



STATE BOARD OF EQUALIZATION

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January 25, 2012

**Re: Termination of Life Estate
Assignment No.: 11-205**

Dear Ms. _____ :

This is in response to your email requesting our opinion regarding whether or not a life estate in certain real property in _____, California was terminated on June 18, 2009. As explained below, it is our opinion that the life estate terminated as of that date, and the interest in the property passed to the holder of the remainder interest.

Facts

Your question is regarding the personal residence of L _____ W _____ and the surrounding fifteen acres (collectively, the property). As of 2001, the property was owned by The L _____ W _____ Trust, a revocable trust established in 1994.¹ The Salvation Army (TSA) was named as a beneficiary of the trust. A dispute arose in 2001 when the Superior Court of _____ County appointed T _____ K _____ as the temporary conservator for the Estate of L _____ W _____ for the purpose of modifying the terms of the trust to place a nondevelopment or conservation easement on the trust property. TSA opposed any changes to the trust. To settle the dispute, the parties agreed to a Compromise Agreement and Lease (Agreement) which became effective on October 10, 2003 pursuant to an Order Granting Petition for Approval of Compromise Agreement (Order). Pursuant to the Agreement:

- The trustee transferred the property to the conservator. (Agreement, § 4(b).)
- The conservator transferred a remainder interest in the property to TSA. (Agreement, § 4(b).)
- TSA agreed to pay an annuity of \$270,998 payable to the trustee of the trust for the benefit of Ms. W _____ during her lifetime. (Agreement, § 4(a)-(b).)
- Ms. W _____ retained a life estate in the property, subject to the following: at some point following the Agreement, the property would be divided into two parcels; Parcel A, which would include Ms. W _____'s residence and four acres, and Parcel B, which would include eleven acres. (Agreement, § 4(c).)

¹ The facts in this letter are taken from your letter, the Order Granting Petition for Approval of Compromise Agreement, the Compromise Agreement, as well as from information provided by the assessor.

Ms. W's life estate would terminate in Parcel B, "as soon as subdivision of the property is permitted by the relevant authorities." (Agreement, § 4(d).) Ms. W's life estate in Parcel A would remain intact until her death.

On September 23, 2004, TSA granted their remainder rights in the property to Homes. On June 18, 2009, the City of approved the subdivision of Parcel B. To our knowledge, Ms. W is still alive.

Law & Analysis

Article XIII A, section 2 of the California Constitution requires the reassessment of real property upon a "change in ownership," unless an exclusion from change in ownership applies. Under Rule 462.060, subdivision (a), the creation of a life estate is a change in ownership unless the life estate is reserved in the transferor or the transferor's spouse. Revenue and Taxation Code,² section 61, subdivision (g) provides that a change in ownership occurs upon "[a]ny vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63."

Pursuant to the Agreement, Ms. W retained a life estate in Parcel A and a life estate in Parcel B. As explained above, the creation of a retained life estate is not a change in ownership. By the terms of the Agreement, her life estate in Parcel B was to terminate as soon as subdivision of the property was permitted by the relevant authorities. Section 4, subdivision (d) of the Agreement states:

The Conservator, on behalf of L W shall enter into a Building Pledge Agreement to contribute her life estate in Parcel B to TSA, or its nominee, as soon as subdivision of the Property is permitted by the relevant authorities.

A life estate, like any other estate in real property, may provide for a termination upon the occurrence of a certain event. (3 Miller & Star, Cal. Real Estate (3rd ed. 2000) Estates, § 9:24, p. 37.) This is what is known as a determinable life estate. (*In re Reinhardt's Estate* (1887) 74 Cal. 365; *Estate of High* (1967) 250 Cal.App.2d 561.) Upon the happening of the event the life estate terminates automatically without any further action by the holder of the remainder interest.³ (3 Miller & Star, Cal. Real Estate (3rd ed. 2000) Estates, § 9:5, p. 9.) Therefore, upon the approval of subdivision by the City on June 18, 2009, Ms. W's life estate in Parcel B terminated and the property passed to the holder of the remainder interest, D Homes. This resulted in a change in ownership pursuant to section 61, subdivision (g).

You also have questions regarding the procedures used by the assessor. Our understanding of the facts is that prior to the Agreement, Ms. W's residence was designated assessor's parcel number (APN) 000-00-001. After the property was divided, that APN was retired, and Parcel A became APN 000-00-002, and Parcel B became APN 000-00-003. Through lot line adjustments with other parcels, Parcel B became APN 000-00-005. Parcel A became APN 000-00-030 when it was discovered that its dimensions differed from those in the

² All section references are to the Revenue and Taxation Code unless otherwise noted.

³ We note that California abolished the determinable fee estate by enacting Civil Code, section 885.0020. However, that section does not apply to determinable life estates, which remain valid estates under California law. (Cal. Law Revision Com. Deering's Ann. Civ. Code (2011 ed.) foll. § 885.020.)

preliminary description in the Order and Parcel A was reduced from 4.04 acres to 3.66 acres. This is consistent with the Agreement which states that "if required. . .the size of Parcel A will decrease by not more than 15% of its currently proposed size, in order to enable TSA to develop Parcel B to its highest and best use." (Agreement, § 4(e).)

When an APN is "retired" it becomes static on the assessor's records. That is, the ownership and other characteristics of the property remain as they were on the date of retirement. Since APN 000-00-001 was owned by Ms. W on the date of its retirement, the assessor's records will forever show her as the owner of that parcel. For the same reason, Ms. W is shown to have a life estate on APN 000-00-003, the former Parcel B, which was retired on October 12, 2005 while Ms. W's life estate was still in existence.

You also ask about a lot line exchange involving Homes and R and J C . The information provided by the assessor confirmed that a lot line adjustment involving APN 000-00-003 did occur on September 21, 2006, but did not specify the parties or other parcels involved. As we were not provided with any evidence to the contrary, we assume that the adjustment was done in accordance with the requirements of Government Code section 66412 et seq.

Finally, you ask how three parcels, APN's 000-00-002, 000-00-004 and 000-00-339, were added to Tract 8919 when they were not purchased until August 7, 2009. As an initial matter, there is no other mention of an August 7, 2009 purchase in the material either you or the assessor provided. Further, it is our understanding that these parcels were never added to Tract 8919. (See attached Tract Map 8919.) Therefore, we are unable to answer your question. If you intended to identify different parcels or a different tract map, please let me know.

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/ Daniel Paul

Daniel Paul
Tax Counsel

DMP:yg
J:/Prop/Prec/LifeEstates/2012/11-205.doc

Attachment

cc: Honorable
County Assessor
2530 Arnold Dr., Suite 400
Martinez, CA 94553-4359

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