

M e m o r a n d u m

To: Mr. Verne Walton
Office Technician (Typing)

Date: September 19, 1988

From: Eric F. Eisenlauer

Subject: Proposition 58 – DVA Contracts

This is in response to your memorandum of August 18, 1988 to Mr. Richard Ochsner in which you ask whether a sale and purchase involving Cal-Vet financing preclude granting Proposition 58 benefits since the Department of Veteran Affairs “acquires” the property from the owner (parent) before selling it to the veteran (child) by a contract of sale.

The Cal-Vet program was summarized by the Court of Appeal in Department of Veterans Affairs v. Duerksen (1982) 138 Cal.App.3d 149 as follows:

“The Veterans’ Farm and Home Purchase Act of 1974 (Act) Mil. & Vet Code, §987.50 et seq. [fn. Omitted] was enacted to provide veterans with the opportunity to acquire farms and homes. (§ 987.51.) Under the Act, the Department is empowered to buy farms and homes from their owners and sell the properties back to eligible veterans under long-term installment contracts at a low rate of interest . . . Since the sale is by installments (§§ 987.69, 987.71), the Department retains legal title to a property until the price has been paid in full. (See Eisley v. Mohan (1948) 31 Cal.2d 637, 643) Funds for Department’s purchase are provided by the public through general obligation bonds. . . .

“A veteran who seeks a Cal-Vet contract must agree that he or the members of his immediate family will actually reside on the property until it is paid off or sold. (§987.60.) If he later wishes to transfer, assign, encumber, lease, let or sublet his property before he has paid the full price, he must first obtain the written consent of the Department. The Department may give its written consent for good cause shown, subject to the interest of the department and consistent with the purposes’ of the Act. (§987.73, subd. (a).) In the event of an approved assignment to a person who is not a veteran, that person does not enjoy the special low rate of interest, but pays a higher rate as fixed by the department (§987.72.)

“Only one farm or home purchased under the Act may be owned by a veteran at any one time. (§987.86, subd. (c).) However, a veteran who has paid his contract in full may in certain circumstances be granted a subsequent opportunity to purchase another farm or home under the Act. (§987.86, subs. (a), (b), (d), (e).)

“If a veteran fails to comply with any of the terms of his contractual obligations the Department may cancel the contract; in such event all payments made to the Department up to that time are forfeited as rental paid for occupancy, and the Department is entitled to take possession of the property. (§987.77.)”

As you know, Proposition 58 amended article XIII A of the California Constitution to provide among other things that the terms "purchase" and "change in ownership" do not include the purchase or transfer to the principal residence and the first \$1 million of the full cash value of other real property between parents and children. Chapter 48 of the Statutes of 1987 (AB 47) is the implementing legislation for Proposition 58. Chapter 48 added section 63.1 to the Revenue and Taxation Code and applies to purchases and transfers of real property completed on or after November 6, 1986.

The term "purchase" is defined by section 67 as "a change in ownership for consideration." "Change in ownership" is defined by section 60 "as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Thus, if a parent transfers to a child (or vice versa), an interest in real property as described in section 60, the transfer is excluded from change in ownership pursuant to Proposition 58 and section 63.1.

The Military and Veterans Code provides (§987.68) that the department, before consummating a purchase (from the owner), shall cause the title of the property sought to be purchased to be examined and may require an abstract and unlimited certificate of title or a policy of title insurance and may refer the same to the Attorney General for his opinion. After that, "[t]he department shall then enter into a contract with the veteran for the sale of the property to the veteran" (§987.69.)

It is settled law that the vendee of a contract of sale with the Department of Veterans Affairs is the owner of the property for all purposes and that the Department retains mere legal title as security for payment of the contract purchase price (Eisley v. Mohan, supra.)

Thus, when a parent sells property to the department under the Cal-Vet financing program, the department is then statutorily obligated to enter into a contract of sale with the veteran (child) by which the veteran is the equitable owner of the property and the department owns mere legal title. Because of the statutory requirement to contract with the veteran, the department does not have the right to the beneficial use of the property purchased. That right passes from the owner (parent) through the department to the veteran (child).

The situation here is analogous to a transfer in trust for the present benefit of a child of the trustor which in our opinion qualifies for the parent-child exclusion. See Letter to Assessors dated September 11, 1987, No. 87/72. In either case, property is transferred to a party who is under a legal obligation to make the beneficial use or benefits of the property available to another. In the case of a trust, the legal obligation is imposed by the trust instrument while in this case the legal obligation is imposed by statute as indicated above. In either case, the transferee of the legal title to the property owns only the mere legal title to the property (Eisley, supra; Estate of Feuerisen (1971) 17 Cal.App.3d 717, 720; Allen v. Sutter County Board of Equalization (1983) 139 Cal.App.3d 887,890.)

Therefore, in our opinion, there is a transfer to the veteran (child) from the owner (parent) of a present interest in real property including the beneficial use thereof, which is equal to the value of the fee interest. The substance of the transaction is no different than if the child had purchased the property directly from his parent using conventional financing in which case there would be no question regarding the applicability of Proposition 58. In either case, the parent receives money for the sale of the property, the child is at least the equitable owner of the property, and a third party collects principal and interest payments from the child. See Eisley v. Mohan, supra, wherein the court quoted with approval at page 643 that “[w]here beneficial interest has passed to a vendee, the retention of legal title does not give significant difference from the situation of a deed with a lien retained or a mortgage back to secure the purchase money.”

Section 2 of Stats. Of 1987, Chap. 48, provided that it is the intent of the Legislature that the provisions of section 63.1 shall be liberally construed in order to carry out the intent of Proposition 58 to exclude from change in ownership purchases or transfers between parents and their children described therein.

In our view, to treat transactions between parents and children differently depending upon whether Cal-Vet financing or more conventional financing is used would frustrate the expressed intent of the Legislature that section 63.1 be liberally construed.

For the foregoing reasons, we conclude that when the department purchases the property of a parent (or child) and contracted to sell the same property to that individual’s child (or parents) under the Act described above, the transfer is between parent and child for purposes of Proposition 58 and section 63.1.

If you have further questions regarding this matter, please let us know.

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cc: Mr. Richard H. Ochsner
Mr. Robert H. Gustafson

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