

Memorandum

To: Mr. Dean Kinnee
Policy, Planning and Standards Division

Date: October 7, 2002

From: Kristine Cazadd
Assistant Chief Counsel

Subject: *County of _____ – Proposition 60 Opinion Request – Principal Residence*

Question:

A property owner has sold his primary residence and finished construction on a replacement home. The original property had a 990 square foot apartment combined with a detached garage. Family and guests used this unit.

It is not clear to the _____ County Assessor's office whether the apartment can be considered part of the original property value for Prop 60 comparisons. Below are the references that the Assessor's office used in attempting to make this decision:

1. Prop 60 Application – If an original property is multi-unit dwelling, each unit shall be considered a separate original property.
2. Property Taxes Law Guide 200.0064 – In making the value comparison between an original property and a replacement property, the value of structures on the original property other than the principal place of residence must be excluded.
3. LTA 87/71 Question 4 – It is clear from the language of the statute that the property to be compared is the property occupied as the claimant's principal residence in total, which qualifies for the Homeowners' Exemption.

The Assessor's inclination is to think of the apartment as part of the principal residence and therefore use the full sales price in our qualifying comparison.

Answer:

Based on the facts described here, the homeowner did not rent the apartment to others, but presumably used it for guests, family members, etc. Unless there is evidence that the homeowner executed a lease or otherwise used the apartment for purposes incompatible with the homeowners' exemption, it would appear to qualify as part of his/her principal residence. This conclusion is consistent with legislative intent, as explained in the Board staff's previous opinion on this matter, as set forth in LTA No. 87/71, question 4.

Mr. Dean Kinnee

October 7, 2002

Page 2

Section 69.5(a)(1) and (b)(2) require that the “original property” must be eligible for the homeowner’s exemption “as the result of the claimant’s ownership and occupation of the property as his/her principal residence.”

The factual question to be determined by the assessor in the instant case is whether the 990 square foot apartment combined with a detached garage was “eligible for the homeowner’s exemption” because of the claimant’s ownership and occupation as his/her principal residence. Based on our long-standing interpretation of section 218 and Rule 135, LTA No. 82/50, page 19, states that “None of the homeowners’ exemption or the veterans’ exemptions may apply to land or structures on a side [or portion of the property] rented to others.” The basis for the “rented-to-others test” is that occupation and/or leasehold possession of property by others establishes prima facie evidence that it is the “principal residence” of some other person.

KEC:tr

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