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June 24, 1994

Honorable Raymond J. Flynn  
Humboldt County Assessor  
825 Fifth Street, Room 129  
Eureka, California 95501-1172

Attention: Mr. Raymond L. Jerland  
Assistant Assessor

Dear Mr. Jerland:

This is in response to your letter of March 15, 1993, regarding the date of transfer of a property in which the deed was not recorded promptly. I apologize for the delay in responding; other matters requiring our attention have resulted in an unfortunate backlog of correspondence.

The facts contained in your letter are as follows:

1. Prior to 1964 a taxpayer, W, acquired a property.
2. In March 1975, W applied for and received a homeowner's exemption on this property as it was his principal place of residence.
3. On September 28, 1983, W signed a deed transferring title to his son, G.
4. The deed was notarized on October 6, 1983, but not recorded. W placed the deed in his dresser drawer.
5. On June 25, 1987, W requested termination of the homeowner's exemption on this parcel for 1987-88 because he moved into town due to poor health.

6. Sometime in late 1990 or early 1991, W gave deed to G. On July 8, 1991, G recorded deed with the county recorder.
7. Upon receiving a copy of the recorded deed, your office reappraised the property as of September 28, 1983, and enrolled supplemental and escaped assessments.

While most people in your office feel that the date of the change in ownership is the deed date in 1983, some feel that the 1991 recording date is the date of the change in ownership. You would like our opinion of the date of change in ownership in this situation.

Initially in our discussion with you in March 1993, we opined that the date of the change in ownership was September 28, 1983, the date of the deed. However, upon further review and discussion with our legal staff, based on the facts presented in your letter, we now feel that the recording date is the date of change in ownership.

Property Tax Rule 462(n)(1) provides that with respect to sales of real property which are evidenced by the recordation of a deed the date of change in ownership is rebuttably presumed to occur on the date of recordation. This presumption may be rebutted by evidence proving a different date to be the date all parties' instructions were met in escrow or the date the agreement of the parties became specifically enforceable.

If there was a written agreement of sale between W and G in this case, the foregoing rule would be applicable. Since the facts provided do not indicate that there was such an agreement, we will assume there was none and that Rule 462(n)(1) does not apply.

Civil Code Section 1054 provides that a deed takes effect only when delivered. The term "delivery" refers solely to the intention of the grantor and not to the mere physical act of manually transferring the deed to the grantee. (Osborn v. Osborn (1954) 42 Cal.2d 358.) If the grantor has the required intent, there may be a legal "delivery" even though the deed itself has not been given to the grantee. (Huth v. Katz (1947) 30 Cal.2d 605.) A legal "delivery" requires an intention by the grantor that the deed be presently operative and effective to transfer title to the grantee and that the grantee become the legal owner. (Huth, supra.)

Whether the grantor has the requisite intent and whether there has been a legal delivery of the deed are questions of fact to be determined from all of the circumstances surrounding the transaction. (Longley v. Brooks (1939) 13 Cal.2d 754.) This would include the grantor's own words or acts at or near the time the deed was executed (Knudsen v. Adams (1934) 137 Cal.App. 261) and the grantor's acts and declarations before and after the execution of the deed (Osborn, supra.)

Also, there are certain presumptions which operate with respect to delivery of a deed. These are rebuttable and can be overcome by contrary evidence (Evid. Code Section 600). For example, it is presumed that a deed has been delivered when it has been duly executed or acknowledged (Henneberry v. Henneberry (1958) 164 Cal.App.2d 125). On the other hand, it is presumed that if the grantor retains possession of the deed there has been no delivery and the party who alleges that the title has been transferred has the burden of proving that the grantor intended to convey title to the grantee at the time he executed the deed (Miller v. Jansen (1943) 21 Cal.2d 473).

Under the foregoing principles, there was an effective conveyance by W in 1983 only if W intended the deed to be operative and effective to convey title to G at that time. However, the facts that W placed the deed in his dresser drawer, continued to live on the property, and continued his homeowner's exemption on the property after 1983 all suggest that W did not intend to transfer anything at the time of execution.

Although the question is not entirely free of doubt, we are of the opinion, based on the facts presented, that the date of delivery is the date of recordation because W (the grantor) retained the deed. Delivery did not occur until G took possession of the deed and had it recorded.

I hope this has been responsive to your inquiry. If you have any further questions, please contact our Real Property Technical Services Section at (916) 445-4982.

Sincerely,

Verne Walton, Chief  
Assessment Standards Division

VW:sk

bc: Mr. Richard Ochsner

(Prepared by: Glenna Schultz)