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**From:** Mark Mullin [mailto:mmullin@ayhmf.com]  
**Sent:** Tuesday, May 29, 2018 8:06 PM  
**To:** Schultz, Glenna  
**Subject:** Rescission letter - LTA 2018/023 [IWOV-WorkSite.FID66025]

Hi Glenna,

I quite like the [draft letter](#) covering rescissions noted in the topic line; I highly enjoy property tax law and find its development fascinating.

I did have some comments, if you will humor me:

- Your letter takes the position that the reasonable time/accepting benefits requirement applies to mutual rescissions as well as unilateral rescissions. I was left wondering whether this is really the case; Civil Code §1693 appears to only allow this limitation on rescission where the delay would prejudice to one of the parties to a contract. But it would seem to me that a mutual rescission should never result in prejudice to a party, as that party would otherwise not agree to the rescission. And even if there could be prejudice to a party, I do not understand how an assessor could realistically have superior knowledge of this than the parties.

The courts do have further case law elaborating on §1693, but I note that you only discuss case law involving unilateral rescission. I think the letter would be far more persuasive if you were able to point out how case law supports limitations on mutual rescissions. If none exists, this should be discussed as well.

Also, as regards the accepting benefits prong, I read with the impression that you think that once a person has accepted benefits for long enough, that person cannot disgorge all such benefits and rescind. I do not see support for that view; it seems to me that if there is no prejudice, a person is always free to rescind, so long as they fully honor the requirements of rescission.

- I am curious as to how rescission fits in with the substance over form doctrines, as they have been imported into property tax law. While the letter nicely addresses *Fashion Valley Mall*, it strikes me that there are more difficult fact patterns.

For example, how does the step transaction doctrine work with the rescission doctrine? Say in year 0, A sells real property to B. In year 4, A and B realize the transfer of real property should be rescinded as it interferes with a potential future transaction beneficial to both of them. What result if they rescind and then enter into that potential transaction soon after in year 4? Under one view, if the rescission is truly honored, it is

as if A owned the real property the whole time—there is nothing for that potential transaction to be stepped together with. Under another view, one could see the rescission plus the potential transaction as a single integrated transaction, with the result that the rescission is effectively ignored and instead A and B are deemed to have entered into a new contract.

I appreciate your attention. Please let me know if you have any thoughts as to the above.

Best,

Mark Mullin

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