



## STATE BOARD OF EQUALIZATION

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February 24, 2016

**Re: Unrecorded Transfers**  
**Assignment No.: 15-470**

Dear Mr. \_\_\_\_\_ :

This is in response to your questions regarding whether an assessor has the discretion to accept or disregard an unrecorded deed as evidence of a change in ownership, whether an assessor has the discretion to retain a previous owner's name on the tax roll, and regarding Government Code section 15606, subdivision (h). As explained below, in our opinion, if the parties meet the requirements of a valid deed, which do not include recordation, then such deed should be considered evidence of a change in ownership, unless there is clear and convincing evidence indicating otherwise. In addition, if a deed is accepted as conveying full interest in property, the former owner's name should be removed from the secured tax roll. Finally, regarding your question on Government Code section 15606, subdivision (h), that section is generally exercised when there is no adequate remedy at law, and only in instances where there has been a clear violation of a constitutional or statutory property tax provision or administrative regulation.

### Facts

Real property located in \_\_\_\_\_ County, California, was owned by E \_\_\_\_\_. According to your letter to the Board of Equalization (Board) dated July 6, 2015 (July letter), E \_\_\_\_\_ is the name of a trust, of which you state you are a managing director.<sup>1</sup> You state that E \_\_\_\_\_ transferred the subject property to you, as your sole and separate property. The quitclaim deed included with your email to \_\_\_\_\_, dated September 21, 2015, shows E \_\_\_\_\_ as the grantor and "J \_\_\_\_\_, a married man, as his sole and separate property" as the grantee, executed on June 29, 2015.<sup>2</sup> The June 2015 deed states, "It is the express intent of M \_\_\_\_\_, being

<sup>1</sup> We note that the authority to transfer trust property is generally held by a "trustee" rather than a "managing director." As such, it may be appropriate for the assessor to request trust documents, such as a Declaration of Trust, to determine whether E \_\_\_\_\_ is a form of "business trust", which operates as a legal entity, and to confirm the authority of the "managing director" to transfer the subject property. (See Property Tax Annotation 220.0399 (January 13, 1998).) Additionally, we note that the quitclaim deed dated June 29, 2015, is signed by M \_\_\_\_\_,

also as managing director. Thus, it may be appropriate for the assessor to confirm that either managing director is authorized to transfer the subject property, by requesting applicable trust or legal entity documents.

<sup>2</sup> Although you state in your July letter that the property was transferred by E \_\_\_\_\_ in December 2014, the deed dated June 29, 2015 states that it is "nunc pro tunc on the date of the underlying Deed, which is dated December 10<sup>th</sup>, 2014 and is attached hereto as Exhibit A." We note that the copy of the deed in our possession does not include an Exhibit A; however, for purposes of this analysis, we assume the deed dated June 29, 2015, is the operative deed that you are using as evidence of the property transfer. Hereafter, we will refer to this deed as the June 2015 deed.

a Managing Director of E \_\_\_\_\_, and spouse of the Grantee, to convey all right, title, and interest of the Grantor, community or otherwise, in and to the herein described property to the Grantee as his sole and separate property."

In your July letter, you state that the deed was not recorded, and that you appeared in the assessor's office in \_\_\_\_\_ to give the assessor actual notice of the transfer. You state that the assessor requires the deed "be recorded before a former owner of property will be removed from the [s]ecured [r]oll" and that "E \_\_\_\_\_ will remain as assessee because the [d]eed was not recorded. The [assessor] claims he has discretionary authority to disregard [Civil Code section 1217].<sup>3</sup>" According to your email to \_\_\_\_\_ and \_\_\_\_\_ dated December 8, 2015, E \_\_\_\_\_ was assessed property taxes on the subject property on July 1, 2015.

In an email to \_\_\_\_\_, dated September 22, 2015, you also inquire about the enforcement of Government Code section 15606, subdivision (h), which provides that the Board shall bring an action in a court of competent jurisdiction to compel an assessor to comply with any provision of law, or any rule or regulation of the board adopted in accordance with subdivision (c), governing the assessment or taxation of property.

