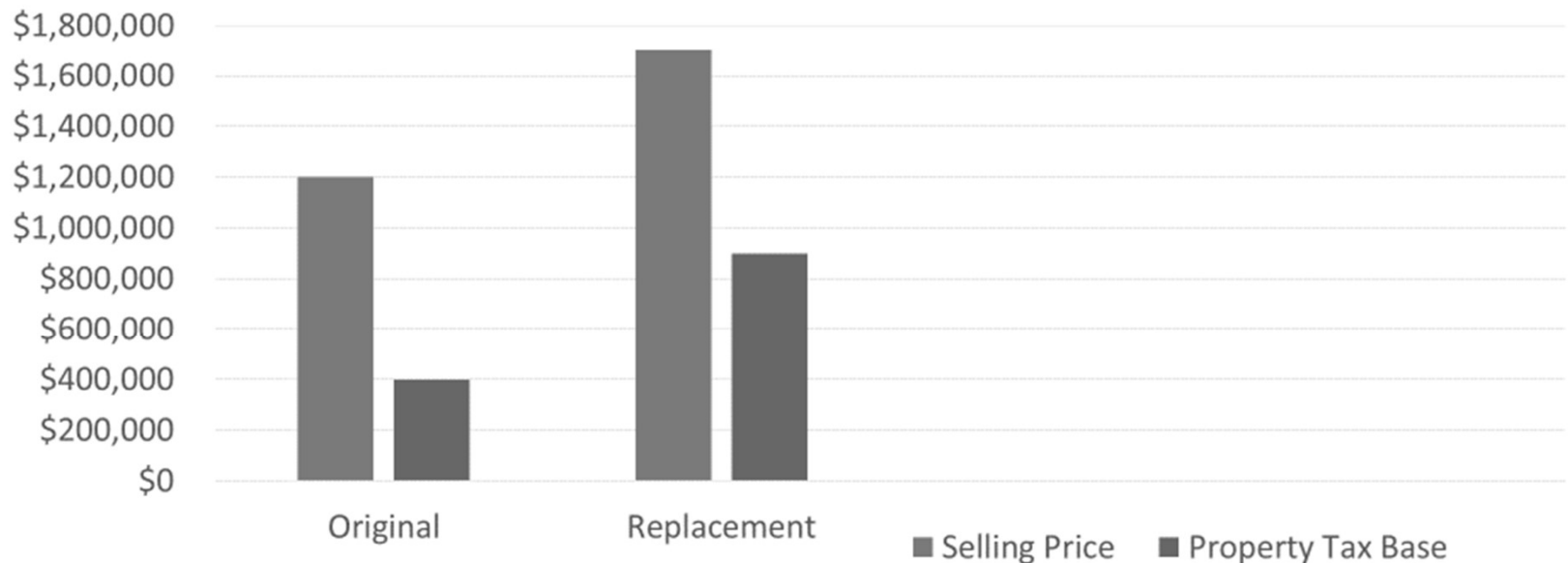
Spouses buy a home in Alameda in 1980 for \$200,000. The assessed value is about \$400,000. The property taxes are about \$5,000 a year.

Today the house is worth \$1.2M (market value)

After April 1, 2021, spouses sell the Alameda home and buy a home in San Diego to be closer to their daughter for \$1,700,000

Their new home in San Diego (or anywhere in CA) will have an assessed value of \$900,000 and they will pay about \$11,250 per year in property tax rather than \$21,250

GRAPH OF EXAMPLE



Example: original home sells for \$1,200,000. Replacement home costs \$1,700,000. (Assessed Value) Base year of original is \$400,000. Transferred base year will be \$400,000 plus \$500,000 (difference between \$1.7 and \$1.2M) or \$900,000 saving \$10,000 a year in property taxes

Basics of Parent to Child Transfers to Avoid Reassessment of Property Taxes When Transferring Property Held in Trust

**When a Trust Holds Real Property and No (or
Limited) Other Assets
and
One of the Beneficiaries Wants
the Real Property as their
Share of the Distribution**

**The Main Requirement for a Full Exclusion for
Reassessment is that the Trust be Distributed Evenly**

Equalizing Distributions

- A trustee may equalize distribution to beneficiaries of the trust (when authorized to make a non-pro rata distribution) by encumbering the real property with a third party loan
- Third Party
- Beneficiary receiving the real property cannot obtain the loan or give their own cash to equalize the distributions
- Loan must be to the trustee

Phong on Parent-Child Exclusion Submissions

There is not a universal submission package for parent-child exclusions

Some Assessor offices may ask for the BOE-19-P, a copy of the trust and the distribution agreement. After reviewing these documents, the Assessor may ask for more supporting documentation. This can be time consuming and potentially frustrating.

Kerry will be going over how to eliminate the back and forth for missing items during his portion of the presentation.



PHONG LA
ALAMEDA COUNTY ASSESSOR

1221 OAK STREET, ROOM 145
OAKLAND, CA 94612

Email:

AssessorWebResponse@acgov.org

Website:

acassessor.org/proposition-19/

Phone: (510) 272-3787

We are fortunate to have Bradley Marsh participate in this presentation. Brad, as you know, is the Co-Managing Shareholder of the San Francisco office of GreenbergTraurig.

What you may not know is that Brad has won many awards and serves on the Executive Board of the California Association of Taxpayer Advocates. He has Chaired the Executive Committee of the California Lawyers Association as well as other committees for the California Lawyers Association. These are just a few of his many professional associations. He has taught at Golden Gate University as well as Santa Clara University Law School.

Is it difficult to Obtain an Exclusion
for Reassessment on a
Proposition 19 Parent-Child
Transfer?

GT

The Answer

Under the following circumstances, it is a fairly simple process :

1. There is only one beneficiary / heir.
2. All the beneficiaries / heirs are children of the decedent, and they are all taking title to the property together.

These situations should require:

1. Completion of form BOE-19-P – Claim For Reassessment Exclusion For Transfer Between Parent And Child.
2. Copy of the Trust or Will.
3. Final Accounting for Distribution of the Trust / Estate.

Important Caveat

If the children beneficiaries decide to sell the real property, the children ***may still*** file a Claim For Reassessment Exclusion for Transfer Between Parent and Child.

Why?

The property “changes ownership” at the time of death and it could take months before the property is sold. Filing the Claim For Reassessment Exclusion will allow the children to benefit from the lower tax rate from the date of death to sale of the property.

BOE 58-AH (PT) (REV. 18 (06-17))
**CLAIM FOR REASSESSMENT EXCLUSION FOR
 TRANSFER BETWEEN PARENT AND CHILD**

NAME AND MAILING ADDRESS
 (Make necessary corrections to the printed name and mailing address.)

A. PROPERTY
 ASSESSOR'S PARCEL NUMBER _____
 PROPERTY ADDRESS _____
 REVERSE'S DOCUMENT NUMBER _____
 PRECINCT NUMBER (if applicable) _____ DATE OF DEATH (if applicable) _____ DATE OF DEED OR DISTRIBUTION (if applicable) _____

The disclosure of social security numbers is mandatory as required by Revenue and Taxation Code section 63.1. (See Title 42 United States Code, section 405(c)(2)(C)(i) which authorizes the use of social security numbers for identification purposes in the administration of any tax.) A foreign national who cannot obtain a social security number may provide a tax identification number issued by the Internal Revenue Service. The numbers are used by the Assessor and the state to monitor the exclusion limit.

