

220.0565 **Probate.** Title to a decedent's property usually passes to the heirs as of the date of death. If portions of a property are devised to each of several heirs, each interest would be separately appraised as of the date of death and not at a later time when the heirs cause a subdivision map to be filed. If the property were transferred to creditors rather than to heirs, the change in ownership and reappraisal should be as of the date the creditors took title. Increases in value between the decedent's death and the transfer to the creditors would be included in the reappraised value. C 12/6/84.

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December 6, 1984

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Dear

This is in response to your letter of October 2, 1984, to Margaret Boatwright in which you ask on what date property should be reappraised in the following situation:

A died in November, 1982. A parcel map subdividing land owned by A into four parcels was recorded in December, 1983. The decree of final distribution was recorded in March, 1984, distributing one parcel each to A's four heirs.

The value of the four parcels is higher than the value of the single, unsubdivided parcel. Therefore, you ask if it is proper to consider the split as of the date of death. You also ask if it would make any difference if the testator had specified in the will what portion of the parcel each heir was to receive, or if the parcel had been divided among creditors rather than among the heirs.

In California, at the death of a testator, title to his realty vests instantly in the person to whom it is devised. (Pasadena Inv. Co. v. Weaver, 376 P.2d 175 (1967); Probate Code, Section 309.) The date of change in ownership is the date of death of the decedent. (Rule 462(n)(3).) Therefore, the title to the parcel vested in A's four heirs on the date of his death in November, 1982. In December 1983, after title was already vested in A's heirs, the parcel map subdividing the property was recorded. Article XIII A of the California Constitution permits upward valuation of property only if there has been new construction or a change in ownership. It is our position that the filing of a subdivision map for division of property

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into separate parcels is not, by itself, either new construction or a change in ownership. Thus, the lack of a triggering event is sufficient to keep the property from being reappraised. In addition, this particular case is similar to a partition which is excluded from change in ownership by Revenue and Taxation Code, section 62(a)(1). That section provides that change in ownership shall not include "[a]ny transfer between coowners which results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners . . . such as a partition of a tenancy in common." In this case, the four heirs each owned an undivided one-fourth interest in the property at the date of the testator's death. After the parcel was subdivided, each heir owned a specific one-fourth part of the property in severalty. Assuming the parcels were of equivalent value, it is our opinion that section 62(a)(1) applies to exclude the subdivision of the parcel from change in ownership.

You next ask if it would make any difference if the testator had specified in the will what portion of the parcel each heir was to receive. In such a case, each heir would inherit that portion of the property which was devised to him as of the date of the testator's death (Rule 462(n)(3).) The executor would then have to subdivide the property to distribute it in accordance with the testator's will. The sequence would be the same as outlined above and our conclusion would also be the same.

Lastly, you ask if the answer would be different if the parcel was divided among creditors. Title to realty vests in the person to whom it is devised at the death of the testator, subject only to probate administration. (Estate of Reichel, 28 Cal.App.3d 156 (1972).) The power of testamentary disposition of property is subordinated to the probate court's authority to appropriate property for payment of the testator's debts, and to the extent that the probate court exercises such power, devisees take no beneficial interest in property. (In re Davis' Estate, 86 Cal.App.2d 263 (1948).) The creditors would receive title to the property on the date it was transferred to them in payment of the testator's debts. Therefore, if the property had been subdivided before its transfer to creditors, the reappraisal triggered by this change in ownership would include any increase in value.

December 6, 1984

If you have any questions or wish to discuss this matter further, please contact me.

Very truly yours,

Michele F. Hicks
Tax Counsel

MFH:la

cc: Ms. Margaret S. Boatwright

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
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Legal Section