



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
916 445-4982 • FAX 916 323-8765
www.boe.ca.gov

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No. 2010/027

May 7, 2010

TO COUNTY ASSESSORS:

ASSESSORS' HANDBOOK SECTION 401, CHANGE IN OWNERSHIP –
INTERESTED PARTIES MEETING

In 2008, Board staff initiated a project to develop a new section of the Assessors' Handbook relative to changes in ownership of real property under the provisions of article XIII A (Proposition 13). The first draft of the handbook was mailed on June 27, 2008, and we received many comments. On September 14, 2009, the second draft of the handbook was distributed to county assessors and interested parties in Letter To Assessors 2009/042, and interested parties were asked to comment on the draft. Enclosed is a matrix summarizing the comments received from interested parties on this second draft.

An interested parties meeting will be held on Wednesday, June 9, 2010 at the Board's headquarters in Sacramento, 450 N Street, Room 122, 9:30 a.m. to noon. This matrix will serve as the agenda for the meeting. We have "shaded" those items that we do not believe require any discussion. Those items will only be discussed if someone wants to raise an issue. The final handbook is tentatively scheduled to be brought to the Property Tax Committee on September 14, 2010.

All documents concerning this project will be posted on the Board's website at www.boe.ca.gov/proptaxes/ah401_timeline.htm. If you plan to attend the June 9, 2010 meeting, please advise Ms. Glenna Schultz at glenna.schultz@boe.ca.gov or at 916-324-5836.

Sincerely,

/s/ Lynn Bartolo for

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:grs
Enclosure

**ASSESSORS' HANDBOOK SECTION 401, CHANGE IN OWNERSHIP, DRAFT 2
ALTERNATIVE LANGUAGE**

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
1	1	21	Board Member Yee's Office (He)	Revise sentence: Under Proposition 13, property assessments were rolled back to the 1975-76 levels and provided that locally-assessed property would thereafter be reassessed to fair market value only upon a change in ownership or completion of new construction.	Accept
2	2	26	Board Member Yee's Office (He)	Revise sentence: Even though a property may be temporarily assessed at its current market value, its base year value is still increasing <u>annually adjusted</u> by the annually inflation <u>factor</u> adjustment.	Agree with concept – see SBE Rewrite Ref: LTA 2009/036
3	2	27	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: Even though a property may be temporarily assessed at its current market value, its base year value is still increasing by the annually <u>annual</u> inflation adjustment.	See item #2
4	3	32	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: A change in ownership requires that the transferred property interest be substantially equal to the value of the fee interest in the property. Fee simple ownership means absolute ownership of property. Thus, <i>substantially equal to the value of a fee interest</i> means an ownership interest that is substantially equal to the value of absolute ownership. This is known as the value equivalency test and it ensures that there is only one primary owner for property tax purposes at any point in time in most instances . A major purpose of this third element is to avoid unwarranted complexity so that only a transfer by the primary owner will be a change in ownership. Under this test, the primary owner may be someone other than the record owner of the property and may not be the person legally responsible for payment of property taxes. Comment: When there is an estate for years, there is not always a "primary owner."	Not accepted The concept of primary ownership was created by the 1979 Tax Force on Property Administration. This concept also applies to situations involving an estate for years.
5	5	28-30	Board Member Yee's Office (He)	Comment: The term “sales contract” is not as commonly associated with seller financed real estate transactions. <u>Installment Land Sales Contract</u> An <u>installment land</u> sales contract creates a mutual obligation. An <u>installment land</u> sales contract transfers the use and control of a property to the buyer, or vendee, while the seller, or vendor, retains title as security for payment.	Not accepted – consistent with LTA 80/147 See SBE Rewrite, Item #6.

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
6	5 29-31	Sacramento County Assessor's Office (Lewis)	<p>Revise paragraph: A sales contract creates a mutual obligation. One party is obligated to sell and the other to buy within a limited time. <u>Sales contracts for purposes of change in ownership are to be distinguished from sales contract or purchase agreement forms typically used for the earnest money deposit and opening escrow in most real estate transactions.</u> A sales contract <u>or contract of sale</u> transfers the use and control of a property to the buyer, or vendee, while the seller, or vendor, retains title as security for payment. When the <u>this type</u> of contract is entered into, the buyer becomes the beneficial owner of the property and a change of ownership results. If the buyer defaults, and the property reverts back to the seller, another change in ownership occurs.</p> <p>SBE Rewrite: The date of change in ownership for property that is sold is rebuttably presumed to be the recording date if a deed or other document evidencing the transfer is recorded. If a deed is unrecorded, the change in ownership date is rebuttably presumed to be the date on the transfer document. These presumptions may be overcome by proving that (a) all the parties' escrow instructions were met on another date, or (b) the parties' agreement was specifically enforceable on another date.</p> <p>Sales Contract</p> <p>A sales contract creates a mutual obligation. One party is obligated to sell and the other to buy within a limited time. <u>Sales contracts for purposes of change in ownership are to be distinguished from real estate purchase contracts typically used for the earnest money deposit and opening escrow in most real estate transactions. The date that a sales agreement opens escrow is not considered to be the date of change in ownership because the escrow instructions have not yet been met.</u></p> <p>A sales contract <u>that</u> transfers the use and control of a property to the buyer, or vendee, while the seller, or vendor, retains title as security for payment <u>is a financing mechanism that results in</u> . When the contract is entered into, the buyer <u>becomes</u> <u>becoming</u> the beneficial owner of the property. <u>Under this type of contract,</u> and a change of ownership results <u>when the contract is entered into</u>. If the buyer defaults, and the property reverts back to the seller, another change in ownership occurs.</p> <p><u>Another type of sales contract is an installment or conditional land sale contract. This is an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which does not require conveyance of title within one year from the date of the formation of the contract. In the case of the typical installment land contract, when equitable ownership is transferred to the buyer, the seller retains bare legal title as a security interest in the property and the buyer acquires equitable title to the property as well as possession. Upon complying with the contract (that is, full payment), the buyer's equitable estate becomes absolute and the buyer is entitled to receive the legal title. Under these circumstances, the date the contract becomes specifically enforceable is the date of change in ownership and not the date of recording.</u></p>	See SBE Rewrite. Ref: Annotation 220.0320; legal opinions C10/28/2003, C 4/6/1993