B. TRANSFEROR(S)/SELLER(S) (additional transferors please continue on the reverse)

1. Print full name(s) of transferor(s) _____
2. Social security number(s) _____
3. Family relationship(s) to transferee(s) _____
 If adopted, age at time of adoption _____
4. Was this property the transferor's principal residence? ☐ Yes ☐ No
 If yes, please check which of the following exemptions was granted or was eligible to be granted on this property:
☐ Homeowners' Exemption ☐ Disabled Veterans' Exemption
5. Have there been other transfers that qualified for this exclusion? ☐ Yes ☐ No
 If yes, please attach a list of all previous transfers that qualified for this exclusion. (This list should include for each property: the County, Assessor's parcel number, address, date of transfer, names of all the transferees/buyers, and family relationship. Transferor's principal residence must be identified.)
6. Was only a partial interest in the property transferred? ☐ Yes ☐ No. If yes, percentage transferred _____ %
7. Was this property owned in joint tenancy? ☐ Yes ☐ No
8. If the transfer was through the medium of a will and/or trust, you must attach a full and complete copy of the will and/or trust and all amendments.

CERTIFICATION
 I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and that I am the parent or child (or transferor's legal representative) of the transferee(s) listed in Section C. I knowingly am granting this exclusion and will not file a claim to transfer the base year value of my principal residence under Revenue and Taxation Code section 69.5.

SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE _____ DATE _____
 SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE _____ DATE _____
 MAILING ADDRESS _____ CAYTON PHONE NUMBER _____
 CITY, STATE, ZIP _____ MAIL ADDRESS _____

(Please complete applicable information on reverse side.)
THIS DOCUMENT IS NOT SUBJECT TO PUBLIC INSPECTION

**What if Some of the Children
Beneficiaries Want Cash?**

GT

The Answer

If there are enough assets to make an equal distribution to all the beneficiaries, the exclusion should be granted if the trust document does not prohibit non-pro rata distributions. Lawyers should be prepared to provide:

1. Form BOE-19-P – Claim for Reassessment Exclusion for Transfer Between Parent and Child
2. Copy of the Trust or Will
3. Final Accounting – Final Distribution of the Trust / Estate

GT

Unique Note

- Although each Assessor's Office handles transfers differently, we are working toward uniformity on these submissions.
- This consistency will make the job easier for lawyers as well as various Assessor offices.
- Kerry will be discussing this further in this presentation

**What if There are Not Enough
Assets to Make an Even
Distribution?**

GT

The Answer


The Board of Equalization opined in Annotation 625.0235.005 that a trustee who elects to make a non-pro rata distribution of trust real property to one beneficiary may equalize the value of the other beneficiaries' interests in the trust assets by encumbering the real property with a loan and distributing the loan proceeds to the other beneficiaries.

The key here is that the **trustee** must borrow the money on **behalf of the trust**. The beneficiary(ies) taking the property cannot personally guarantee the loan, provide the loan or actually act as the borrower on the loan (See July 9, 2019 BOE letter available on the Proposition19.org website).

625.0000 PARENT-CHILD TRANSFER ANNOTATION 625.0235.005

625.0235.005 Trusts—Share and Share Alike.

A trustee who elects to make a non pro rata distribution of trust real property to one beneficiary may equalize the value of the other beneficiaries' interests in the trust assets by encumbering the real property with a loan and distributing the loan proceeds to the other beneficiaries. If the beneficiary of the real property is the trustor's child, then the parent-child exclusion would be applicable to the full extent of the value of the real property provided all other statutory requirements are met. However, a loan made by the beneficiary of the real property rather than the trustee in order to equalize the trust interests would be considered payment for the other beneficiaries' interests in the real property resulting in a transfer between beneficiaries. In that event, the parent-child exclusion would not apply to the interests transferred between beneficiaries. C 8/4/2003; C 9/5/2007; C 2/19/2009.



STATE OF CALIFORNIA
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TRACY A. BROWN
JAMES S. DAVIS, CHIEF OF STAFF

August 4, 2003

Honorable Stephen L. Vagstad,
Assessor, Monterey County
P.O. Box 570
Courthouse
Salinas, CA 93902
Attn: Steve Vilcone, Appraiser

Re: Trust Property Transfers – Application of Parent-Child Exclusion to Non ProRata Distribution

Dear Mr. Vagstad:

This is in reply to your letter of April 22, 2003 in which you relate questions from Mr. requesting an opinion concerning the application of the parent-child exclusion to the distribution of real property from a trust to beneficiaries who are the children of the settlor in which the trustee proposes to make non pro rata distribution of the property. The trustee proposes to obtain a loan in order to equalize the dollar value of distributed interests to the beneficiaries. For purposes of applying the exclusion, you ask whether the loan to the trust may be obtained from the beneficiary to whom the real property will be distributed rather than from a third-party lender. For the reasons set forth below, a loan made by the beneficiary would be considered payment for the other beneficiary's interest in the trust property distributed to the lender which would constitute a transfer of that interest, in effect, constituting a "purchase" by the lender/beneficiary from the other beneficiary. Thus, the parent-child exclusion would not be applicable to exclude the transfer of the other beneficiary's interest in the real property from a change in ownership.

Facts Presented

A trust has a single asset, a piece of real property called Blackacre, worth \$100,000 that is to be distributed equally to the two beneficiaries who are the children of the trustor. The trustee has the power under the terms of the trust instrument to make non pro rata distributions of the trust property. In order to make a non pro rata distribution of the property to A, it is proposed that the trustee will obtain a \$50,000 unsecured loan from A. The trustee will distribute the \$50,000 to B and Blackacre to A encumbered by the obligation to repay the loan. Alternatively, A would lend the trust the \$50,000 secured by a note and deed of trust on Blackacre. The trustee then distributes the \$50,000 to B and Blackacre to A subject to the note.

