



STATE OF CALIFORNIA

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December 18, 1997

Attention: Ms. [redacted]

**Re: Interspousal Transfer after Dissolution of Marriage.**

Dear Ms. [redacted]:

This is in response to your faxed memorandum of October 29, 1997, in which you have requested our opinion on the following fact situation:

1. Sandra and Ron were married in June 1961, and purchased a home together in Beach (hereinafter "the property") in August 1967.
2. In June 1986, Sandra and Ron were divorced, and a judgment and the Marital Settlement Agreement (hereinafter "Agreement"), dividing the property equally between them as tenants-in-common was entered by the court on June 18, 1986. Paragraphs 14 and 15 of the Agreement set forth the following terms on their co-ownership of the property:

"14. Terminable Co-ownership. The parties agree to transfer the family residence to themselves as tenants in common. The husband shall take a 50 percent interest and the wife a 50 percent interest. Neither party shall encumber the property without the written consent of the other. The parties shall take steps to terminate their co-ownership at the first occurrence of any one of the following events:

- (1) the family residence shall be sold or utilized as rental property upon the expiration of five years from the date of this agreement, and if the parties agree on such disposition, then the family residence shall be sold forthwith at fair market value;

- (2) the wife moves from or abandons the family residence, upon which occurrence the family residence shall be sold forthwith at fair market value;
- (3) the parties mutually agree to sell the residence;
- (4) the wife dies or remarries, upon which occurrence the family residence shall be sold forthwith at fair market value.

**"15. Right to Purchase or Rent. When co-ownership is to be terminated either by agreement of the parties or because of the occurrence of a terminating event provided for in this Agreement, the wife shall have the right of first refusal to purchase the husband's interest in the residence at fair market value. If either party dies before this right to purchase can be exercised, the other party shall have the right to purchase the decedent's interest from the estate of the decedent upon giving notice to the legal representative of the estate."**

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- 3. In September 1995, Ron transferred his undivided one-half interest in the property to his living trust, and in October 1995, he died.
- 4. Following Ron's death, Sandra apparently exercised her right under the Agreement to purchase from his estate, his 50 percent interest in the property. She obtained a stipulation and court judgment on June 21, 1996, ordering her to pay into escrow \$314,500 for Ron's estate as the fair market value for his one-half interest in the property.

Your question is whether the interspousal exclusion should apply to the transfer of Ron's one-half interest in the property by his estate to Sandra, as a "transfer to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation," pursuant to Revenue and Taxation Code Section 63(c). For the reasons hereinafter explained, we believe that the exclusion does apply.

## **LEGAL ANALYSIS**

As you are aware, a change of ownership after 1975 generally results in a reassessment of the property transferred pursuant to section 2, subdivision (a) of Article XIII A of the California Constitution. However, subdivision (g)(3) of section 2 of Article XIII A excludes from "change in ownership" those "transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation." (Emphasis

added.) Revenue and Taxation Code section 63, subdivision (c) codifies section 2, subdivision (g)(3). Property Tax Rule 462.220 provides for the same exclusion.<sup>1</sup>

By express language, the "interspousal exclusion" extends to transfers between former spouses when made in connection with a property settlement agreement. The term "in connection with" is critical here to the correct application of the exclusion to these facts. It has been our opinion in the past that any transfer made in connection with a property settlement agreement, including post dissolution transfers based on the terms of a settlement agreement, or post dissolution transfers resulting from finalizing the former spouses' property rights under such agreement or decree of dissolution, is not subject to reappraisal under the interspousal exclusion, because of its relationship to the terms of the agreement or to the conditions of the judgment. (See Hicks Letter 4/4/87, attached.)

The facts submitted in the instant case are clearly within this interpretation. The 1986 marital settlement agreement expressly granted to Ron and Sandra a 50 percent undivided interest in the property, subject to a list of several conditions subsequent in paragraph 14, the occurrence of any one of which would terminate their co-ownership and cause the property to be sold. Paragraph 15 provides the additional condition that Sandra has the right of first refusal in the event that: (1) a sale would be required from the occurrence of one of the conditions subsequent in paragraph 14, or (2) Sandra and Ron agree to terminate their co-tenancy. Paragraph 15 further provides that in the event of the death of either Sandra or Ron before the right of purchase is exercised, the surviving party shall have the right to purchase the decedent's interest upon proper notice to the legal representative of his/her estate.

Based on these terms in paragraphs 14 and 15, a subsequent transfer of one or both of their respective 50% interests in the property at some future time after the 1986 judgment was anticipated by the former spouses. In point of fact, the last transfer, described in paragraph 15, is the one that actually occurred, albeit ten years after the date of the Agreement. That is, Ron died before Sandra exercised her right of first refusal, with the result that Sandra acted upon her paragraph 15 right and notified the legal representative of Ron's estate that she would purchase his 50 percent interest at the fair market value. (We note that since this right was predicated on the death of the former spouse and not a specific number of years, it was timely and valid.) The court so decreed and stated in paragraph 10 of the Stipulation and Order that "Escrow shall state that this is a transfer current to Dissolution of Marriage Judgment previously entered." Thus, Sandra's purchase of Ron's 50 percent interest in the property from his estate would be excluded from change in ownership and reappraisal under Section 63 (c) as a transfer to a former spouse "in connection with a property settlement agreement."

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county or any person or entity.

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<sup>1</sup> Rule 462.220 states: "... a change in ownership shall not include any interspousal transfer, including, but not limited to:

(c) Transfers to a spouse or former spouse in connection with a property settlement agreement, including post-dissolution amendment thereto, or decree of dissolution of a marriage or legal separation, ..."

December 18, 1997

The views expressed in this letter are, of course, only advisory in nature. They are not binding upon the assessor of any county or any person or entity.

Very truly yours,



**Kristine Cazadd**  
**Senior Staff Counsel**

**KEC:sao**

<h:/property/precednt/intrspal/1997/97001.kec>

**Attachment**

**cc: Mr. Richard Johnson, MIC:63**  
**Policy, Planning and Standards Division, MIC: 64**  
**Ms. Jennifer Willis, MIC:70**