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
7	5	29-31	San Diego County Counsel's Office (De Lorell)	<p>Revise paragraph: A sales contract creates a mutual obligation. One party is obligated to sell and the other to buy within a limited time. A <u>The date a sales contract transfers the use and control of a property to the buyer, or vendee, while the seller, or vendor, retains title only as security for payment is the date of change in ownership.</u> When the contract is entered into <u>seller merely retains a security interest</u>, the buyer becomes the beneficial owner of the property and a change of ownership results. If the buyer defaults, and the property reverts back to the seller, another change in ownership occurs.</p> <p>Comment: Sales contracts contain mutual obligations to purchase the property within a limited time, but usually specified conditions must be met before there's a transfer of the seller's beneficial interest. Only those sales contracts that transfer the right to beneficial use of the property where equitable title passes cause a change in ownership. The specified date in the contract for removal of conditions and transferring the right to use and control the property may not be the date the contract is entered into.</p>	See SBE Rewrite, Item #6
8	9	11, 15	Cahill, Davis & O'Neill LLP (Cahill)	<p>Revise sentences: A transfer may be rescinded by the parties7. <u>Whether that rescission reverses a change in ownership is subject to the discretion of the county assessor, the assessment appeals board, and the courts.</u></p> <p>When rescission of a transfer is accepted as valid by a county assessor, <u>the assessment appeals board or the courts</u>, the legal effect is that it <i>relates back</i> to the creation of the deed—it is as though the transfer had never been made.</p> <p>Comment: This improperly implies that the county assessor can pass judgment on whether the parties have the ability to rescind a transaction—when the assessor can only determine whether to reverse a change in ownership. It also implies that only the county assessor has the discretion to recognize rescissions when that discretion is ultimately shared with the assessment appeals boards and the courts.</p> <p>SBE Rewrite: A transfer may be <i>rescinded</i> by the parties, subject to the discretion of the county assessor. 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>When rescission of a transfer is accepted as valid by a county assessor, 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. The property is returned to the transferor and the transferor's original adjusted base year value is restored effective on the date of the rescission. When an 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; the base year value is restored as of the following lien date.</p>	<p>This handbook does not address jurisdiction of either assessment appeals boards or courts. See SBE Rewrite.</p> <p>See Annotations 220.0594 and 220.0595</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
9	10	16-17	San Diego County Counsel's Office (De Lorell)	<p>Revise sentence: In general, the Preliminary Change of Ownership Report (PCOR) <u>must be completed and may be filed with the county recorder at the time any document evidencing effecting a transfer of title to real property change in ownership</u> is recorded.</p> <p>Comment: Section 480.3(a) states: "...transferees of real property <i>shall complete</i> and may file with the recorder concurrent with any document <i>effecting</i> a change in ownership..." (emphasis added.) The PCOR must still be completed even though the recorder must accept a document evidencing a change in ownership for recordation without it. Section 480.3(c).</p> <p>SBE Rewrite: In general, the Preliminary Change of Ownership Report (PCOR) <u>must be completed and may be filed with the county recorder at the time any document evidencing a transfer of title to real property change in ownership</u> is recorded.</p>	Partially accepted. See SBE Rewrite See Stats. 1984, Ch. 1237 Statement of legislative intent; annotation 220.0561; C 1/18/2008 (not annotated)
10	10	17-19	San Diego County Counsel's Office (De Lorell)	<p>Revise sentence: If a PCOR is not filed with the county recorder at that <u>the time a document evidencing a change in ownership is presented for recordation</u>, the county recorder may impose a \$20 additional recording fee.</p> <p>Comment: Section 480.3(b) provides that the recorder may charge an additional fee if a document "evidencing" a change in ownership is not accompanied by a PCOR.</p>	Not accepted. Additional language merely restates previous sentence.
11	10	25-26	San Diego County Counsel's Office (De Lorell)	<p>Revise sentence: The intent of the PCOR is that it be used in situations where the transaction is <u>or is</u> not a change in ownership.</p> <p>Comment: Section 480.3(a) states that the transferee "shall complete" the PCOR for any document "effecting" a change in ownership. Section 480.3(b) provides that the fee can be charged even for documents that just "evidence" a change in ownership. Section 480.3(g) also states that the section applies to "changes in ownership occurring on or after July 1, 1985." The language of the statute provides the intent is that a PCOR be used where there is a change in ownership as well as where there is evidence of a change in ownership. Another option would be to delete this last sentence.</p> <p>SBE: Delete Sentence:</p> <p>Even though a document may "evidence" a change in ownership, once all the facts are presented, it may not involve a change in ownership. The intent of the PCOR is that it be used in situations where the transaction is not a change in ownership.</p>	Not accepted. Accept – recommendation to delete last sentence. Stats. 1984, Ch. 1237 (AB 3132) Statement of Legislative Intent indicates that PCOR was intended to establish an additional aid to assessors with respect to property that changes ownership. Ref: C 1/18/2008

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
12	14	17-19	San Diego County Counsel's Office (De Lorell)	Revise sentence (Example 2-6): X owns a property as a sole owner. X deeds the property to herself and B as joint tenants. No change in ownership results because X is an original transferor (since she was both transferor and a resulting joint tenant). B did not own the property before the transfer. Therefore, he <u>B</u> is an other than original transferor.	Accept
13	15	10	Board Member Yee's Office (He)	Revise sentence (Example 2-7): Y is the sole owner of the property. Y deeds to X, Y, and Z as joint tenants. Y is an original transferor, and X and Z are other than original transferors. Subsequently, X transfers her interest to Y and Z. No change in ownership results <u>from X's transfer of her interest to Y and Z</u> because X transferred her interest to the remaining joint tenants, which includes an original transferor, Y.	Accept
14	17	16	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: A trust that passes a life estate in the joint tenant's interest to the surviving joint tenant tenants maintains the right of survivorship for property tax purposes.	Accept
15	17	16	San Diego County Counsel's Office (De Lorell)	Comment: "Tenant" is used twice.	See Item #14.
16	17	16-17	San Diego County Counsel's Office (De Lorell)	<p>Comment: The passing of a life estate is insufficient to satisfy the requirements of a joint tenancy's right of survivorship even if a life estate may be the substantial equivalent of the fee.</p> <p>The death of a joint tenant passes absolute fee title to the survivor in severalty. On death, the interest of the deceased joint tenant is not part of his or her estate and does not pass to heirs or devisees. He or she cannot dispose of it by will, and heirs acquire no interest in estate in the property because a deceased joint tenant has no estate to pass. Therefore, the deceased joint tenant cannot retain a reversion to pass to his/her heirs without destroying the joint tenancy. See <i>Miller & Starr</i> §12:23.</p> <p>"[U]pon the death of one joint tenant the survivor becomes the sole owner in fee by right of survivorship and no interest in the property passes to the heirs, devisees or personal representatives of the joint tenant first to die." <i>People ex rel. Department of Public Works v. Nogarr</i>, 164 Cal. App. 2d 591, 593 (1958).</p>	Not accepted. SBE opined in LTA 2004/042 (Ex. J) that the passage of a life estate to surviving joint tenants maintains the right of survivorship.