Law and Analysis:

Basics of Parent to Child Transfers to Avoid Reassessment of Property Taxes When Transferring Property Held in an Illiquid Trust

GT

The Basics

When a Trust Holds Real Property and No (or limited) Other Assets and One of the Beneficiaries Wants the Real Property as their Share of the Distribution

- The Main Requirement for a Full Exclusion for Reassessment is that the Trust be Distributed Evenly
- But how can the Assets be Divided Equally when the only Asset is Real Property?
- The Trust Can Borrow Enough Money from a Third Party Lender to Pay the Other Beneficiaries in Cash an Amount Equal to the Equity Received by the Beneficiary (ies) Taking the Real Property
- Basic Calculation (Assuming no other assets in the trust and no trust expenses): $\text{Property Value} \div \text{Number of Beneficiaries} = \text{Each Beneficiary's Share}$

GT

Example

- Property Value - \$900,000
- No. of Beneficiaries – 3
- Each Beneficiary's Share - \$300,000 ($\$900,000 / 3$)
- Beneficiary “A” gets \$300,000 in Cash
- Beneficiary “B” gets \$300,000 in Cash
- Beneficiary “C” gets \$300,000 in Equity
 - Property Value = \$900,000
 - Beneficiary “A” cash = (\$300,000)
 - Beneficiary “B” cash = (\$300,000)
 - Equity in Real Property \$300,000
- The Trust Needs to Borrow \$600,000 to Pay Beneficiaries “A” & “B”
- (This example is simplified for explanation purposes. The Trust will have expenses that must be factored in before distribution of the trust)

GT



Common Questions

- Who Can Make the Loan to the Trust/Estate?
 - Anyone except the recipient of the real property (acquiring beneficiary)
- Can the Acquiring Beneficiary get a Loan from a Bank and put the Proceeds into the Trust/Estate?
 - No, because these funds would be coming from the recipient of the real property and would be considered a purchase of the other siblings share as opposed to a parent to child transfer. The Trustee must borrow the money on behalf of the trust. (See Property Tax Annotation 625.0235.005)
- Can the Transaction be Structured as a Purchase by the Acquiring Beneficiary from the Trust?
 - No, because the acquiring beneficiary would be buying the property from himself/herself and other siblings. This is not a parent to child transfer.
- Can the Trustee Create Promissory Notes to Distribute to the Siblings that Want Cash and Distribute the Property to the Acquiring Beneficiary to Show an Equal Distribution and Gain a Full Exclusion for Property Tax Reassessment for the Acquiring Beneficiary?
 - See Property Tax Annotation 625.0260

625.0000 PARENT-CHILD TRANSFER ANNOTATION 625.0260

• Summary

625.0260 Wills—Share and Share Alike.

- A mother bequeathed real property in her will to three children in equal shares. As such, the children held the property as tenants in common. One child contributed \$140,000 to the estate in order to receive a 100 percent interest in the real property, rather than a one-third interest. The contribution was made in order to equalize the shares of the beneficiaries for the purpose of distribution. When a beneficiary makes a money contribution in order to equalize the shares of the beneficiaries, such contribution constitutes payment for the interest of the other sibling beneficiaries and results in a purchase of that interest from the sibling beneficiaries. As such, the transfer of the two-thirds interest in the property does not qualify for the parent-child exclusion and is subject to reassessment. C 2/19/2009.

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
405 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 90271, SACRAMENTO, CALIFORNIA 95827-0202
TELEPHONE (916) 324-2000 • FAX 916-322-3357
www.sbe.ca.gov

BETTY T. YEE
PRESIDENT, SAN FRANCISCO
BILL LEONARD
SECOND DEPUTY, OAKLAND
MICHELLE STEEL
THIRD DEPUTY, RIVERSIDE COUNTY
JOSEPH CHILDS
FOURTH DEPUTY, LOS ANGELES
JOHN CHAMBERLAIN
SIXTH DEPUTY
RONALD J. HOFFIC
EXECUTIVE DIRECTOR

February 19, 2009

Honorable Gary W. Freeman
San Joaquin County Assessor
24 South Hunter Street, Room 303
Stockton, CA 95202-3273

Attn: Chief of Standards/Recorder-County Clerk

Re: Parent-Child Exclusion under Will – "Share and Share Alike"
Assignment No.: 08-194

Dear Ms. :

This is in response to your letter to Chief Counsel Kristine Cazadd dated September 12, 2008, requesting an opinion as to whether a non pro rata distribution of the decedent-mother's real property to one of her three surviving children, where the terms of the decedent's will allocated equal shares in her property to her surviving children, results in a change in ownership. In our opinion, a two-third interest in the property is subject to reassessment because one child-beneficiary (C) provided consideration (cash) to the estate in order to equalize the shares of the beneficiaries for the purpose of distribution of the property under the will, constituting payment for the interests of the other beneficiaries (i.e., a purchase of the other siblings' interests in the property). (Property Tax Annotation (Annotation) 625.0235.005.)

Facts and Contentions

The real property at issue is located at (property). The previous owner of the property, N , died testate on August 22, 2006. The third paragraph of Ms. N 's will, which you provided for our review, states that "I give all my jewelry, clothing, household furniture and furnishings, personal automobiles, books and other tangible articles of a personal nature together with any insurance on such property to my surviving children, *in equal shares*, as they may select on the basis of valuation." (Emphasis added.) The fourth paragraph of her will states that "I give the residue of my estate to my issue, who survive me, by right of representation." Although this paragraph four does not specifically state that the surviving children were entitled to receive a distribution of the real property held in the estate *in equal shares*, we consider this to be a reasonable and valid

625.0260

625.0000 PARENT-CHILD TRANSFER ANNOTATION 625.0235

• Summary

625.0235 Trusts—Share and Share Alike.

- When a parent transfers property to a trust which provides that the children are to receive the trust assets on a share and share alike basis, unless the trust instrument specifies otherwise, the trustee has the power to distribute the property on a pro rata or non-pro rata basis. The distribution of sole ownership of a single asset to one child would qualify for the parent-child exclusion, except to the extent the value of the asset exceeds the value of that child's interest in the total trust estate. Such excess must be considered a non-excludable transfer from the other beneficiaries pursuant to a sale of their interests to the recipient. C 8/6/1990; C 9/10/1996; C 10/28/1999; C 3/14/2000.

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
400 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 94251, SACRAMENTO, CALIFORNIA 94279-0051
TELEPHONE (916) 222-4000
FAX (916) 222-3287

September 10, 1996

Attorneys at Law

Attention: Ms.

Re: Proposition 58 Remeasurement Exclusion

Dear Ms. :

This is in response to your letter to me of August 8, 1996 in which you request our opinion as to whether a "change in ownership" for property tax purposes occurred and if so, to what extent under the following facts described in your letter and set forth below. For the reasons stated hereafter, we are of the opinion that no "change in ownership" occurred.

Factual Background

The decedent died on October 20, 1994. Her estate consisted of cash and her principal residence, all held in the ABC 1993 Family Trust. The decedent resided in the real property with her son prior to her death. The son still resides in the residence.

The Trust provides that following the decedent's death, the Successor Trustee should divide the trust estate into equal shares and distribute one share to each of the decedent's two children, a daughter and a son, free of trust. In the Trust, "trust estate" refers to "the assets listed in Schedule A and to any other property received by the Trustee." Furthermore, the Trust provides that "the Trustee is authorized to allot and make the division or distribution, pro rata or otherwise, in cash or in kind, including undivided interests in any property, or partly including undivided interest in any property, or partly in cash and partly in kind, in the Trustee's discretion." (Art. Sixth, Sec. A, p. 11.) The Trust also provides that the Trustee has the power to "encumber,

GT

What are the Different Options for Funding an Illiquid Trust?



- Private Money
(Equalization Loan Lender)



- Acquiring Beneficiary
- Not allowed



- Family Friend



- Bank or Mortgage Company
- Will not fund directly into an irrevocable trust. Will require property removal from an irrevocable trust.