### **Law and Analysis**

#### *Deed Requirements and Assessment Roll Contents*

Revenue and Taxation Code<sup>4</sup> section 405 requires the assessor to assess all the taxable property in her county annually, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date. The assessor has the duty to make diligent inquiry and examination to ascertain that all the property within the county subject to assessment has been assessed on the roll, according to the best of the assessor's judgment, information, and belief, at its value as required by law. (Rev. & Tax. Code, § 616.)

Deeds are used when an owner of an interest (the grantor) transfers, sells, or gives the interest to another (the grantee) by executing a written document with certain requirements. The requirements for a valid deed are a grantor, a grantee, a writing and subscription, delivery, and acceptance. Recordation is unnecessary; its effect is to give constructive notice and to determine priorities. (12 Witkin, Summary of Cal. Law (10th ed. 2010) Real Property, § 254; Cal. Civ. Code, §1217.) Thus, an unrecorded deed is valid as between the parties and as to all those who have notice thereof. (Cal. Civ. Code, § 1217, *supra*; *Merritt v. Rey* (1930) 104 Cal. App. 700, 707 [citing *Blackledge v. McIntosh*, (1927) 85 Cal. App. 475, 483].)

Evidence Code section 662 provides that, "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption, often referred to as the deed presumption, may be rebutted only by clear and convincing proof." Rule 462.200, subdivision (b) interprets Evidence Code section 662 in the context of property taxation, providing that "[w]hen more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property, unless an exclusion from change in ownership applies." In addition, Civil Code section 1105 provides that

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<sup>3</sup> Civil Code section 1217 provides, "An unrecorded instrument is valid as between the parties thereto and those who have notice thereof."

<sup>4</sup> All further statutory references are to the Revenue and Taxation Code, unless otherwise specified.

a deed conveying the property is presumed to grant fee simple title, unless it appears from the grant that a lesser estate was intended.

Here, the June 2015 deed appears to meet the requirements of a valid deed, showing E as the grantor, J as the grantee, in a writing signed by M G as managing director of E, and presumably delivered and accepted by you, the grantee. The deed does not need to be recorded in order to convey the interest in the property. (Civ. Code, § 1217, *supra*.) Thus, under the deed presumption, J is presumed to own 100 percent of the property, unless there is clear and convincing evidence indicating otherwise.

With regards to the contents of the secured tax roll, section 602, subdivision (a) provides that the contents of the assessment roll shall show the name and address, if known, of the assessee. An assessee is "the person to whom the property or a tax is assessed." (Rev. & Tax. Code, § 23.) As noted above, section 405 provides that the assessor may assess the property on the secured roll to "the person owning, claiming, possessing, or controlling it on the lien date."

In this case, you are "a person owning, claiming, possessing, or controlling the property." As noted above, the June 2015 deed executed by M as managing director of E states that "[i]t is the express intent of M . . . to convey all right, title, and interest of the Grantor . . . as his sole and separate property", which suggests that upon transfer, E is no longer "owning, claiming, possessing, or controlling" the property. An "assessee" is understood to mean the current owner; after property is transferred, the former owner is no longer considered an "assessee" of that property. If that were not the case, a person that no longer owns the property would have access to confidential information by virtue of her continued listing as an "assessee". (Property Tax Annotation<sup>5</sup> (Annotation) 160.0002 (March 6, 1998).) Thus, unless the assessor believes there is clear and convincing evidence to rebut the deed presumption or unless the assessor has reason to believe that E is "owning, claiming, possessing, or controlling" the property, then E, the previous owner, should be removed from the secured tax roll.

If, on the other hand, the assessor believes there is clear and convincing evidence that, irrespective of the deed, no transfer of the property occurred, then the assessor may use his or her discretion not to accept the deed as evidence of a change in ownership. In that case, the owner, E, should remain on the secured tax roll as the assessee.