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
17	17	28 et seq	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: For property purposes, upon the transfer of the property into the revocable trust, there is no change in ownership, <u>but if the transfer occurred before November 13, 2003, the joint tenancy is severed.</u></p> <p>Comment: The following sentence identifies that if it is after November 13, 2003, the joint tenancy is not severed, which would indicate it is severed if it occurred prior to Nov. 13, 2003. This should be stated specifically.</p> <p>SBE Rewrite (Example 2-14):</p> <p>X and B acquired property as joint tenants. Subsequently, X and B transfer their property to themselves as trustees of the X-B Revocable Living Trust, which provides that: (1) each joint tenant places his respective joint tenancy interest in trust for the benefit of the other joint tenant; (2) on X's death, X's interest will transfer to B; and (3) on B's death, B's interest will transfer to X.</p> <p>For property tax purposes, upon the transfer of the property into the revocable trust, there is no change of ownership. <u>If the transfer occurred before November 13, 2003, the joint tenancy was not severed, but no original transferor status was obtained.</u> If the transfer occurred on or after November 13, 2003, no severance of the joint tenancy occurs because the trust provisions duplicate the essential characteristics of a joint tenancy; both X and B become original transferors. Upon the death of either X or B, there will be no reassessment upon the transfer to the remaining original transferor.</p>	<p>Not accepted. See SBE Rewrite.</p> <p>Prior to Nov. 13, 2003, SBE's opinion was that a transfer to a trust did not sever the joint tenancy.</p> <p>Ref. C 2/10/2003 (not annotated)</p>
18	18	32	San Luis Obispo County Assessor's Office (Edginton)	<p>Comment: “<u>Reasonable Cause to Presume Joint Tenancy</u>” This really is not about ‘correcting’ deeds.</p> <p>SBE Rewrite: Correcting Deed <u>Reasonable Cause to Presume Joint Tenancy</u></p> <p>When more than one person's name appears on a deed, it is rebuttably presumed that all persons listed on the deed have ownership interests in property. In overcoming this presumption, consideration may be given, but not limited, to the existence of a written document executed prior to or at the time of the conveyance or other written evidence. The standard for rebutting the deed presumption in most instances is clear and convincing evidence. As mentioned earlier, operative words must be clearly expressed declaring the intent to create a joint tenancy. If the deed does not express this intent, some other documentation must be provided that declares the intent to create a joint tenancy.</p>	<p>Accept title change</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
19	21	15	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: "With revocable trusts, the trustor is commonly, but not necessarily, also the trustee and the named present beneficiary." [Alternatively, "With revocable trusts, the trustor is commonly, but not necessarily, also the trustee and the named <u>income present beneficiary.</u>"]</p> <p>SBE Rewrite: The <i>trustor</i>, also called the <i>settlor</i>, <i>creator</i>, or <i>grantor</i>, is the person who establishes the trust and transfers assets into the trust. With revocable trusts, the trustor is commonly, but not necessarily, also the trustee and the named present beneficiary <u>retains the present beneficial ownership interest of the property transferred to the trust because the trustor has the power to amend or revoke the trust.</u></p>	See SBE Rewrite.
20	21	24	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: A <i>present beneficiary</i> <u>in an irrevocable trust</u> is the person or entity who has the current beneficial use of the property. <u>A <i>present beneficiary</i> in a revocable trust is the person who will receive the interest upon the death of the trustor(s).</u></p>	Accept
21	21	28	SBE Staff	<p>Add definitions to Trust Terms:</p> <p><u>A <i>power of appointment</i> is "general" so long as it can be exercised in favor of the donee, his estate, his creditors, or the creditors of his estate. A grant of a general power of appointment is equivalent to a grant of absolute ownership. A power of appointment that is not "general" is "special" and includes a power of appointment that is limited by an ascertainable standard relating to a person's health, education, support or maintenance.</u></p> <p>^{FN} <u>Probate Code section 611.</u></p>	Accept See Annotation 220.0818 See Annotations 625.0206 (C 8/22/96), 625.0210, 625.0234
22	22	3,4	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: An <i>irrevocable trust</i> is an arrangement in which the trustor relinquishes the beneficial ownership and control of the property. The trustor cannot revoke or amend the trust after it is established.</p>	Accept
23	22	6	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: Thus, an irrevocable trust permanently dedicates the property transferred into the trust to the benefit of the trust beneficiaries, <u>who may include the trustor.</u> The <i>present beneficial owners</i> of property held in an irrevocable trust are the named present beneficiaries, who may or may not include the trustor.</p>	Not accepted – included in following sentence
24	23	10	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: For purposes of change in ownership, it is necessary to determine whether the present beneficial ownership has changed. To determine who has the present beneficial ownership in the trust property, you must disregard the trustee's legal title and look to the present beneficiary named in <u>the an irrevocable trust and to the trustor in a revocable trust.</u> This is referred to as "looking through" a trust.</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
25	23	16	San Diego County Counsel's Office (De Lorell)	Revise sentence: The trustor retains the present beneficial ownership interest of the property transferred to a revocable trust because the trustor has the power to amend or revoke a revocable trust. Thus, transfers of property into or out of a revocable trust do not result in a change in ownership, unless, as noted above, the transfer is to someone other than the trustor or to a person for whom an exclusion is <u>un</u> available.	Accept
26	24	4,5	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence (Example 3-2): Z transfers income-producing real property to revocable living Trust X in which Z is the sole present beneficiary trustor . Trust X provides that upon Z's death, income from the trust property is to be distributed to Z's brother B for his lifetime. Upon Z's death, 100 percent of the property held in Trust X, representing B's present beneficial interest, undergoes a change in ownership.	Accept
27	24	17	San Diego County Counsel's Office (De Lorell)	Add citation to footnote: If the ownership interest is identical before and after the transfer, this is merely a change in the method of holding title and no change in ownership occurs. ⁷⁸ ⁷⁸ Section 62(a)(2), Rule 462.160(d)(1).	Accept
28	24	20-23	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: Where a trustee of an irrevocable trust has total discretion to distribute the trust property or income to a number of potential beneficiaries (<i>sprinkle power</i>), the property is subject to change in ownership if any of the potential beneficiaries lack an exclusion. This is because even though the trustee may not elect to distribute the trust property or income to a non-excludable beneficiary, the trustee has the authority to make such a distribution. Comment: According to Legal, only distribution of income determines beneficial ownership, not ownership of principal. To leave in "trust property" would imply that principal might also be considered in determining beneficial ownership.	Not accepted. Rule 462.160(b)(1)(A) reads: "Where a trustee of an irrevocable trust has total discretion ("sprinkle power") to distribute trust income or property...."
29	24	32	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: The provision for distribution of the trust income and principal authorizes the trustee, at any time and from time to time, to distribute all or any part of the net income and/or principal of such trust to any one or more of the beneficiaries of such trust at the sole discretion of the Trustee.	Not accepted – see Item #28
30	25	14,15	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: If, instead of specifying the interest that each beneficiary was to receive, the trust had given the trustee a sprinkle power, all of the real property held in the trust would undergo a change in ownership and be reassessed because the nephew could receive 100 percent of the property or income .	Not accepted – see Item #28

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
31	26	15-17	Board Member Yee's Office (He)	<p>Add court case citation to footnote: The creation of a life estate results in a change in ownership of the property unless the life estate is reserved in the transferor or the transferor's spouse, or unless the creation of the life estate itself otherwise qualifies for another exclusion.⁸²</p> <p>⁸² Section 62(e); Rule 462.060(a); <i>Steinhart v. County of Los Angeles</i> (2010) 2010 Cal. LEXIS 869.</p>	<i>Steinhart</i> upheld Rule 462.060. Add citation to FN 82.
32	26	20	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: The termination of a life estate upon the death of a life tenant is a change in ownership unless the remainderman is otherwise excluded. When a life estate terminates upon the death of a life tenant, the grantor of the <u>life-estate remainder interest</u> is considered to be the transferor and not the life tenant. The transfer from the grantor to the remainderman is a change in ownership unless the remainderman is the transferor or the transferor's spouse or another exclusion applies.</p>	Accept
33	26	21,22	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: The transfer from the grantor to the remainderman is a change in ownership unless the remainderman is the transferor or the transferor's spouse or another exclusion applies.</p> <p>Comment: According to a recent conversation with Legal, if A grants a life estate to B, when B dies, it is a 100 percent reassessment when the property returns to A. Thus, it would only be eligible for exclusion if it went to A's spouse, parent, child, or eligible grandchild, not if it goes back to the 'transferor.'</p>	Not accepted. Rule 462.060(a) last sentence reads: "Upon termination... the vesting... of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership."
34	26	30,31	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence (Example 4-1): X records a deed that transfers property to cousin B, for B's life, with remainder to nephew C. X is the transferor of the property to B, the life tenant. The creation of the life estate is a change in ownership.</p> <p>Upon the death of the life tenant B, the life estate terminates, and the property transfers to C, the remainderman. When a life estate terminates on the death of a life tenant and the remainderman becomes possessory, the transfer is between the creator-grantor of the remainder interest and the remainderman rather than between the life tenant and the remainderman. Thus, the termination of the life estate is also a change in ownership because no exclusion exists for a transfer to a nephew.</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
35	27	19	San Diego County Counsel's Office (De Lorell)	<p>Revise sentence: Eight years later the sister-in-law transfers....</p> <p>SBE Rewrite: <u>B. An an</u> owner of property, dies testate. In her will she left a residence to her sister, <u>D</u>, for her life with the remainder interest to her nephew, <u>J</u>, her sister's son. Eight years later the sister-in-law <u>D</u> transfers her life estate to her son, <u>J</u>, by quitclaim deed.</p> <p>A change in ownership occurred when the life estate was created because no exclusion exists for a sibling transfer. The vesting of the nephew's remainder interest as the result of the termination of the life estate is <u>If the vesting of J's interest had occurred as the result of D's death, there would be another change in ownership. However, because D the sister transferred the life estate interest to her son while she was alive who is the remainderman, the vesting remainder transfer of the life estate interest is excluded from change in ownership as a parent-child transfer.</u></p>	<p>Replace familial titles with letters. See SBE Rewrite.</p> <p>See annotation 220.0372</p>
36	27	22-24	San Luis Obispo County Assessor's Office (Edginton)	<p>Comment: <u>If the vesting of the nephew's remainder interest had occurred as the result of the sister's death, termination of the life estate is there would be another change in ownership. However,</u> because the sister transferred the interest to her son who is the remainderman <u>while she is still alive,</u> the vesting remainder interest is excluded from change in ownership as a parent-child transfer.</p>	See Item #35
37	27	23-26	San Diego County Counsel's Office (De Lorell)	<p>Revise sentence: However, Because <u>because</u> the sister transferred the <u>life estate</u> interest to her son who is the remainderman, the vesting remainder interest <u>transfer of the life estate</u> is excluded from change in ownership as a parent-child transfer.</p> <p>Comment: In the original wording, the third sentence appears to contradict the second sentence. This clarifies that the transfer between siblings and the vesting of the remainder interest in the nephew is a change in ownership, but the life estate transferred to the nephew by his mother is not.</p>	See Item #35