GT

Determining the Amount of Annual Property Taxes *if* the Property is Reassessed

- The percent of the Property that will be reassessed will depend on the number of total child beneficiaries and the number of child beneficiaries taking the property as their part of the distribution
- Most of the cases will involve 1 Child Beneficiary taking the Property. The following calculation will assume 1 Child Beneficiary taking the Property and 3 total Child Beneficiaries with interests in the trust

GT

Calculating New Property Taxes on the Reassessed Value

- Take 1% of the Current Value of the Property and Divide that Number by the Number of Total Child Beneficiaries
- Multiply that Number by the Number of Child Beneficiaries that are taking Cash instead of Equity in this Property
- Let's Call this Number "Siblings Reassessed Portion"
- Take the Current Property Tax Amount and Divide by the Total Child Beneficiaries
- Let's Call this Number "Acquiring Beneficiary's Portion"
- Add the "Siblings Reassessed Portion" to the "Acquiring Beneficiary's Portion" to get the new **Reassessed Property Tax Amount**

(Keep in mind that only the non-acquiring siblings' portions are reassessed)

GT

Let's Try it with Some Numbers

- Current Property Value - \$900,000
- Annual Property Tax Rate – 1% (Actual Rates are typically 1% to 1.25%)
- Total Number of Children Beneficiaries – 3
- Current Assessed Value - \$150,000
- Current Annual Property Taxes (Prop 13) - \$1,500
- $\$900,000 \times 1\% = \$9,000$ divided by 3 = \$3,000 (Each Bene's Share of Prop. Taxes at current market rate)
- $\$3,000 \times 2 = \$6,000$ (Siblings Reassessed Portion – only children not taking title)
- $\$1,500$ divided by 3 = \$500 (Acquiring Beneficiary's Portion – still gets his/her Parent to Child Exclusion)
- $\$6,000 + \$500 = \$6,500$ (Estimated Reassessed Property Tax Amount)
- $\$6,500 - \$1,500 = \$5,000$ Annual Savings if the Acquiring Beneficiary takes full advantage of the Parent-Child Transfer

Let's Review the Requirements for a Child- Beneficiary to Gain an Exclusion for Reassessment of Property Taxes?

GT

Restrictions

There are some restrictions for transfers that occur on or after February 16, 2021.

1. The property transferred only qualifies for reassessment exclusion if it was the primary residence of the transferor (in the case of two parents where one has died earlier, the Surviving Spouse will be the transferor).
2. The property must become the primary residence of the transferee (Acquiring Beneficiary) within one year of the transfer date. A homeowners' exemption or disabled veterans' exemption must be filed within a year of the transfer.
3. The exclusion maximum is the taxable value (assessed value) of the property (it shows on the tax bill for the assessment year during which the transfer was made) plus \$1,022,600.

GT

Basic Calculations

Let's get familiar with some terms...

Full Cash Value (FCV) – What the property is worth in the market

Full Base Year Value (FBYV or BYV) – **Mom & Dad's "Property Tax" Value (Value on the Property Tax Statement in the Year of the Transfer)**

Exemption Maximum – One Million Twenty Two Thousand Six Hundred Dollars + FBYV

Excluded Amount – The amount excluded from taxation

Excess – Amount added to the FBYV to get the New Taxable Value

Now, let's do some calculations

GT

Full Cash Value (FCV).....	\$1,200,000
Full Base Year Value (FBYV).....	\$150,000 <small>(Mom & Dad's "Property Tax" Value)</small>
Exemption.....	<u>\$1,022,600</u>
Excluded Amount.....	<u>(\$1,172,600)</u>
Excess \$27,400	

The "Excess" is added to the FBYV to get the "New Taxable Value". If the Excess is "o" or less, the "New Taxable Value" remains the same as the FBYV (Mom & Dad's Value).

In this example the New Taxable Value will be \$177,400 (\$27,400 + \$150,000)

GT

Equalizing Distributions

One of the main requirements for gaining a full Exclusion for Reassessment is an Equal Distribution.

Many times the Trust / Estate will not have enough assets to make an Equal Distribution.

These situations will require a Third Party Loan to the Trust / Estate to provide the liquidity needed to make an Equal Distribution.

Claimants are using Creative Ways to Structure Transactions to show Equal Distributions without obtaining a proper Third Party Loan.

Let's talk about why they are not acceptable ways to Equalize Distributions.

Taxpayers may take the Property out of the Trust, Refinance it and put the Loan Proceeds and Property back in the Trust before they Ask for an Exclusion for Reassessment

GT

This is typically done in the following circumstances:

- 1. A Conventional Loan Officer (who is unfamiliar with the requirements of third party loans) guides a borrower to take the property out of the trust, get a loan and then return the property to the trust.**
- 2. A taxpayer is trying to avoid the costs of a legitimate third party loan**

Why can't it be done this way?

GT

Conventional Refinance – Acquiring Beneficiary Refinances

These funds would be coming from the recipient of the real property (acquiring beneficiary) and would be considered a purchase of the other siblings share as opposed to a parent to child transfer.

The trustee must borrow the money on behalf of the trust. Most banks and mortgage companies will not lend to an irrevocable trust (Against FNMA / FHLMC guidelines), so that means the acquiring beneficiary must sign the loan documents as an individual and contribute the proceeds to the trust / estate. This is considered a buy out of the other siblings interest and not a parent to child transfer.

625.0000 PARENT-CHILD TRANSFER

ANNOTATION 625.0235.005

625.0235.005 (../..../proptaxes/pdf/625_0235_005b.pdf) **Trusts—Share and Share Alike.** A trustee who elects to make a non pro rata distribution of trust real property to one beneficiary may equalize the value of the other beneficiaries' interests in the trust assets by encumbering the real property with a loan and distributing the loan proceeds to the other beneficiaries. If the beneficiary of the real property is the trustor's child, then the parent-child exclusion would be applicable to the full extent of the value of the real property provided all other statutory requirements are met. However, a loan made by the beneficiary of the real property rather than the trustee in order to equalize the trust interests would be considered payment for the other beneficiaries' interests in the real property resulting in a transfer between beneficiaries. In that event, the parent-child exclusion would not apply to the interests transferred between beneficiaries. C 8/4/2003; C 9/5/2007; C 2/19/2009.

How would the Assessor detect this?

GT

An Assessor can pull a recorded copy of the Deed of Trust to see if it was recorded after the date of death. A loan after the date of death would be a red flag that the funds in the trust probably came from a refinance. The “Trustor” on the Deed of Trust would be the borrower. If the borrower is not the trust or estate, then it will most likely be the Acquiring Beneficiary.

Lawyers should ensure that a Deed of Trust shows the Trust or Estate as the **ONLY TRUSTOR**.

If the Acquiring Beneficiary shows as the Trustor, the equalizing contribution to the Trust or Estate was made by the Acquiring Beneficiary. The Assessor will reassess any portion that is more than the Acquiring Beneficiary’s share of the Trust or Estate.