### *Change in Ownership*

Assuming that the assessor accepts the unrecorded deed as conveyance of 100 percent of the property from E to J, we note that the potential change in ownership consequences may depend on whether E is a trust or a business trust, which, as previously discussed, is treated as a legal entity for property tax purposes. (Annot. 220.0399, *supra*.) As noted above, your July letter states that E is a trust, but the title of "managing director" suggests that E may be a legal entity.

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<sup>5</sup> Property Tax Annotations are summaries of the conclusions reached in selected legal rulings of Board legal counsel published in the Board's Property Tax Law Guide and on the Board's website. See Cal. Code Regs., tit. 18, § 5700 for more information regarding annotations.

Article XIII A, section 2 of the California Constitution provides that real property must be reassessed whenever a change in ownership occurs. A change in ownership is defined at section 60 to mean "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Section 61, subdivision (j) provides that a "transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person" is a change in ownership unless an exclusion applies. (See also Property Tax Rule<sup>6</sup> (Rule) 462.180, subd. (a).) Section 63 provides an exclusion from change in ownership for interspousal transfers of property and ownership interests in legal entities. (See also Rule 462.220.)

Here, if E is a trust, then it is necessary to "look through the trust" to determine the present beneficial owner of the property. (See Annot. 220.0823 (November 15, 2006).) Our understanding is that for prior transfers of the subject property to E, a Preliminary Change in Ownership Report indicated that E was for the benefit of M alone. Thus, if the trust was for the benefit of M, your spouse, then she was the beneficial owner of the property prior to the June 2015 transfer. Therefore, a transfer from E, if it is a trust for the benefit of M, to you, her spouse, would qualify for the interspousal exclusion under section 63.

If, on the other hand, E is a business trust or a legal entity, and assuming it was wholly owned by your spouse, the interspousal exclusion is not applicable because section 63 does not apply to transfers from a spouse to a legal entity wholly owned by the other spouse. (Annot. 220.0278 (May 14, 1993; February 22, 2007).) Thus, a transfer of the property to you from E, if it were treated as a legal entity wholly owned by M, would result in a change in ownership under section 61, subdivision (j).

*Revenue and Taxation Code Section 15606, subdivision (h)*

You also inquire about Government Code section 15606, subdivision (h), which provides that the Board shall bring an action in a court of competent jurisdiction to compel an assessor to comply with any provision of law, or any rule or regulation of the board adopted in accordance with subdivision (c), governing the assessment or taxation of property.

First, we note that Government Code section 15606, subdivision (h) is a remedy in the nature of mandamus, by which the Board may compel a local official or body to perform its duties as prescribed by statute or regulation. (Back-up Letter dated March 17, 1997, to Annot. 180.0022.) "It is well settled that mandamus, administrative or traditional, does not lie where there is an adequate remedy at law." (*Mystery Mesa Christian Church, Inc. v. Assessment Appeals Board, No. 1* (1976) 63 Cal.App.3d 37.) It appears you have a civil remedy available to you in the form of an appeal to the local assessment appeals board or a writ of mandate by verified petition to a superior court. (See Code Civ. Proc., §1084 *et seq.*) Finally, Government Code section 15606, subdivision (h) is exercised only in rare instances where there has been a clear violation of a constitutional or statutory property tax provision or administrative regulation and not in instances of statutory interpretation for which statutory procedures exist. (Back-up Letter dated March 17, 1997, to Annot. 180.0022, *supra.*)

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<sup>6</sup> All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

*/s/ Leslie Ang*

Leslie Ang  
Tax Counsel

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cc: Honorable  
County Assessor

Mr. Dean Kinnee (MIC:63)  
Mr. David Yeung (MIC:61)  
Mr. Todd Gilman (MIC:70)  
Mr. Mark Sutter (MIC:70)