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
38	31	10-19	San Diego County Counsel's Office (De Lorell)	<p>Delete language: Amendment or Extension of Lease Term</p> <p>The addition to or extension of a lease term which was originally 35 years or longer, at a time when it has a remaining term of less than 35 years, is not a change in ownership. That long-term lease was already reassessed for a change in ownership. The mere extension of time is not a substantial modification of the original lease such that the original lease is deemed terminated and a new lease entered into. However, if in addition to the extension of its term back to a term of 35 years or longer, such a lease was modified so substantially or extensively in its terms, it would be deemed terminated, resulting in a change in ownership. Then amendment or modification would result in the creation of a new lease with a period of 35 years or longer, causing a second change in ownership under section 61(c).</p> <p>Comment: The statement that an extension of the lease is not a change in ownership contradicts the fact that the primary ownership of the property rests with the lessor when the lease drops below 35 years. If the lessor were to sell the property when the lease is below 35 years, there would be a change in ownership. Conversely, if the lessor were to sell the property after extension of the lease to above 35 years, the primary ownership rests with the lessee and there is no change in ownership. Therefore, upon extension of the lease back above 35 years, the primary ownership interest transfers from the lessor to the lessee causing a change in ownership.</p>	<p>Not accepted.</p> <p>Handbook reflects recent SBE opinion.</p> <p>See annotation 220.0357</p>
39	31	12-19	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise paragraph: The addition to or extension of a lease term which was originally 35 years or longer, at a time when it has a remaining term of less than 35 years, is not a change in ownership <u>unless the new lease term returns to or exceeds 35 years or more.</u> <u>In this case, there is a transfer from the lessor (who is considered the primary owner when the lease term is less 35 years) to the lessee (who is considered the primary owner when the lease term is more than 35 years).</u> <u>In addition, a substantial modification of the original lease such that the original lease is deemed terminated and a new lease entered into may also be considered a change in ownership under section 61(c).</u> That long-term lease was already reassessed for a change in ownership. The mere extension of time is not a substantial modification of the original lease such that the original lease is deemed terminated and a new lease entered into. However, if in addition to the extension of its term back to a term of 35 years or longer, such a lease was modified so substantially or extensively in its terms, it would be deemed terminated, resulting in a change in ownership. Then amendment or modification would result in the creation of a new lease with a period of 35 years or longer, causing a second change in ownership under section 61(c).</p> <p>Comment: See Annotation 220.0332.</p>	<p>Not accepted.</p> <p>Handbook reflects recent SBE opinion (anno. 220.0357)</p> <p>Annotation 220.0332 was deleted (CLD 2009-4)</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
40	31-32	35-37, 1-4	San Luis Obispo County Assessor's Office (Edginton)	<p>Delete Example 5-4: A lease with a 40-year term commences January 1, 1970. In 2005, the lessor transfers the real property, subject to the lease. A change in ownership occurs since the remaining term of the lease is less than 35 years. Because the new lessor-lessee relationship was established when the remaining term was less than 35 years, the primary ownership at that time is held by the new lessor. Since the lessor's interest was already reassessed when it acquired the primary ownership in 2005, the property will not undergo another change in ownership upon the termination of the lease in 2010.</p> <p>Comments: I have never seen this opinion before, and the statute does not say this. Is a pending LTA or Annotation about this interpretation?</p>	<p>Not accepted</p> <p>See CLD 2010-2 for new annotation 220.0326.005 (C 12-21-09) and deletion of 220.0072.</p>
41	33	4-7	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise format: Indent to show these lines are part of Example 5-6.</p> <p>Indent paragraph and revise sentence:</p> <p>After 12 years (while there is 38 years remaining on the lease), lessee B subleases the property to C for 38 years. This results in a change in ownership because B, the present beneficial owner, has entered into a sublease for a term of more than 35 years, thereby transferring the present beneficial ownership interest of the property to the sublessee C.</p>	<p>Accept</p>
42	33	10	Board Member Yee's Office (He)	<p>Revise sentence: When a tax-exempt government entity leases its property to a private owner, the entity's interest is exempt from taxation, but the lease creates <u>may create</u> a possessory interest that is subject to assessment and taxation (see Chapter 10).</p>	<p>Not accepted – sentence deleted. See Item #43</p>
43	33	13-19	Board Member Yee's Office (He)	<p>Comment: This section is confusing and unclear. It appears to jump between leases by private owner of a fee interest, subleases by private party of such private party's taxable possessory interest in a government-owned property, without specifying when the discussion is about what.</p> <p>SBE Rewrite: <u>Exempt Government-Owned Property Government Lessee</u></p> <p>When a tax-exempt government entity leases its property to a private owner, the entity's interest is exempt from taxation, but the lease creates a possessory interest that is subject to assessment and taxation (see Chapter 10). When a private owner leases its property to a tax-exempt governmental entity, the private owner's interest remains subject to assessment and taxation. Even though the creation of a lease of taxable real property for a term of 35 years or longer causes a reassessment of the real property under section 61(c), it does not transfer ownership of the property such that the government entity would be deemed to be the fee "owner" for tax exemption purposes. The leased property is assessed to the private owner-lessor, who is deemed to be the owner of both the leasehold and reversionary interests for property tax purposes.</p>	<p>Clarify that a long-term government lessee does not become property owned by government</p> <p>See SBE Rewrite</p> <p>See Annotations 220.0341 and 560.0010</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
44	33	22	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: If the governmental entity held the exclusive right to occupy and use the facility and the lease provided for automatic vesting of title in the state-governmental entity at the expiration of the lease if all rental payments were made, the true owner of the property may be the governmental entity, even though legal title resides in the lessor.	Accept
45	35	23-24	Mullen & Henzell (Beckerman)	Revise sentence: For Proposition 13 and change in ownership purposes, ownership in a corporation is determined by the percentage of ownership and <u>or</u> control of a corporation's voting stock." Comment: For consistency with Section 64, subdivision (c)(1).	Accept
46	37	4-5, 9-10	Mullen & Henzell (Beckerman)	Delete last sentence: For change in ownership purposes, general partnerships, limited partnerships, and family limited partnerships are treated similarly. Thus, a partner's classification as a limited or general partner is disregarded. An ownership interest in a partnership is represented by a partner's total interests in the partnership capital and profits. The partnership agreement of some validly formed partnerships may provide that certain partners have no right to share in partnership capital or profits; in these instances, no partnership ownership interests are attributed to such partners for change in ownership purposes. Thus, a partner's classification as a limited or general partner is disregarded. Comment: Sentence is repeated at lines 4-5 and 9-10.	Accept
47	37	9-10	San Diego County Counsel's Office (De Lorell)	Delete last sentence: Thus, a partner's classification as a limited or general partner is disregarded. Comment: Already stated as the second sentence of the paragraph.	See Item # 46.
48	37	9	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: The partnership agreement of some validly formed partnerships may provide that certain partners have no right to share in partnership capital or profits; in these instances, no partnership ownership interests are attributed to such partners for change in ownership purposes <u>in most cases</u> . Comment: The Legal section has opined in some limited partnership cases that a partner who has no interest in either the capital or profits, but who has certain rights that give it a beneficial advantage (e.g. a contractor for a tract that is being built, and who has the option of purchasing a certain number of lots at a price considerably under market value) has an "indefinable interest" which is more than 0 percent, and thus could affect proportional transfers.	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
49	37	22	San Luis Obispo County Assessor's Office (Edginton)	<p>Change formatting (separate into two paragraphs) and revise sentence:</p> <p><i>A single member limited liability company is treated as a separate legal entity for property tax purposes. Even though a single member LLC may be disregarded for federal tax reporting purposes and its profits and losses reported on the individual member's tax return, its affairs are governed by all of the formalities imposed on all other legal entities.</i></p> <p>Its <u>An LLC's</u> articles of organization and its operating agreement determine who the members are, the extent of the interests they own, the activities it conducts, and the terms of its future dissolution. An LLC acquires its separate existence as a legal entity once its articles of organization are filed and its operating agreement executed. How its federal or state income taxes are reported on various returns has no bearing on the legal recognition of a properly formed LLC (single member or otherwise).</p>	Accept
50	39	15-19	Mullen & Henzell (Beckerman)	<p>Replace the existing paragraph with the alternative text:</p> <p>Control of an entity is ownership of more than 50 percent of the ownership interest in that entity, in the case of corporations represented by ownership of voting stock and in the case of partnerships or LLCs represented by ownership of the capital and profits interests. Control may be obtained either directly or indirectly. A transfer of an interest in a legal entity that results in a change in control of that entity is a change in ownership of the real property owned by the entity.</p> <p><u>Control of a corporation exists when one entity or person has direct or indirect ownership or control of more than 50 percent of the voting stock of the corporation. Control of a partnership or LLC exists when one entity or person directly or indirectly owns more than 50 percent of the capital and profits interests. A transfer of an interest in a legal entity that results in a change in control of that entity is a change in ownership of the real property owned by the entity.</u></p> <p>SBE Rewrite: Control of an entity is ownership of more than 50 percent of the ownership interest in that entity, in the case of corporations represented by ownership of voting stock and in the case of partnerships or LLCs represented by ownership of the capital and profits interests. Control may be obtained either directly or indirectly. <u>Control of a corporation exists when one entity or person has direct or indirect ownership or control of more than 50 percent of the voting stock of the corporation. Control of a partnership or LLC exists when one entity or person directly or indirectly owns or controls more than 50 percent of the capital and profits interests.</u> A transfer of an interest in a legal entity that results in a change in control of that entity is a change in ownership of the real property owned by the entity.</p>	See SBE Rewrite See Annotations 220.0111, 220.0482, 220.0525