Deed of Trust Example – Page 1

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

SPACE ABOVE THIS LINE

FOR RECORDER'S USE

APN: Property's APN

Order #:

Escrow #:

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (WITH ASSIGNMENT OF RENTS AND LEASES)

Should be trust or estate

This Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents and Leases) ("Deed of Trust" or "Deed") is made, between Borrower Name herein collectively called Trustor, whose address is , , and Lender Name, herein called **Beneficiary**, whose address is and, herein called Trustee,

WITNESSETH: THAT TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, TOGETHER WITH RIGHT OF ENTRY AND POSSESSION, the following property (the "**Trust Estate**");

(a) all that certain real property now or hereafter acquired, located at , , (the "**Land**"), more particularly described as follows:

COMPLETE LEGAL DESCRIPTION IS ATTACHED HERETO AND MADE A PART HEREOF AS PER ATTACHED EXHIBIT A

APN:

Street Address: , ,

(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "**Improvements**");

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Land or the Improvements, including easements, rights-of-way, development rights, mineral rights, water and water rights, pumps and pumping plants and all shares of stock evidencing the same (the "**Appurtenances**," and together with the Land and the Improvements, the "**Real Property**");

Deed of Trust Example – Final Page

Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

- (9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- (10) TRUSTOR SPECIFICALLY ACKNOWLEDGES AND AGREES THAT, UPON THE EVENT OF DEFAULT BY TRUSTOR UNDER THE NOTE OR THIS DEED OF TRUST, LENDER MAY AT ANY TIME UTILIZE A PROPERTY MANAGER OR OTHER AGENT TO COLLECT ANY AND ALL RENTS, ISSUES, AND PROFITS ASSIGNED UNDER THIS DEED OF TRUST DIRECTLY FROM TRUSTOR AND/OR ANY ONE OR MORE OF TRUSTOR'S TENANTS.

Lender requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Lender's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the California Civil Code.

The undersigned Trustor requests that copies of any Notice of Default and Notice of Sale be mailed to him at his address hereinbefore set forth.

Dated:

Trustor(s): Borrowers's name goes here. Should be trust or estate.

Date: _____

Should be signed by the Trustee or Administrator

Date: _____

, Trustee

Mailing Address: , ,

Taxpayers may structure this transaction as a purchase transaction. The Acquiring Beneficiary will buy the property from the trust. The sale proceeds will be put in the trust for the other siblings to split.

Why can't it be done this way?

The acquiring beneficiary would be buying the property from himself / herself and other siblings.

This is not a parent to child transfer.

Email from the BOE on Structuring a Transfer from the Trust as a Sales Transaction

From: Schultz, Glenna <Glenna.Schultz@boe.ca.gov>
Sent: Tuesday, July 9, 2019 10:57 AM
To: ksmith@cloanc.com
Subject: RE: Proposition 58 Transfer

Good morning:

One beneficiary purchasing from the trust is a purchase from the beneficiaries. This appears to be a sibling-sibling transaction and would result in a reassessment.

Glenna Schultz

Senior Specialist Property Appraiser
County-Assessed Properties Division
Tel: 1-916-274-3362
Fax: 1-916-285-0134



How would an Assessor Detect this?

The Assessor will be able to look up the transactions on this property after the date of death and see the grant deed to the acquiring beneficiary (buyer).

The Distribution Agreement will show the assets in the trust as either:

- * Cash and no property – Assessor will ask for Sale Agreement and Closing Statement for this transaction or;
- * Property and little to no cash – The trust would need to equalize the distribution for the acquiring beneficiary to gain a full Exclusion for Property Taxes

**Trustees might create promissory notes to
distribute to the siblings that want cash
and distribute the property to the
acquiring beneficiary**

Why can't it be done this way?

From: Schultz, Glenna <Glenna.Schultz@boe.ca.gov>
Sent: Monday, December 16, 2019 1:38 PM
To: ksmith@cloanc.com
Subject: RE: Proposition 58 Transfer

Good afternoon, Mr. Smith:

Here is the response that I just received from our Legal Department.

Your message did not specify who was writing the promissory notes to whom, but the money is coming directly from the beneficiary acquiring the property to the siblings. This undermines the requirement of Revenue and Taxation Code section 63.1 that the transfer be strictly between an eligible transferor and an eligible transferee. Please see Annotation 625.0235.005 and back-up letters dated 8/4/2003, 9/5/2007, and 2/19/2009; Annotation 625.0260 (2/19/2009) and Annotation 625.0235.

I hope this is helpful.

Glenna Schultz

Senior Specialist Property Appraiser
County-Assessed Properties Division
Tel: 1-916-274-3362
Fax: 1-916-285-0134



Ultimately, the funds are coming from the Acquiring Beneficiary

The strategy here is to refinance after distribution and pay off the Promissory Notes. The Acquiring Beneficiary would be the one paying off the Promissory Notes.

This is a Sibling – Sibling buyout as opposed to a Parent-Child Transfer.

How would the Assessor detect this?

The Distribution Agreement

The Assessor will see the Promissory Notes on the Distribution Agreement and ask for copies of those Notes.

A Taxpayer may record a deed of trust and create a promissory note from a family member and show the cash on the distribution agreement even though no money changed hands.

How would the Assessor detect this?

What to look for

The Assessor can request a copy of the trust or estate's bank statement showing the "loan proceeds" being deposited.

The deposit should match the "loan proceeds" on the Closing Statement

Bank Statement Example

PMA[®] Prime Checking Account

Name of the trust or estate

Activity summary

Balance on 10/1	104,738.50
Deposits/Additions	3,956,931.85
Withdrawals/Subtractions	- 49,127.34
Balance on 10/31	\$4,012,543.01



■ October 1, 2016 - October 31, 2016 ■

Interest you've earned

Interest earned this month	\$8.69
Average collected balance this month	\$204,827.22
Annual percentage yield earned	0.05%
Interest paid this year	\$31.84

Account number:

FAMILY TRUST

Wells Fargo Bank, N.A. (Member FDIC)

CALIFORNIA account terms and conditions apply

Questions about your account: **1-800-742-4932**

Worksheet to balance your account and General Statement Policies can be found towards the end of this statement.

Transaction history

Date	Description	Check No.	Deposits/ Additions	Withdrawals/ Subtractions	Ending Daily Balance
Beginning balance on 10/1					104,738.50
10/3	WF Home Mlg Auto Pay			7,195.68	97,542.82
10/5	IRS Treas 310 Tax Ref 100516 XXXXXXXXX		1,480.00		
10/5	Check	3424		115.00	98,907.82
10/8	Deposited OR Cashed Check	3426		447.00	98,460.82
10/7	Check	3427		475.00	97,985.82
10/11				1,595.09	96,390.73
10/12	Check	3428		400.00	95,990.73
10/13	So Cal Gas Paid Scgc 1			34.34	
10/13	Dish Network Dish Ntwrk			216.88	
10/13	Verizon Wireless Payments 0000000047			230.34	
10/13	Check	3431		30.00	95,479.17
10/14	Online Transfer to :checking #1bev4H7Xnk On 1u/14/16			25,000.00	70,479.17
10/17	American Express ACH Pmt 1810			5,369.51	65,109.66
10/19	Withdrawal Made In A Branch/Store			3,000.00	
10/19	Time Warner Cabl Twc Ellpmt			79.99	
10/19	Check	3429		70.92	61,958.75
10/21	ATT Payment			78.62	
10/21	Check	3430		1,136.76	60,743.37
10/24	Check	3432		30.00	60,713.37
10/25	So Calif Edison Payments			242.74	
10/25	Mesa			2,661.19	57,809.44
10/31	WT FedRt US Bank, NA/Org=Fidelity National Title Company Ora		3,955,443.16		
10/31	Wire Trans Svc Charge - Sequence:			15.00	
10/31	Check	3433		703.28	4,012,543.01
10/31	Interest Payment		8.69		
Ending balance on 10/31					4,012,543.01
Totals			\$3,956,931.85	\$49,127.34	

There should be a deposit that matches the loan proceeds from the 3rd party loan.

