

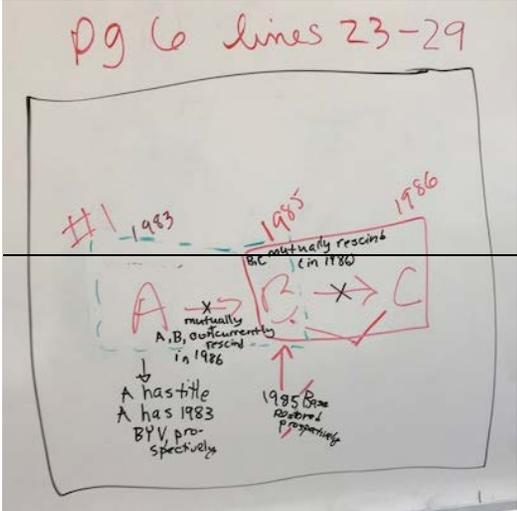
**Draft BOE LTA 2018/023 on Rescission of Deeds
Suggested ALTERNATIVE LANGUAGE**

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
1	2	1-2	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	Comment: Add a subtitle such as "Summary" to match the other subtitles.	
2	2	4-5	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comments: Add language same as or similar to Page 6 Lines 9 through 13. This is good information to have in a Summary at the beginning of the document.</p> <p>See also Item 12 below. We recommend adding a reference to and perhaps content from the discussion of Rescinded Transfers from the Assessor Handbook 401 Change In Ownership on page 10 in the Summary portion of the LTA on Rescissions.</p> <p>Suggested Alternative Text (from Page 6 Lines 9 – 13):</p> <p><u>Once a transfer of real property is rescinded and the parties are placed in the same position they were in before the contract was executed, the value of the real property reverts to its previous adjusted base year value prior to the transfer. However, the liabilities established while the contract was in existence are not extinguished. Therefore, placing the parties in the position they held before the transfer will not result in a refund of taxes paid while the contract was in effect.</u></p>	
3	2	9	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: Delete the word 'a' at the end of Line 9.</p> <p>Suggested Alternative Text:</p> <p><u>... subject to all rules of law concerning contracts in general; except that consideration is not necessary to its validity.</u></p>	
4	2	14 – 23	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	Comment / Suggestion: Move the content of Lines 14 – 23 ["Civil Code section 1688 provides that a contract is extinguished...should return each other to the position they were in prior to the execution of that contract."] and place it below Line 24 under Agreement Between Parties subtitle, so that the content above "Agreement Between Parties" subtitle remains a Summary.	

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5	4	20	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: Reconsider or more clearly define and explain the use of the term “status quo” in the context this document. The term “status quo” means ‘existing state of affairs’. A rescission, by contrast, is attempting to go back to a pre-existing state of affairs.</p> <p>We are concerned that the use of the term “status quo” may invite the interpretation that the intervening tax bills should actually be cancelled, possibly supplementally.</p> <p>Locations of the term “status quo” occur in several other places throughout the draft LTA document.</p>	
6	5	11 - 21	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: This part is really hard to follow, see questions in item 7 below.</p>	
7	5	22-27	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: We really struggled with this part.</p> <p>Questions: How are a sham and a valid rescission different from each other? The included reference to Fashion Valley Mall (FVM) court case, without further explanation or an example, does not totally clarify the point in our minds.</p> <p>What does a valid rescission effected solely to achieve certain property tax consequences look like in real life? What kind of components added or not added to the contract will turn a valid rescission into a “sham”?</p> <p>Request: Is it possible to put a bit more information from the FVM case to help clarify, or perhaps even better from a staff perspective, compose an A – B – C scenario based on FVM to illustrate a situation where the rescission was not valid and they don't get their prior base value back at all?</p>	