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
51	39	20-23	SBE Staff	Revise sentence: A person (an individual or other entity) obtains <i>direct control</i> of an entity when it acquires <u>more than 50 percent of the total interest in a majority ownership interest</u> in any partnership or LLC capital and profits, or when it acquires more than 50 percent of the total ownership interest in any other entity, in its own name.	Accept Consistent with Rule 462.180(d)(1)(B)
52	39	20-23	Mullen & Henzell (Beckerman)	Revise sentence: A person (an individual or other entity <u>other than a trust</u>) obtains <i>direct control</i> of an entity (i) when it acquires <u>ownership in its own name, or control, of</u> more than 50 percent of the voting stock of a corporation, (ii) when it acquires a majority ownership interest <u>in its own name</u> in any partnership or LLC capital and profits, or (iii) when it acquires more than 50 percent of the total ownership interest <u>in its own name</u> in any other entity (other than a trust), in its own name.	Not accepted. Rules 462.060 and 462.180 provide that trusts are not legal entities, with the exception of a business trust. The emphasis on "in its own name" unnecessarily complicates issue.
53	40	8	SBE Staff	Revise sentence: A person (an individual or other entity) may obtain <i>indirect control</i> of an entity by acquiring direct control of another entity that, in turn, directly or indirectly controls such entity.	Accept
54	40	19	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: <u>On or after March 1, 1975,</u> if real property or legal entity interests are transferred to an entity in a proportional transfer where the ownership interests are identical before and after so that the transfer is excluded under section 62(a)(2) or Rule 462.180(d)(4), the persons holding the ownership interests in the transferee entity immediately after the transfer are deemed <i>original co-owners</i> for purposes of determining whether a change in ownership occurs upon subsequent transfers of the ownership interests in the transferee legal entity.	Accept Ref: Sec. 64(d)