Closing Statement Example

FIDELITY NATIONAL TITLE COMPANY

Borrower(s) Closing Statement Final

Escrow No: 0000123 - 001 NT Close Date: 02/28/2023 Proration Date: Disbursement Date: 02/28/2023

Buyer(s)/Borrower(s): (BORROWER SHOULD BE TRUST OR ESTATE)

Lender:

Loan #:

Property: 123 Main Street

Description	Debit	Credit
NEW AND EXISTING ENCUMBRANCES: (LENDER)		458,000.00
NEW LOAN CHARGES:		
Appraisal Fee to	195.00	
Loan Origination Fee to	6,870.00	
Underwriting Fee to	1,695.00	
Prepaid Interest to @ \$137.90 per day from 2/28/2023 to 3/1/2023	137.90	
Property Taxes 2022/23 2nd half- Waived by lender for borrower to pay when due to San Diego County Tax Collector		
ESCROW CHARGES:		
Title - Escrow Fee to Fidelity National Title Company	575.00	
Title - Recording Service Fee to ePN	23.00	
TITLE CHARGES:		
Title - Signing/Notary Fee to On The Dot Signing, LLC		175.00
ALTA Standard Loan Policy (6-17-06) for \$572,500.00 to Fidelity National Title Company	635.00	
Premium: \$635.00		
Endorsement 103.7 to Fidelity National Title Company	25.00	
Endorsement 8.1 to Fidelity National Title Company	25.00	
Endorsement 103.4 to Fidelity National Title Company	170.00	
Endorsement 104.1 to Fidelity National Title Company	170.00	
RECORDING FEES:		
Recording Fee For Mortgage to Fidelity National Title Company	89.00	
Recording Fees Affordable Housing to Fidelity National Title Company	225.00	
Sub Totals	10,814	458,000.00
Refund Due Borrower	447,185.10*	
Totals	458,000.00	458,000.00

*This amount represent the loan proceeds and the bank statement should show a deposit that matches.

A Taxpayer may have a rich sibling who wants to keep the property. The rich sibling may buy out the others by creating an LLC, putting the buyout money in the LLC and using that entity as the 3rd party lender.


How would the Assessor detect this?

GT

▶ The Answer

- Assessors can check with the California Secretary of State to see how recently that company was created. If it was created in the last three years, they would ask for a copy of the latest Statement of Information showing the majority of the people involved in that entity.

Statement of Information Example

 State of California Secretary of State		L
STATEMENT OF INFORMATION (Limited Liability Company)		
Filing Fee \$20.00. If amendment, see instructions.		
IMPORTANT — READ INSTRUCTIONS BEFORE COMPLETING THIS FORM		
1. LIMITED LIABILITY COMPANY NAME (Please do not alter if name is preprinted.)		
		This Space For Filing Use Only
DUE DATE: [For forms preprinted by the Secretary of State]		
FILE NUMBER AND STATE OR PLACE OF ORGANIZATION		
2. SECRETARY OF STATE FILE NUMBER	3. STATE OR PLACE OF ORGANIZATION	
NO CHANGE STATEMENT <input type="checkbox"/> If there has been no change in any of the information contained in the last Statement of Information filed with the Secretary of State, check the box and proceed to Item 13. If there have been any changes to the information contained in the last Statement of Information filed, or no Statement of Information has been previously filed, this form must be completed in its entirety.		
COMPLETE ADDRESSES FOR THE FOLLOWING (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)		
4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY AND STATE	ZIP CODE
5. CALIFORNIA OFFICE WHERE RECORDS ARE MAINTAINED (DOMESTIC ONLY)	CITY	STATE ZIP CODE CA
NAME AND COMPLETE ADDRESS OF THE CHIEF EXECUTIVE OFFICER, IF ANY		
6. NAME	ADDRESS	CITY AND STATE ZIP CODE
Should NOT be the Acquiring Beneficiary		
NAME AND COMPLETE ADDRESS OF ANY MANAGER OR MANAGERS, OR IF NONE HAVE BEEN APPOINTED OR ELECTED, PROVIDE THE NAME AND ADDRESS OF EACH MEMBER (Attach additional pages, if necessary.)		
7. NAME	ADDRESS	CITY AND STATE ZIP CODE
Should NOT be the Acquiring Beneficiary		
8. NAME	ADDRESS	CITY AND STATE ZIP CODE
Should NOT be the Acquiring Beneficiary		
9. NAME	ADDRESS	CITY AND STATE ZIP CODE
Should NOT be the Acquiring Beneficiary		
AGENT FOR SERVICE OF PROCESS (If the agent is an individual, the agent must reside in California and Item 11 must be completed with a California address. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to Corporations Code section 1505 and Item 11 must be left blank.)		
10. NAME OF AGENT FOR SERVICE OF PROCESS		
Should NOT be the Acquiring Beneficiary		
11. ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE ZIP CODE CA
TYPE OF BUSINESS		
12. DESCRIBE THE TYPE OF BUSINESS OF THE LIMITED LIABILITY COMPANY		
13. THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.		
Should NOT be the Acquiring Beneficiary		
TYPE OR PRINT NAME OF PERSON COMPLETING THE FORM		SIGNATURE TITLE DATE
LLC-12R (REV 03/2007)		APPROVED BY SECRETARY OF STATE

Example of a Promissory Note – Page 1

NOTE

Date: Anywhere, CA

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Equalization Loan Corporation, a California corporation, located at 123 Main Street. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **8.250%**. I will pay interest on the amount lent to me even though the Lender may hold some of my cash or other property as collateral for repayment.

The interest rate required by this Section 2 is the rate I will pay before any default. If I default, the above rate shall, at the option of Lender, increase by 5 percentage points and remain at that rate until all defaults are fully cured.

3. PAYMENTS

(A) Time and Place of Payments

I will pay interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on . I will make these payments every month until I have paid the entire principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date." If I have prepaid interest in a given month but prepay this Note in full during that month, I will be credited the unearned interest.

I will make my monthly payments at 123 Main Street or at a different place if required by the Note Holder. I agree to accept payment billings by email.

Lender name here. If an LLC that is a red flag!

Example of a Promissory Note – Last Page

Borrower: (SHOULD BE THE TRUST OR ESTATE)

By: (SHOULD BE THE TRUSTEE OR ADMINISTRATOR SIGNATURE)

Trustee / Administrator

By: _____

Additional Trustee

Kerry Smith

Kerry started in the loan business 42 years ago.

