



# Memorandum

To: Mr. \_\_\_\_\_

Date: December 13, 1996

From: Kristine Cazadd

*K. Cazadd*Subject: Confidentiality Requirements under Section 481 and Information Specifically Excepted under Section 408.1.

This is in response to your November 27, 1996 request for a legal opinion concerning the proper interpretation and application of Revenue and Taxation Code Sections 481 and 408.1. You ask whether there is a conflict between the requirement in Section 481 which mandates the assessor to hold secret all information furnished on either the preliminary change in ownership statement (PCOR) or the change in ownership statement (COS), and the requirement in Section 408.1 that the assessor shall maintain and open to public inspection a list of transfers of property which have occurred within the preceding two-year period.

The practical implication of this interpretation problem is that assessors have been cited by the Board's survey teams for violating Section 481, whenever it is discovered that the source of the information placed on the list of transfers pursuant to Section 408.1 was the PCOR's. The staff presently conducting a survey in Solano County has made such a determination, and the Solano County Assessor-Recorder is challenging the staff's position. The Assessor does not agree that use of the PCOR for purposes of listing the transfer information required by Section 408.1 violates Section 481.

For the reasons hereinafter explained, it is our opinion that the specific information required to be placed on the transfer list under Section 408.1 constitutes an exception to the "hold secret" requirement in Section 481, with the result that the two Sections may be read to be consistent with each other, rather than in conflict. However, the exception is limited by Section 408.1, subdivision (f), showing the assessor to include on the transfer list only information from the PCOR or COS that is otherwise "public" information.

Statutory Authority for Information and Records Kept or Prepared by Assessors.

The authority for the disclosure of all information and records held by state and local government agencies is the California Public Records Act (Government Code Sections 6250 et seq.) This law establishes the right of the public to inspect any "...writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of form or characteristics." (Government Code Section 6252(d).) Certain records, however, are exempted from disclosure, specifically, records that are exempted or prohibited under other provisions of law, federal or state.

Revenue and Taxation Code Section 481 is such a provision of state law which describes two county documents to be exempted from public disclosure. The section provides as follows:

"All information requested by the assessor or the board pursuant to this article or furnished in the change in ownership statement shall be held secret by the assessor and the board. All information furnished in either the preliminary change in ownership statement or the change in ownership statement shall be held secret by those authorized by law to receive or have access to this information. These statements are not public documents and are not open to inspection, except as provided in Section 408."

Exceptions to Section 481 Are Set Forth in Section 408, 408.1, 408.2 and 408.3.

Section 408 is the general provision dealing with the confidentiality of "any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor" and homeowners' exemption claims. The documents described in Section 481, the PCOR and the COS, are in addition to the documents required to be kept confidential by Section 408(a). Exceptions in subdivisions of Section 408, in particular subdivisions (c), (d), (e), and (f), and in Section 408.1, Section 408.2, and Section 408.3 authorize the assessor to furnish specific information to designated persons, including assessees, their representatives, and in some cases, the public.

The relevant provisions of Section 408.1 state in pertinent part as follows:

(a) The assessor shall maintain a list of transfers of any interest in property, other than undivided interests, within the county, which have occurred within the preceding two-year period.

(b) The list shall be divided into geographical areas and shall be revised on the 30th day of each calendar quarter to include all such transactions which are recorded as of the preceding quarter.

(c) The list shall contain the following information:

- (1) Transferor and transferee, if available;
- (2) Assessor's parcel number;
- (3) Address of the sales property;
- (4) Date of transfer;
- (5) Date of recording and recording reference number;
- (6) Where it is known by the assessor, the consideration paid for such property; and
- (7) Additional information which the assessor in his discretion may wish to add to carry out the purpose and intent of this section. Other than sales information, the assessor shall not include information on this list which relates to the business or business affairs of the owner of the property, information concerning the business carried on upon the subject property, or the income or income stream generated by the property.

(d) The list shall be open to inspection by any person. The assessor may require the payment of a nonrefundable fee equal to an amount which would reimburse local agencies for their actual administrative costs incurred in such inspections or ten dollars (\$10), whichever is the lesser amount.

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(f) Pursuant to Section 481, the assessor shall not include information on the list which was furnished in the change in ownership statement by

the transferee and is not otherwise public information.

Legislative history indicates that there was no conflict between Section 408.1 and Section 481. It was recognized at the time that the bill containing Section 408.1 was proposed and ultimately adopted (AB 2777, Imbrecht) that while the assessor was required to maintain confidentiality of the PCOR and COS, some of the information shown on these documents was, in fact, already disclosed or available as "public" information. The logical result was that the assessor could use the PCOR and COS as sources for information already available to the public. Thus, Section 408.1, subdivision (c) and Section 481, subdivision (f) were to be applied consistent with each other, allowing the assessor to include on the transfer list only information from the PCOR or COS that was otherwise "public" information.

Shortly after Section 408.1 took effect, the Board's staff informed assessors and others that the sole modification to the provisions of Section 408.1 (under AB 2777, Imbrecht) was the addition of subdivision (f), the purpose being to remove any doubts regarding possible conflict between the confidentiality requirement in Section 481 and the disclosure requirement in Section 408.1. In Letter to Assessors No. 80/181, December 9, 1980, page 2, we stated as follows:

"The only amendment to this section is the addition of subdivision (f) which, pursuant to Section 481, prohibits the assessor from including on the list any information furnished by the transferee on a change in ownership statement other than public information."

Several years later, in Assessment Practices Survey, "A Report on the Confidentiality of County Assessors' Records," 1989, we addressed the meaning of the phrase "other than public information" in subdivision (f) by explaining that Section 408.1

"...has in effect declassified transfer data and directed that it be released to the public."  
(Emphasis added.) (See p.5, copy enclosed.)

Based on the foregoing, we conclude that the items of "public information" expressly indicated in Section 408.1 may be resourced by the assessor from either the PCOR or the COS,

providing that such information is "public" information. The term "public" applied in this context means information concerning real property transfers that is already disclosed, known, or published and available from sources other than the PCOR or the COS. For example, the name of the transferor and transferee, the assessor's parcel number, the property address, date of transfer, and date of recording and recording number generally constitute information that is known and/or available to the public at the recorder's office. The consideration paid for the property may or may not be disclosed. If the amount of documentary transfer tax shown on the recorded deed represents the approximate amount of consideration paid, or if the loan balance is shown on the deed of trust, then the information is "public". In some cases, newspapers or real estate publications disclose information to the public concerning the sales price or liabilities assumed.

In summary, the proper application of subdivision (c) and subdivision (f) of Section 408.1 requires the assessor under the authority of Section 481 to hold secret the information on the PCOR and the COS which is not otherwise disclosed, known, or published and available from sources other than the PCOR and the COS. In particular, the information on the transfer record in the recorder's office is public.

KEC:ba

Attachments

cc: Mr. Jim Speed, MIC:63

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