

Memorandum

To : Mr. Verne Walton

Date April 29, 1988

From : Richard H. Ochsner *RHO*

Subject: Preliminary Change of Ownership Report

This is in response to your request for advice relating to the inquiry from James Max Stewart, relating to the requirement of the filing of a Preliminary Change of Ownership Report in connection with the recordation of an Affidavit of Death of Joint Tenant. You ask for my thoughts on his request for the authority on which the Board relies in directing assessors to require a report in this situation.

Preliminarily, the Board has no authority to "direct" assessors to do anything unless that direction is in the form of a duly adopted regulation. I am not aware of any regulation adopted by the Board on the subject of PCOR's. We have, I assume, provided some advice to assessors regarding the appropriate interpretation of Revenue and Taxation Code sections 480.3 and 480.4, which provide for the PCOR. You haven't provided me any information on that, however, so I am not sure what that advice may have been. In any case, that advice was just that. It did not require an assessor to do anything.

The question seems to be whether the recorder can require either the filing of a PCOR or the payment of the \$20 recording fee when the document is an Affidavit of Death of Joint Tenant relating to property owned by an individual and his deceased spouse. Presumably, the argument is that this is an inter-spousal transfer excluded from change in ownership by Revenue and Taxation Code section 63 and, therefore, the filing of a PCOR or the payment of the recording fee is not required.

Subdivision (b) of section 480.3 provides that the recorder may charge the \$20 filing fee if the PCOR is not filed with a document "evidencing a change in ownership." In our opinion, a document may "evidence" a change of ownership even though, once all the facts are presented, it turns out that it does not involve a change in ownership. This conclusion is based upon the facts that the PCOR was clearly intended to be filed in situations where the transaction is not a change in ownership. Section 480.4 includes an example of the form of the PCOR. A

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review of the terms of this statutorily mandated report form illustrates that the Legislature intended that it would be filed in situations which were not actually changes in ownership. For example, in the paragraph below the identification of the seller and buyer, the form states "The property which you acquired may be subject to a supplemental tax assessment. . . ." The fact that the term "may" is used in this sentence indicates a legislative intent that the form not be limited solely to situations actually involving a change in ownership. Further, the transfer information provided expressly applies to situations which are excluded from change in ownership. Question 1.A. expressly refers to interspousal transfers involving the death of a spouse. This seems to cover the situation involved in this specific inquiry. In our opinion, therefore, the recorder and the assessor properly required either the payment of the filing fee or the filing of the PCOR in this case.

Hopefully, Mr. Stewart will find this response satisfactory and he will not find it necessary to file a mandamus proceeding in order to "protect" his client from the requirement of either filing a simple form or paying \$20.

RHO:cb
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cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. Daryl Facchini