His companies have funded over 15,000 in mortgage loans as a lender dealing direct with consumers (retail originations).

Kerry's company has funded over 575 Trust / Estate Loans used for the Equalization of distributions in order to meet the requirements for a full Parent – Child Exemption for Reassessment of Property Taxes.

Data on our 575+ Trust / Estate Loans

- The average Acquiring Beneficiary saves \$6,537 per year in property taxes.
- The clients' trusts/estates have averaged \$50,252 more in distributions versus selling the properties.
- Each of the beneficiaries of the trusts / estates have averaged \$18,641 more than if they would have sold the properties and split the proceeds.

How is it possible to have more for Distributions by keeping the Property?

When clients sell the property, they will pay 6% to 6.5% of the Sales Price (property value) in commissions and sales costs.

When one or more of the children beneficiaries keep the property, the Equalization Loan will cost about 3% of the loan amount.

Typical Loan Amounts are 50% to 65% of the property value

Example

Sales Price (Property Value).....\$1,000,000

Sales Costs (6%).....\$60,000

3rd Party Loan Costs:

Property Value x 65%.....\$650,000

3rd Party Loan Costs (3%) - \$650,000 x 3% = \$19,500

Difference \$40,500

There are good reasons to have your clients consider keeping a family property and take advantage of a Full Exclusion for Reassessment.

Getting through the process effectively and efficiently will save you some headaches.

Let's talk about the process of obtaining financing and preparing documents for submission to the Assessor.

Sell vs. Keep

Sell vs. Keep

Children beneficiaries should talk to a competent Trust / Estate Equalization Lender (TEEL) before deciding on their best strategy.

A good TEEL will show the beneficiaries an accurate estimate on what they can expect to net if they sell or keep the property.

A good TEEL will show all costs of an Equalization Loan and show Acquiring Beneficiaries the time it will take to absorb those costs in property tax savings.

If it is determined that keeping the property provides the most benefit, a good TEEL will make sure the Acquiring Beneficiary either has the money to pay off the Equalization Loan or qualifies for conventional long term financing to pay off the Equalization Loan.

Equalization Loans are typically 12 month loans.

If the acquiring beneficiary cannot qualify for a conventional loan, they may be in trouble when the Equalization Loan comes due.

A good TEEL will make sure that does not happen. If an Acquiring Beneficiary cannot qualify for conventional financing, selling the property may be the better choice.

If Selling the Property is the Better Option

A good TEEL will have referral sources for Real Estate Professionals in the area where the property is located that can assist with the Sale of the Property.

Many times, keeping the property is the best option. If there are not enough assets to make an even distribution, the trust/estate will need to obtain an Equalization Loan.

Let's look at Equalization Loans

Equalization Loans

Trust / Estate Equalization Lenders are not lending to an individual, so they should not require certain items typically required for a conventional loan.

Make sure there is.....

- No Income Documentation
- No Credit Reports
- No Personal Guarantees (personal guarantees by the acquiring beneficiary is viewed as a sibling to sibling buyout as discussed earlier)
- No Prepayment Penalty or Minimum Days Interest Requirement

A Typical Trust / Estate Equalization Loan Package should only require:

1. Trust Loan Application (1 Page)
2. Appraisal – Usually, an appraisal is done for the trust. Most trust lenders should ask for a review appraisal for about \$250
3. Death Certificate
4. Copy of Trust and Amendments / Letters of Administration & Notice of Proposed Action
5. Tax ID Number of Trust / Estate
6. Picture Identification of Trustee(s) / Administrator(s)
7. Proof of Hazard Insurance
8. Proof of Funds for Payoff of the Trust Loan –

A bank statement showing enough funds to pay off the trust loan or an approval letter from the take out lender. Reputable Trust / Estate Equalization Lenders should make sure the acquiring beneficiary has a take out method (a way to repay the short-term equalization loan). If the borrower(s) do not qualify for a take out loan, a 3rd party loan may not be the best strategy.

Clouds on Title

A good Trust / Estate Equalization Lender will deal with all the problems associated with clearing title to the property, so the attorney does not have to deal with it.

Communication

We recommend a conference call between the Trust / Estate Equalization Lender, all beneficiaries of the trust / estate and the attorney. The trust / estate is the borrower, so all the beneficiaries are the clients. A good Trust / Estate Equalization Lender will go over the transaction completely on that call to make sure everyone is on the same page and answer any questions beneficiaries may have.

The Loan Process

Once an Trust / Estate Equalization Lender has these items,

- | | |
|---|--|
| 1. Trust Loan Application (1 Page) | 5. Tax ID Number of the Trust / Estate |
| 2. Appraisal | 6. Picture ID of Trustee / Administrator |
| 3. Death Certificate | 7. Proof of Hazard Insurance |
| 4. Copy of Trust and Amendments or Will | 8. Proof of Funds / Loan Preapproval |

Lender will order Escrow Instructions (Receipt in 48 hours)

Lender will order Preliminary Title Report (Receipt in 48 hours)

Loan is Underwritten once all of the above are in the file

The Loan Process (cont)

The loan documents should be sent to the trustee(s) / administrator(s) and the attorney for review.

Once approved by the attorney & trustee(s) / administrator(s), the loan documents can be emailed to escrow to set up signing by a mobile notary. The notary meets the trustee / administrator to sign documents at a place desired by the trustee or administrator.

A typical transaction should take 10 calendar days.

Most Delays are related to Distribution Agreement Disputes or Clouds on Title

Brokered Loans

A loan broker does not have their own capital to fund loans. A loan broker gathers information from the borrower and puts the documentation in a package and presents that “loan package” to the lender.

The lender’s underwriter will review the loan package and approve the loan subject to conditions. These conditions are usually documentation that was not found in the loan package submitted by the broker.

Once the broker submits the outstanding conditions, the conditions are removed and the loan is approved for preparation of loan documents.

Time Consumption

The majority of the time that is taken by the lender in the loan process is the time from submission of the loan to underwriting and the final sign off for loan documents.

An underwriter will have to set aside the new loans coming in to review the conditions that come in on previously underwritten loans.

Top of the List

My companies have a history of closing loans much quicker than our competition.

How do we do it?

Complete Packages

We make sure when we submit a loan that every piece of documentation necessary to answer any question an underwriter may have is already in the file.

Underwriters are graded not only on performance of their loans, but the number of loans they underwrite in a day.

It was not unusual for underwriters to skip the loans on the top the pile to find one of our loans because they knew they would only have to underwrite it once and all the proper documents would be in the file.

The Point

Underwriters would much rather have a file with everything in it and avoid the phone calls and emails needed to complete the file. Some will even look for loans to underwrite from loan brokers that have a reputation of submitting complete files.

Submissions of Claims for Reassessment Exclusions

These submissions are similar to loans submitted to underwriting

The Assessors' offices have to make sure that all the "i's" are dotted and the "t's" are crossed.

If a Claim for Reassessment Exclusion doesn't answer all the questions in the initial submission package, there will be emails and phone calls necessary to get all the information needed. This aggravates everyone involved.

How can this be Avoided?