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
55	40	30,31	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: A subsequent transfer of any original co-owner's interest in a legal entity is not a change in ownership until cumulatively more than 50 percent of the total ownership interests in the entity has been transferred in one or more transactions. Only the real property previously excluded from change in ownership is reassessed as of the date cumulatively more than 50 percent of the co-owners' interests have transferred. <u>Note that</u> this does not apply to property acquired by the entity that was reassessed upon acquisition, since no original co-owners exist.</p> <p>SBE Rewrite: A subsequent transfer of any original co-owner's interest in a legal entity is not a change in ownership until cumulatively more than 50 percent of the total ownership interests in the entity has been transferred in one or more transactions. Only the real property previously excluded from change in ownership is reassessed as of the date cumulatively more than 50 percent of the co-owners' interests have transferred. <u>Thus, any property acquired by the entity and reassessed upon the acquisition would not be subject to another reassessment, since the co-owners are not original co-owners with respect to those interests in the acquired property. This does not apply to property acquired by the entity that was reassessed upon acquisition.</u></p>	<p>Not accepted</p> <p>See SBE Rewrite.</p> <p>See Annotation 220.0453, CLD 2010-2 Proposed annotation 220.0452.005 (C 12/3/09)</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
56	41	7-23	SBE Staff	<p>Revise section and move footnotes: In general, most transfers of legal entity interests owned by original co-owners are. Once a person, trust and/or legal entity is deemed to be an original co-owner, subsequent transfers by or between any of the original co-owners will be counted and cumulated for purposes of determining, under section 64(d), when cumulatively more than 50 percent of the original co-owner interests in the entity have been transferred, including the following:¹¹⁵ although there are a few exceptions.</p> <p><u>The following list includes the most common types of transfers of original co-owners' interest that are counted for purposes of determining whether a change in ownership has occurred:¹¹⁵</u></p> <ol style="list-style-type: none"> 1. Transfers of original co-owner interests between parents (original co-owners) to their and children. 2. Transfers of original co-owner interests between grandparents (original co-owners) to their and grandchildren. 3. Transfers of original co-owner interests between original co-owners, partner A (original co-owner) to existing partner B (original co-owner). 4. Transfers of original co-owner interests held by a trust once the beneficiary of the trust changes because the trust becomes irrevocable when a revocable trust becomes irrevocable or when the present beneficiary of an irrevocable trust changes. <p><u>Once an original co-owner's interest is counted and cumulated, the holder of the interest after the transfer is not an original co-owner with respect to the counted and cumulated interests.</u></p> <p>On the other hand, the following transfers are not counted or cumulated: The following list identifies the types of transfers of original co-owners' interest that are NOT counted for purposes of determining whether a change in ownership has occurred:¹¹⁶</p> <ol style="list-style-type: none"> 1. Interspousal <u>Transfers between spouses</u> excluded under section 63 2. <u>Transfers between registered domestic partners</u> transfers excluded under section 62(p). 3. Transfers into or out of qualifying trusts excluded under 62(d) and Rule 462.180(d)(4). 4. Proportional transfers excluded under section 62(a)(2), Rule 462.180(b)(2), and Rule 462.180(d)(4) and Rule 462.180(d)(2). 5. <u>Successive transfers of the same original co-owner interest that has already been counted as long as proportional interests remain the same before and after the transfer.</u> <p><u>An original co-owner's interest that is transferred but not counted and cumulated is still considered to be an interest of an original co-owner and may be counted and cumulated in a future transfer.</u></p>	<p>Accept</p> <p>See Annotations 220.0451.005, 220.0451.010</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
57	41	14	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: Transfers of original co-owner interests held by a trust once the beneficiary of the trust changes because <u>a revocable trust becomes irrevocable or the present beneficiary of an irrevocable trust transfers.</u>	See Item #56
58	41	22,23	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: Successive transfers of the same original co-owner interest <u>that has already been counted</u> as long as proportional interests remain the same after the transfer.	See Item #56
59	41-42	31-1	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence (Example 6-4): K and B are equal tenants in common in Greenacre. K and B transfer Greenacre to Corporation Y and in exchange K and B each receive 50 percent of Corporation Y's single class of voting stock.</p> <p>There is no change in ownership because the transfer is a proportional ownership interest transfer. However, K and B become original co-owners. If K transfers 30 percent of Corporation Y voting stock to C (K's child), and B thereafter transfers 25 percent of Corporation Y voting stock to D (B's grandchild), there is a change in ownership of Greenacre as a result of B's transfer to D, <u>since more than 50 percent of original co-owner interests have transferred.</u> The parent-child and grandparent-grandchild exclusions are not applicable to these transfers because they are transfers of stock and not transfers of real property interests. However, if the same transfers were made by K and B to their respective spouses, no change in ownership would occur.</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
60	42	13-17	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentences (Example 6-5): A, B, and C are tenants in common in Greenacre. A and B each own a 20 percent undivided interest and C owns the other 60 percent. They transfer their interest in Greenacre to LP. In exchange, A and B each receive 20 percent of the capital and profits interests in LP and C receives the other 60 percent. The transfers are excluded from change in ownership and A, B, and C become original co-owners. If A, B and C then transfer their LP interests to LLC-A, LLC-B, and LLC-C, respectively, and each own 100 percent of the capital and profits interests of his own respective LLC, the transfers are excluded from change in ownership under Rule 462.180(d)(4). However, <u>Each LLC remains an original co-owner in LP, and A, B, and C each becomes an original co-owner in his respective LLC.</u></p> <p>If A transfers cumulatively more than 50 percent of the capital and profits of LLC-A, there is a change in ownership of 20 percent of Greenacre deemed indirectly owned by LLA-A through its 20 percent ownership of LP that was excluded from change in ownership transfer of LLC-A's 20 percent original co-owner interest in LP.</p> <p>SBE Rewrite of Example 6-5:</p> <p>A, B, and C are tenants in common in Greenacre. A and B each own a 20 percent undivided interest and C owns the other 60 percent. They transfer their interest in Greenacre to LP. In exchange, A and B each receive 20 percent of the capital and profits interests in LP and C receives the other 60 percent. The transfers are excluded from change in ownership and A, B, and C become original co-owners. If A, B and C then transfer their LP interests to LLC-A, LLC-B, and LLC-C, respectively, and each own 100 percent of the capital and profits interests of his own respective LLC, the transfers are excluded from change in ownership under Rule 462.180(d)(4). However, <u>Each LLC becomes an original co-owner in LP, and A, B, and C each becomes remains an original co-owner in his respective LLC.</u></p> <p>If A transfers cumulatively more than 50 percent of the capital and profits interests of LLC-A, there is this results in a change in ownership of the 20 percent of Greenacre deemed indirectly owned by LLC-A through its 20 percent ownership of LP that was previously excluded from change in ownership.</p>	<p>Accept change to first paragraph.</p> <p>Change to second paragraph not accepted.</p> <p>See SBE rewrite</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
61	42	18	San Luis Obispo County Assessor's Office (Edginton)	<p>Add new example: <u>Example 6-5(A)</u></p> <p><u>X and Y are equal tenants in common in Blueacre. X and Y transfer Blueacre to LLC 5 and in exchange X and Y each receive 50 percent of Blueacre's capital and profits interest. The transfer is excluded, and X and Y each become original co-owners. If X transfers 40 percent to Z, and Z subsequently transfers 40 percent to A, there is no change in ownership, since only 40 percent of original co-owner interest has transferred. It is not counted twice.</u></p> <p>SBE Rewrite: <u>Example 6-x</u></p> <p><u>W, X, Y, and Z are equal tenants in common in Blueacre. W, X, Y, and Z transferred Blueacre to a partnership in a transaction that was excluded from change in ownership under section 62(a)(2). As a result of the excluded transaction, W, X, Y, and Z became original co-owners. In 2004, partner W transferred his 25 percent partnership interest to the partnership, resulting in the remaining partners each owning a 33.33 percent interest. In 2006, partner X transferred his 33.33 partnership interest to the two remaining partners.</u></p> <p><u>The transfer of W's 25 percent interest in the partnership was not to a spouse, a registered domestic partner, or an excluded trust. Consequently, the transfer should be counted and cumulated. Once an original co-owner interest has been transferred and counted and cumulated, it ceases to be an original co-owner interest. Thus, only 25 percent of X's 33.33 percent interest was considered an original co-owner interest. As a result, no change in ownership occurred in 2006 because only 50 percent of original co-owner interests had cumulatively been transferred.</u></p>	<p>Not accepted – Z is not an original co-owner so Z's interest wouldn't be counted.</p> <p>See SBE Rewrite.</p> <p>Ref: CLD 2010-1 Annotation 220.0451.010</p>
62	42	19	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: Original co-owner status terminates once the property excluded from reassessment under section 62(a)(2) is reappraised, or the property <u>title</u> is transferred <u>out of the name of the legal entity from the legal entity to an individual.</u></p> <p>SBE Rewrite: <u>Generally, original co-owner status terminates when the original co-owner interest has been counted, once the property excluded from reassessment under section 62(a)(2) is reappraised, or the property is transferred from out of the legal entity to an individual or individuals.</u></p>	<p>Not accepted – <i>title</i> confuses issue</p> <p>See SBE Rewrite.</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
63	42	21,22	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: The merging of two corporations or other entities results in a change in ownership of property owned by the merged (disappearing) corporation, unless an exclusion applies.</p> <p>Comment: Both disappearing and surviving entity could undergo a change in ownership – it is just more likely to be the disappearing entity. I am assuming you don't want to expand the discussion of mergers between entities.</p> <p>SBE Rewrite: <u>Typically</u>, the merging of two corporations or other entities results in a change in ownership of property owned by the merged (disappearing) corporation <u>entity</u>, unless an exclusion applies. <u>However, if, as a result of the merger, the surviving entity also undergoes a change in control, real property owned by that entity would also be reassessed.</u></p>	See SBE Rewrite. See Annotations 220.0065, 220.0066
64	42	22	San Diego County Counsel's Office (De Lorell)	<p>Revise sentence: The merging of two corporations or other entities results in a change in ownership of property owned by the merged (disappearing) corporation <u>entity</u>, unless an exclusion applies.</p>	Accept – see Item #63
65	42	28	San Diego County Counsel's Office (De Lorell)	<p>Add footnote: There is no change in ownership when a <i>statutory merger or conversion</i> occurs when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer, and the owners of the converting or disappearing entity maintain the same ownership interest of the converted or surviving entity that they held in the converting or disappearing entity. ^{FN}</p> <p>^{FN} Rule 462.180(d)(4).</p>	Accept
66	43	10	San Luis Obispo County Assessor's Office (Edginton)	<p>Comment: Section 62(a)(2) does not apply since there is no transfer.</p> <p>SBE Rewrite: Example 6-6</p> <p>Formatting Change: Indent second paragraph</p> <p style="padding-left: 40px;">A limited partnership (LP), which owns Blackacre and in which K and B hold equal partnership interests, merges with a limited liability company (LLC), in which K and B hold equal membership interests, by statutory merger.</p> <p style="padding-left: 40px;">There is no change in ownership of Blackacre upon the statutory merger because there is no transfer of property from LP to LLC. Section 62(a)(2) does not apply <u>since there is no transfer of real property</u>. However, if K and B were original co-owners in LP, they remain original co-owners in LLC.</p>	See SBE Rewrite.
67	44	18	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence (Example 6-10):</p> <p>However, assume the <u>that</u> H and W transfer 70 percent of their partnership interests to the irrevocable trust and only one daughter is the present beneficiary of the trust.</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
68	44	28	SBE Staff	<p>Add footnote: The transfer by the trustor of real property, or an ownership interest in a legal entity holding an interest in real property, to a trust that is revocable by the trustor is excluded from change in ownership. ^{FN}</p> <p><u>^{FN} Section 62(d).</u></p>	Accept
69	44	32 et seq.	San Luis Obispo County Assessor's Office (Edginton)	<p>Replace Example 6-11:</p> <p>Husband H and his wife W, who are original co-owners in a partnership, transfer 100 percent of their partnership interests to a revocable trust. The transfer is not counted or cumulated for purposes of section 64(d). Subsequently, H and W transfer a 60 percent partnership interest to an irrevocable trust naming their son as the sole beneficiary. More than 50 percent of original co-owner interests have been transferred, and a change in control of the partnership occurred upon the transfer to the irrevocable trust when their son acquired the majority interest. Because of the change in control, there is a change in ownership of all partnership real property.</p> <p><u>A, who is an original co-owner in a partnership, transfers his 80 percent partnership interest to his revocable trust. The transfer is not counted or cumulated for purposes of section 64(d). Subsequently, A dies, the trust becomes irrevocable, and A's son becomes the sole beneficiary. More than 50 percent of an original co-owner interest has been transferred, and a change in control of the partnership occurred upon the date the trust became irrevocable and when the son acquired the majority interest. Because of the change in control, there is a change in ownership of all partnership real property, and there are no more original co-owners.</u></p> <p>Comment: Example used in 6-11 is the same as the one in 6-10.</p>	<p>Examples are not the same; one has original co-owners, the other does not.</p> <p>However, accept new example to avoid confusion.</p> <p>Ref: Annotation 220.0451</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
70	46	8-15	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise Example 6-14: A owns 60 percent and B owns 40 percent of the <u>voting stock in a corporation</u> and <u>they</u> transfer their interests to a newly formed LLC in which A receives 60 percent and B receives 40 percent of the LLC capital and profits interests. The transfers are excluded from change in ownership since the proportional ownership interests of A and B in the real property owned by the corporation remain the same before and after the transfer. However, if A received 59 percent, B received 39 percent, and C received two percent of the LLC capital and profits interests, <u>a change in control under section 64(c)</u> results and all of the real property owned by the corporation would be reassessed.</p> <p>Comment: Throwing in the dissolution of the partnership on top of the other concepts involved here seems to make this more difficult than it is already, especially when it is not identified as such. Also, this example includes the "original co-owner" concept contained in Annotation 220.0454.</p> <p>SBE Rewrite: A owns 60 percent and B owns 40 percent of the capital and profits interests in an LP <u>voting stock in a corporation</u> and <u>they</u> transfer those interests to a newly formed LLC in which A receives 60 percent and B receives 40 percent of the LLC capital and profits interests. The transfers are excluded from change in ownership since the proportional ownership interests of A and B in the real property owned by LP <u>the corporation</u> remain the same before and after the transfer. However, if A received 59 percent, B received 39 percent, and C received two percent of the LLC capital and profits interests, <u>a change in ownership under section 61(j)</u> results and all of the real property owned by the LP <u>corporation</u> would be reassessed.</p>	<p>Dissolution is not an issue.</p> <p>Accept first sentence changes. Last sentence changes not accepted – CIO under section 61(j), no CIC under 64(c) – See SBE Rewrite.</p>
71	46	8-21	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise Sentence in Example 6-15:</p> <p>If in the example above only A transferred his LP interests to a <u>withdrew his proportionate share from the corporation and transferred it to a newly formed LLC in exchange for 100 percent of the LLC capital and profits, the transfer would be excluded from change in ownership since the proportional ownership interests of A and B in the real property owned by the LP corporation and A remain the same after the transfer. The LLC would be a tenant in common with B</u> <u>the corporation, and B would become an original co-owner in the corporation.</u></p> <p>SBE Rewrite: If, in the example above, only A <u>only A-B</u> transferred his LP <u>LP</u> interests <u>in the corporation</u> to a newly formed LLC in exchange for 100 percent of the LLC capital and profits, the transfer would be excluded from change in ownership since the proportional ownership interests of A and B in the real property owned by the LP <u>corporation</u> and the <u>LLC</u> remain the same after the transfer. The LLC would be a tenant in common with B <u>the corporation, and B would become an original co-owner in the LLC.</u></p>	<p>Not accepted. A becomes an original co-owner, not B.</p> <p>See SBE Rewrite to coincide with changes to 6-14 and avoid a change in control of the corporation.</p>
72	47	12	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: Since the community property interests of X and B are considered for property tax purposes as one-half owned by each of X and B, each are considered to own one-half of 58 percent (29 percent) of the LLC membership interests.</p>	<p>Accept</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
73	47	15-16	San Luis Obispo County Assessor's Office (Edginton)	<p>Add new example: <u>Example 6-X</u></p> <p><u>H owns 45 percent of the voting stock of Corporation N as his separate property, H and his wife W own 6 percent as their community property, and X owns 49 percent. H and W each own 3 percent of the community property interest, so H owns 48 percent of the voting stock of Corporation N. H and W purchase a 5 percent interest from X as their community property, so each will own an additional 2.5 percent interest. This is a change in ownership of all the real property owned by Corporation N, since H has 50.5 percent of the voting stock, and has gained control of the corporation.</u></p>	Accept new example
74	47	16-23	SBE Staff	<p>Revise sentence: <u>Transfers of real property and ownership interests in legal entities between registered domestic partners or spouses may be excluded from change in ownership under sections 62(p) and 63. However, a transfer of real property between a person and a legal entity that is wholly owned by that person's spouse or registered domestic partner is not a transfer to a spouse or partner, but to a legal entity. Neither is it a transfer of legal entity interests between spouses or partners. Such a transaction does not qualify for either the interspousal and or registered domestic partner exclusion. A legal entity, even one wholly owned by a spouse or registered domestic partner, is not a spouse. Thus, a transfer to a legal entity owned by a spouse or registered domestic partner is not the same as a transfer to the spouse or registered domestic partner. If the ownership interests are not the same before and after the transfer, the property will be subject to change in ownership.</u></p>	Accept Ref: Annotations 220.0274, 220.0278
75	47	30, 31	San Luis Obispo County Assessor's Office (Edginton)	<p>Move comma: A transfer from two registered domestic partners to a corporation, a legal entity, wholly owned by one of the registered domestic partners, is not eligible for the registered domestic partnership exclusion.</p>	Accept
76	49	13	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: A transfer of a stock share in a cooperative housing corporation results in a change in ownership <u>of the particular unit transferred</u>, unless an exclusion applies.</p>	Accept
77	50	24	San Diego County Counsel's Office (De Lorell)	<p>Revise sentence:</p> <ul style="list-style-type: none"> <i>Interdependence test.</i> Under the interdependence test, if the steps or transfers taken were so interdependent that the legal relations created by one transaction or transfer would have been fruitless (e.g., for example, apart from the parties' intention to qualify for an exclusion) without completing the entire series of steps, then the step transaction doctrine may apply and the intermediate steps may be disregarded. 	Accept, but replace Latin abbreviation with English translation.

