



STATE BOARD OF EQUALIZATION

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August 19, 2013

Re: *Change in Ownership – Real Property Acquired at Non-Judicial Foreclosure by Prior Owner*
Assignment No.: 13-097

Dear Mr. _____ :

This is in response to your letter requesting an opinion regarding whether a change in ownership occurred when the existing owner of California real property was the successful bidder for the property at a non-judicial foreclosure sale. As explained below, it is our opinion that no change in ownership occurred.

Factual Background

You purchased the property located at _____ Drive, _____, California (Property) from S _____ W _____ and A _____ W _____ for \$700,000 on July 3, 2012 and assumed three of the sellers' secured loans against the Property. You provided us with a copy of the Grant Deed conveying the Property to you. The Los Angeles County Assessor's Office reassessed the Property at \$700,000 as of July 3, 2012.

Due to default on one of the loans secured by Deed of Trust against the Property, a non-judicial foreclosure proceeding took place on November 2, 2012, at which you were the successful bidder and paid \$650,000 to Sundance Reconveyance Company (Sundance), the Trustee on the Deed of Trust. You provided us with a copy of the Trustee's Deed Upon Sale, showing that the Property was conveyed to you by Sundance on November 2, 2012. The Los Angeles County Assessor's Office reassessed the Property at \$885,000 as of November 2, 2012, as indicated on the Notice of Supplemental Assessment you provided.

Law and Analysis

Revenue and Taxation Code¹ section 60 defines a change in ownership as "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 62, subdivision (c) specifically lists examples of transactions which are not changes in ownership: "(1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument." Property Tax Rule² (Rule) 462.240 specifies that "any transfer resulting in

¹ All statutory references are to the California Revenue and Taxation Code, unless otherwise indicated.

² All references to Property Tax Rule or Rules are to sections of title 18 of the California Code of Regulations.

the creation, assignment, or reconveyance of a security interest not coupled with the right to immediate use, occupancy, possession or profits" does not constitute a change in ownership. In addition, Rule 462.120 subdivision (b) provides that a "Deed of trust foreclosed by trustee's sale shall cause a reappraisal as of the date the right of possession vests in the purchaser."

Pursuant to section 62 and Rule 462.240, deeds of trust do not themselves transfer title to property, but upon default, authorize the holder of the trust deed to convey title to the property.³ Therefore, Sundance was never the owner of the Property for property tax purposes. As you informed us, the default on the Deed of Trust in question authorized Sundance, as trustee on the Deed of Trust, to hold a non-judicial foreclosure sale and to convey title to the Property on November 2, 2012. In a typical foreclosure sale, the conveyance of title to a third-party purchaser would constitute a change in ownership as defined in section 60, as it would transfer the interest in real property, including the beneficial use thereof, to the third party. Applying Rule 462.120 subdivision (b), a reappraisal would typically result following a non-judicial foreclosure sale, when the right of possession vests in the purchaser.

In this case, however, you were both the existing holder and the purchaser of the interest and beneficial use of the Property. A transfer of beneficial use is required for a change in ownership under section 60. The term "beneficial use" means the right to enjoy the benefits of a property and includes the right to occupy a property or the right to receive income from a property. (*Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480, 489; *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334, 338-339; *Pacific Southwest Realty v. County of Los Angeles* (1991) 1 Cal.4th 155, 162.) As there was never a transfer of the right to occupy or receive income from the Property, no beneficial use was transferred. As such, the transaction on November 2, 2012 did not constitute a change in ownership.

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

LA:yg

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cc: Mr.
Los Angeles County Chief Deputy Assessor

Mr. Dean Kinnee	MIC:64
Mr. Mark Sutter	MIC:70
Mr. David Gau	MIC:63
Mr. Todd Gilman	MIC:70

³ See also Property Tax Annotation 220.0150 (1/27/1992). 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.