Make sure that the Claim for Reassessment Exclusion package has all the documentation needed to allow the Assessor to make a favorable decision.

Piecemeal Submissions

Many Assessors' offices start with the submission of the BOE-19-P form.

This form requires a copy of the Trust in Section "B".

(This form should probably ask for a copy of the will, since the rules apply for trusts and estates)

After reviewing the Trust, if they see that there is more than one beneficiary, they will want to see the Distribution Agreement to make sure that the distribution was equal.

The Problem

If there is more than one beneficiary, you will have to wait for an email or phone call to get the “condition” of a copy of the Distribution Agreement.

If the Distribution Agreement shows a 3rd Party Loan was used to equalize the distribution (or they find a recorded Deed of Trust on their property search), you can expect more “conditions” for a copy of the Promissory Note & Closing Statement depending on the situation.

You have been delayed twice now.

How can this be handled more efficiently?

I don't believe these submissions are any different than loan submissions.

If the Exclusion for Reassessment for Transfer between Parent and Child package is complete and answers all the questions that can come up, the amount of time it takes to get a positive response from the Assessor will be greatly reduced.

This will save your time and the Assessors' time.

Making Sure the Package is Complete

We have developed a checklist that will help ensure that all the bases are covered with these submissions.

As Assessors begin to see these packages with the checklists, they will begin to realize that these packages are much easier to “underwrite”.

I wonder if Assessors will start to skip over other submissions to find submissions with these checklists.

The goal is to have every Assessor’s office adopt this checklist for their Claims for Reassessment Exclusion for Transfer between Parent and Child.

Proposition19.org

Introduction to the website

Kerry goes online and explains the website

SAMPLE



Parent to Child Transfers Checklist

1 Claim for Reassessment Exclusion Date of Death 1/15/2021 Correct Form **BOE-58-AH**

2 Affidavit of Death of Decedent or Settlor (Trust) Kefer Mother
Decedent/Settlor Name Relationship

3 Decedent/Settlor Death Certificate

4 Letter of Administration or Trust Agreement and All Amendments (Trusts)

 a. Is there Language directing other than a Share and Share alike Distribution? Yes
Annotation 625.0235.005 b. Is there Language Prohibiting a Non-Pro Rata Distribution? No
 c. Are there any heirs/beneficiaries that are not children of the deceased? No
Annotation 625.0260 d. Is there language granting any heir/beneficiary more than an equal percentage? No
e. Is there language granting a first right of refusal to this property to one of the children? No

ALERT: A PARTIAL REASSESSMENT MAY BE REQUIRED! USE CALCULATION SHEET.

5 Distribution Agreement / Final Accounting

a. Was the distribution of Assets equal to all Heirs/Beneficiaries? Yes
b. Was a 3rd Party Loan Used to Equalize the Distribution? Yes
c. If so, Was the Acquiring Beneficiary the Contributor of those Funds? No

BOE Letter Dated July, 9, 2019

"...The acquiring beneficiary would not be allowed to contribute funds, personally guarantee the loan, or actually act as the borrower on the loan for purposes of qualifying for the parent-child exclusion."


BOE Letter July
9, 2019

6 Copy of Grant Deed / Quitclaim Deed to Acquiring Beneficiary at Distribution

7 Preliminary Change of Ownership (BOE-502-A)

8 Claim for Homeowners Property Tax Exemption (BOE-266) for Prop. 19 - Due within One (1) Year of the Transfer

If a 3rd Party Loan was used to Equalize the Distribution, include the following documents:

9 Copy of Recorded Deed of Trust for 3rd Party Loan

a. Who is the beneficiary listed on the Deed of Trust?

If a company - b. Go to: <https://bizfileonline.sos.ca.gov/search/business>

I. Enter Company's Name and click the Search Icon

II. Click on the ">" to the right of the Company's Name

c. Was the company's Initial Filing Date over Three (3) Years Ago?

Commercial Loan Corporation



Email chain from BOE
December 2019

Yes

If less than three years from initial filing date, request a copy of the latest Statement of Information for the Company showing Officers/ Managing Members

d. Is the Acquiring Beneficiary showing as an Officer or Member of the Organization?

No

10 Copy of the Promissory Note for the 3rd Party Loan used to Equalize the Distribution

a. Was the only Borrower identified as the estate or trust?

b. Was the Lender anyone except the Acquiring Beneficiary?

Yes

Yes

If either answer is "no", the 3rd party loan may not comply with R&T Code 63.1

11 Proof of Funding of the 3rd Party Loan:

Trust or Estate Bank Statement showing Deposit of the Loan Proceeds

12 Closing Statement for 3rd Party Loan

Proceeds should match the deposit shown on Bank Statement

SAMPLE

Parent to Child Transfers Calculation for Change in Ownership

Areas in Green are for entering data. Calculations will be made from the data entered.

Description	Date of Death Market Value	Outstanding Liens	Net Value of Estate/Trust
Primary Residence	\$ 900,000	\$ 567,000	\$ 333,000
Morgan Stanley	\$ 99,000	\$ -	\$ 99,000
Proceeds of 3rd Pty Loan	\$ 567,000		\$ 567,000
			\$ -
			\$ -
			\$ -
			\$ -
Total Estate Value	\$ 1,566,000	\$ 567,000	\$ 999,000

Child?	Name	% of Estate/Trust	Asset / \$ Value	% of Subject Property Acquired
Acquiring Beneficiary (AB)	Bob	33.33%	Primary Residence \$ 333,000	100%
Heir/Beneficiary 2	Kathy	33.33%	Cash \$ 333,000	
Heir/Beneficiary 3	John	33.33%	Cash \$ 333,000	
Heir/Beneficiary 4			\$ -	
Heir/Beneficiary 5			\$ -	
Heir/Beneficiary 6			\$ -	
TOTALS		100.00%	\$ 999,000	100%

Was this a share and share alike distribution?
Did the will/trust allow for a non-pro rata distribution?
What percentage of the property was distributed to a non-child beneficiary (ies)?
Did the acquiring beneficiary receive a disproportional distribution?
If yes:

Yes
Yes
0%
No



Annotation 625.0235



Assessor Training - Section 5

Pages 26 & 27

Calculation: Equity in the property minus the child's share of the estate/trust divided by the equity in the property equals percent of reassessment (LTA 91/08)

Disproportionate Distribution Calculation	
Equity in the Property	\$ 333,000
AB Share of Estate/Trust	\$ (333,000)
Amount Over AB's Share	\$ 0.33
	divided by
Equity in the Property	\$ 333,000
% of Change in Ownership	0.00%
Negative Number = No CIO	

Excess Calculation on Subject Property (Proposition 19 Exclusions Only)	
Full Cash Value	\$ 900,000
Exemption	\$ (1,000,000)
Full Base Year Value (FBYV)	\$ (150,000)
Excess Amount	\$ (250,000)
If Excess is less than or equal to "0", the FBYV remains the same	

Percentage of Property Distributed to a Non-Child beneficiary(ies) 0%
Disproportionate Distribution - % Change in Ownership 0%
Excess of Exemption \$ (250,000) / \$ 900,000 = 0.00%

Change in Ownership 0.00%