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
78	52 11	San Luis Obispo County Assessor's Office (Edginton)	<p>Add new example: <u>Example 7-2</u></p> <p><u>H and W (husband and wife) own 50 percent of LLC X interests, and their son S owns 50 percent. H and W want to gift additional interest to their son. H, W, and S deed out of LLC X to H and W for 50 percent and S for 50 percent. H and W deed a 25 percent interest to S, and file a completed parent-child exclusion. H, W, and S amend their LLC operating agreement to reflect the change in percentages, and deed back to LLC X. There is no change in ownership since both transfers are proportional, and the step-transaction doctrine does not apply.</u></p> <p><u>However, suppose that, after deeding out of LLC X, H and W deed 20 percent to S, and 5 percent to G, the daughter of S. S is eligible for a parent-child exclusion, but G is not eligible for a grandparent-grandchild exclusion. H, W, S, and G amend the operating agreement of LLC X to reflect the change in members and interests. H, W, S, and G then deed back into LLC X. Since G does not qualify for the grandparent-grandchild exclusion, this is a step-transaction, and there would be a 100 percent change in ownership of the real property upon the transfer back into LLC X.</u></p> <p>SBE Rewrite: Add two new examples:</p> <p><u>Example 7-2</u></p> <p><u>H and W (husband and wife) own 50 percent of LLC X interests, and their son S owns 50 percent. H and W want to gift additional interest to their son. H, W, and S deed out of LLC X to H and W for 50 percent and S for 50 percent. H and W deed a 25 percent interest to S, and file a completed parent-child exclusion. H, W, and S amend their LLC operating agreement to reflect the change in percentages, and deed back to LLC X. There is no change in ownership since both transfers are proportional, and the step-transaction doctrine does not apply.</u></p> <p><u>Example 7-3</u></p> <p><u>Using the example above, after deeding out of LLC X, H and W instead deed 20 percent to S, and 5 percent to N, a nephew of W. S is eligible for a parent-child exclusion, but N is not eligible for an exclusion. H, W, and S amend the operating agreement of LLC X to reflect the change in members and interests. H, W, S, and N then deed back into LLC X. Since N does not qualify for a parent-child or grandparent-grandchild exclusion, this is a step-transaction, and there would be a 100 percent change in ownership upon the transfer back into LLC X because S has obtained control.</u></p>	<p>Accept suggestion to add an example, but rewrite second paragraph into another example to avoid complications with grandparent-grandchild exclusion.</p> <p>See Annotations 625.0193, 625.0194, 625.0196</p>
79	53-54	Marin County Assessor's Office (Witt)	<p>Comment: Common Interest Developments: expand discussion on when an apartment complex can be accepted, or not, for CID. We have received deeds where the apartment or multi unit property is transferring a specific unit rather than a percentage of the total property. For property tax purposes how do we value the transfer of a particular unit that is not a separate legal unit or issuance of stock, etc?</p>	<p>No alternate language provided.</p> <p>Discussion item.</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
80	69	25	SBE Staff	<p>Add section: <u>Sale and Leaseback Transactions</u></p> <p><u>Generally, a sale of real property and a lease back to the former owner constitutes a change in ownership requiring reappraisal of the entire property sold. If a leaseback is for a term of 35 years or more, a second change in ownership occurs. Section 62(e) excludes from change in ownership only transfers that involve a true retention by the transferor of a present interest in the property and a conveyance to the transferee of only a future interest. In the case of a sale and leaseback, the purchaser receives title to the property, and the right to a possession. The fact that the parties agree that the purchaser will lease the property to the former owner in no way diminishes the purchaser's ownership interest any more than would a lease not preceded by a sale. Rather, the leasing of the property to the former owner is merely the exercising of the right to possession, a present beneficial use, in exchange for the payment of rent. The facts of each situation will determine whether a sale and leaseback agreement is a financing arrangement or a true sale.</u>^{FN}</p> <p><u>Even though a sale is conditioned upon a lease back, contains a prescription against a resale without the lessee's approval, and contains prohibitions preventing the purchaser from using the property or raising the rent, the transfer should result in a reappraisal. These contractual limitations do not qualify as enforceable restrictions that are governmentally imposed and required to be taken into account by Revenue and Taxation Code section 402.1.</u>^{FN}</p> <p>^{FN} <u>Pacific Southwest Realty Co. v. County of Los Angeles (1991) 1 Cal.4th 155, 162.</u></p> <p>^{FN} <u>Carlson v. Assessment Appeals Board No. 1 (1985) 167 Cal.App.3d 1004.</u></p>	See Annotations 220.0620, 220.0621

