

220.0871 **Void Contract.** A void contract, agreement etc. is without legal significance from the outset, whereas, a voidable contract, agreement etc. is effective until rescinded or voided. A transfer of property which is voidable results in a change of ownership, a reappraisal and taxes based on the new value. If the transfer is rescinded or voided, no refund of taxes would be due. The opposite is true when a transfer is void from the outset. In that case, the base year value at the time of the execution of the agreement should be reinstated, factored to its current assessable value and enrolled. The taxes paid on the value of the property based on the void transfer should be refunded. C 9/22/89.



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September 25, 1989

Dear _____

This is in response to your August 18, 1989 letter to Mr. Richard Ochsner wherein you requested that we advise of possible change in ownership consequences and whether they might be avoided under the following circumstances:

In 1987, Mrs. Beverly Yee was the record owner of 100 Laverne Avenue, Mill Valley. In September of 1987, Merrill Lynch, pursuant to a power of sale, foreclosed a deed of trust and purchased the property at its own foreclosure sale, resulting in a change in ownership assessment.

Merrill Lynch then instituted an action in Marin County Superior Court, No. 135758, to evict Mrs. Yee. By special interrogatories the jury determined that Mrs. Yee did not have the mental capacity to execute the deed of trust. The jury verdict was upheld by the California Appellate court.

Mrs. Yee has a pending action against Merrill Lynch in Marin County Superior Court, No. 136112, to set aside the foreclosure sale and quiet title to the property. The action is based on the fact that the transfer to Merrill Lynch is null and void due to Mrs. Yee's mental capacity. Merrill Lynch has proposed a settlement whereby it would reconvey the property to Mrs. Yee, but because the 1987 transfer to Merrill Lynch is null and void, you want to assure that the assessment of the property reflects the pre-1987 transfer to Merrill Lynch.

While you speak in terms of the jury determining that Mrs. Yee did not have the mental capacity to execute the deed of trust (second paragraph above), and the 1987 transfer to Merrill Lynch being null and void (third paragraph above), no documented evidence in these regards has been provided. Thus,

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 W.P. [unclear]

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as the contracts of persons wholly without understanding or whose insanity has been judicially determined are void and need not be rescinded, while those contracts of persons of unsound mind but not wholly without understanding are voidable and are binding unless rescinded (California Civil Code, Sections 38 et. seq.), whether Mrs. Yee was wholly without understanding or judicially insane or was merely of unsound mind would be critical to the answer to your inquiry and would have to be ascertained by the Marin County Assessor, whose office is responsible for change in ownership determinations.

Our past experience in this area has been that almost all such contracts, agreements, etc. have been voidable, not void. As indicated, unlike a void agreement, a voidable agreement is binding unless rescinded, and where rescission occurs, such indicates that a contract, agreement, etc. has been in existence previously. Thus, in the case of rescission of a voidable contract, agreement, etc., our position is that a change in ownership occurs initially, resulting in a new base year value for the property; that so long as the contract, agreement, etc. remains in effect, the new base year value, factored annually for inflation, also remains in effect; that upon the rescission of the contract, agreement, etc. there is no change in ownership and the property reverts back to its previous base year value and should be enrolled at such value, plus the appropriate inflation adjustment as of the date of rescission; and that no refund of taxes should be made for taxes paid during the period the new base year value was in effect.

In Mrs. Yee's case, this would mean that if the deed of trust were voidable, upon the foreclosure thereof in September of 1987, a change in ownership occurred and the property acquired a new base year value; the new base year value, factored annually for inflation in 1988 and 1989, remains in effect; upon the rescission of the deed of trust, the property will revert back to Mrs. Yee, and it should be enrolled at its previous base year value plus the appropriate inflation adjustment as of that date; and no refund of taxes should be made for taxes paid by Merrill Lynch during the period it owned the property and the new base year value was in effect.

Alternatively, were it determined that the deed of trust was void, then the deed of trust would not have to be rescinded since it is thereby deemed to have been void from its inception. In such case, no change in ownership would have occurred; the property would revert back to its previous adjusted base year value and should be enrolled at such value, plus the appropriate inflation adjustment as of the date the

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contract, agreement, etc. is determined to have been void; and taxes paid during the period the new base year value was in effect should be refunded.

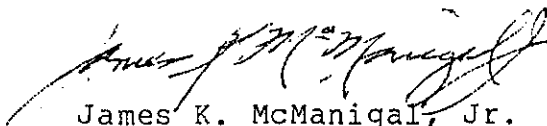
In Mrs. Yee's case, this would mean that if the deed of trust were void, no change in ownership of the property occurred in September of 1987; the property reverts back to Mrs. Yee as of that date and should be enrolled at its 1987 adjusted base year value plus the appropriate inflation adjustment for 1988 and 1989; and any excess taxes paid during the period between September of 1987 and the date the deed of trust was held to be void should be refunded.

As to what document(s) would establish that the deed of trust was void or voidable, it would seem that a judgment against Merrill Lynch in the pending action in Marin County Superior Court, No. 136112, to the effect that the deed of trust was void or was voidable and rescinded would be sufficient. Again, however, the judgment or any other evidence offered in this regard would have to be acceptable to the Marin County Assessor.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the Marin County Assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusions stated above.

In conclusion, our intention is to provide prompt, courteous and helpful responses to inquiries such as yours. Suggestions that help us accomplish this are appreciated.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM:mw
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cc: Mr. James Dal Bon
Marin County Assessor
Mr. John Hagerty
Mr. Verne Walton