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8	5	17	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: Insert the word 'reformation' before the word 'transaction' so it reads:</p> <p>Suggested Alternative Text:</p> <p>The court considered the <u>reformation</u> transaction to be a "sham" and "a mere fiction" that "cannot be given effect for the purposes of determining . . . property tax liability."</p>	
9	5	34 - 39	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comments: Starting on Line 34, it would be easier to read and digest if the sentence were converted to a bulleted or numbered list, similar to below. Also, with reference to Item 5 above, please consider a re-write of the last point so it does not have the term 'status quo'.</p> <p>Suggested Alternative Text:</p> <p>In our view, a mutual rescission should be recognized if:</p> <ul style="list-style-type: none"> ♦ all parties to the transaction consent, ♦ all parties are restored to their original positions before the transfer, ♦ the rescission is made promptly and within a reasonable time (to be determined <u>by the assessor</u> on a case-by-case basis). <p><u>The assessor should also give with consideration given to whether the parties have availed themselves of the benefits under the contract, and whether the rescission agreement does not includes terms different than what originally existed before the rescinded transfers occurred. -from a return to the status quo.</u></p>	

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10	6	3 – 7	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comments: Convert the sentence to a bulleted list, and use a different term at the end than 'status quo'.</p> <p>Suggested Alternative Language:</p> <p>Of course, an assessor may request documentation to verify whether a rescission was valid and the parties were restored to <u>their positions prior to the rescinded transactions.</u> the status quo.</p> <p>For example, an assessor might request:</p> <ul style="list-style-type: none"> ♦ copies of deeds, ♦ a declaration or other evidence from the parties that consideration was in fact restored, ♦ an explanation and description of the steps taken to effect the rescission, or ♦ tax returns that demonstrate income from the property in question was reported by the proper party. 	

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11	6	14 - 34	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: A diagram for each A – B - C scenario described in the text would be really helpful. We discussed and roughed out the first one on a whiteboard; see the photo image below and jpg attached. Let us know if our conclusions are accurate and reasonable.</p> 	

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
12	6	31		<p>Comment: In the LTA on Rescissions, please specify whether the restored base year value after a valid rescission should be enrolled supplemental or non-supplemental, and why. This aspect is discussed in the Assessor Handbook 401 Change In Ownership at page 10. We think that references to page 10 of AH 401 in the Summary section of the LTA on Rescissions and at the end would be really helpful.</p> <p>The text on Rescinded Transfers from AH 401, page 10 is copied in below:</p> <p>RESCINDED TRANSFERS</p> <p>A transfer may be <i>rescinded</i> by the parties. That is, the parties to the transfer agree to undo the transaction and are placed in the same position in which they stood before the transfer took place. However, the original transfer remains valid until the rescission occurs.</p> <p>The legal effect of a rescission is that it relates back to the creation of the deed—it is as though the transfer had never been made. When a county assessor recognizes the rescission of a transfer, the transferor's name is placed on the assessment roll as the assessee and the former base year value is enrolled on the ensuing lien date. Restoration of a base year value as a result of rescission is not subject to supplemental assessment.</p> <p>Accordingly, any increase in the assessment prior to the rescission remains in effect until the lien date following the effective date of the rescission. Thus, a rescission is not retroactive with respect to the taxes due and owing prior to the date of rescission. There is no refund or cancellation of unpaid taxes assessed for the period prior to the rescission since property taxes are determined by the facts existing on the lien date.⁴¹</p>	

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13	6	38 – 39		<p>Comments: Add the word ‘both’ between ‘after’ and ‘availing’ in Line 38, and add a comma between ‘transfer’ and ‘and’ in Line 39 on page 6.</p> <p>Also if possible in the final version of the LTA on Rescissions, it would be good to have this entire paragraph all on the same page. Otherwise it gets pretty confusing trying to distinguish the separate elements of the concept and who gave up their right to rescind the transfer. Thank you!</p> <p>Suggested Alternative Text:</p> <p>This is because Party B, after <u>both</u> availing himself or herself of the benefits of the original property transfer, and for failing to exercise his or her right to rescind within a reasonable time, may be considered to have waived his or her right to rescind such transfer.</p>	
	All			<p>Please refer to assessor handbook 401 Change in Ownership, Rescinded Transfers page 10, in the Summary at the beginning of this LTA, and at the conclusion as well.</p>	
	All			<p>In Sacramento County, we get about two rescissions per month so this is a timely topic. We believe the LTA on this topic needs to be written in the plainest language possible while properly considering the complexity in order to best serve the intended audience comprised of assessors offices deed transfer processing staff as well as attorneys for taxpayers.</p> <p>Excellent job on the writeup by the BOE.</p> <p>Thank you for your time and attention to this topic and to our comments, questions, and suggestions.</p>	