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
81	70	20-23	Board Member Yee's Office (He)	<p>Comment: Rewrite this portion regarding the recognition of out-of-state same-sex marriages in light of the enactment of SB 54 (Leno) since this draft was mailed, and make corresponding changes to FN.</p> <p>SBE Rewrite: For marriages of persons of the same sex, marriages entered into in California after 5:00 p.m. on June 16, 2008 and before November 5, 2008 are recognized as valid on an ongoing basis.²²³ However, no same-sex marriages entered into in California before or after this time period are valid or recognized. Regarding same-sex marriages validly entered into outside of California, these marriages were not barred from being recognized in California during this time period. To date, there is no clear legal guidance regarding the recognition of out-of-state same-sex marriages on or after November 5, 2008.²²⁶</p> <p><u>Same-sex marriages performed during this period are recognized for all purposes, including the designation of "marriage." Senate Bill 54 (Stats. 2009, Ch. 625) amended Family Code section 308 to apply to same-sex marriages performed out of California. Family Code section 308(c) clarifies that persons who enter into a valid same-sex marriage in another jurisdiction after November 4, 2008, have all the rights and responsibilities of married persons, except that their relationship may not be designated as a "marriage." Regarding the treatment of non-California same-sex marriages during the period between the November 5, 2008 and January 1, 2010 (the effective date of Senate Bill 54), recognition is arguably compelled from the beginning of the recognition period. The rationale is that the California Supreme Court^{FN} struck section 308.5 from the Family Code ("Only marriage between a man and a woman is valid or recognized in California"), leaving only section 308, which requires respect of otherwise valid non-California marriages ("A marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state.").</u></p> <p>²²³ <i>Strauss v. Horton</i>, 2009 Cal. LEXIS 4626, p. 253(2009) 46 Cal.4th 364.</p> <p>²²⁶ <i>Strauss v. Horton</i>, 2009 Cal. LEXIS 4626, pp. 253-254. Legislation is currently pending (SB 54).</p> <p>^{FN} <i>In re Marriage Cases</i> (2008) 43 Cal.4th 757.</p>	See SBE Rewrite.
82	72	4	Board Member Yee's Office (He)	<p>Revise sentence: <i>Community property</i> is property owned by a husband and wife spouses or by registered domestic partners, with each person having an undivided one-half interest in the property by reason of their marital or domestic partnership status.</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
83	74	29 et seq.	San Luis Obispo County Assessor's Office (Edginton)	Revise sentences: If there has been a reassessment for a transfer between registered domestic partners that occurred between January 1, 2000 and January 1, 2006 that resulted in a change in ownership, retrospective relief <u>is was</u> available. This means that a reassessment that occurred between these dates may be reversed <u>have been eligible for reversal</u> on a prospective basis beginning with the lien date of the assessment year in which a claim was filed with the county assessor where the transferred property was located. However, claims for such relief must be <u>have been</u> made to the county assessor on or before June 30, 2009.	Accept
84	75	1	Board Member Yee's Office (He)	Revise sentence: However, claims for such relief must be <u>have been</u> made to the county assessor on or before June 30, 2009.	Accept – See Item # 83
85	75	9	Board Member Yee's Office (He)	Add sentence: Since the term <i>spouse</i> within the meaning of the California Constitution does not include a registered domestic partner, a transfer of real property between registered domestic partners will not qualify for the interspousal exclusion under section 63. <u>Instead, such a transfer qualifies under section 62(p), subject to the timing limitations discussed above.</u>	Accept
86	76	6	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: Spouses H and W each owns own a 30 percent ownership interest in a partnership.	Accept
87	76	21-28	SBE Staff	Revise paragraph: <u>Transfers of real property and ownership interests in legal entities between registered domestic partners or spouses may be excluded from change in ownership under sections 62(p) and 63. However, a transfer of real property between a person and a legal entity that is wholly owned by that person's spouse or registered domestic partner is not a transfer to a spouse or partner, but to a legal entity.</u> Neither is it a transfer of legal entity interests between spouses or partners. Such a transaction does not qualify for either the interspousal and or registered domestic partner exclusion. A legal entity, even one wholly owned by a spouse or registered domestic partner, is not a spouse. Thus, a transfer to a legal entity owned by a spouse or registered domestic partner is not the same as a transfer to the spouse or registered domestic partner. If the ownership interests are not the same before and after the transfer, the property will be subject to change in ownership.	Ref: Annotations 220.0267, 220.0274, 220.0278, 220.0279; LTA 2005/062

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
88	81	2 or 23	Board Member Yee's Office (He)	<p>Comment: Add a sentence or two on Pg 81, following Ln 2, or following Ln 23, to summarize the interaction between the RDP laws and the GP-GC exclusion, i.e., whether the GP-GC exclusion applies to transfers by the RDP of one grandparent to that grandparent's grandchild, by a grandparent to the RDP of that grandparent's grandchild, or by a grandparent to the grandparent's child's RDP's child, provided all other conditions for the exclusion are met.</p> <p>SBE Rewrite: See Appendix 1.</p>	Accept – see SBE Rewrite (Appendix 1)
89	82	17-22	Marin County Assessor's Office (Witt)	<p>Comment: A trust specifies that when the first parent dies an A/B trust will be created but the A/B trusts are not funded prior to the death of the second parent. The claims by the children use both parents' social security numbers for the parent/child exclusions. When, if ever, they can receive the maximum exclusions.</p>	No alternate language provided. Ref: CLD 2010-2 Proposed Anno. 625.0235.020 (C 12/16/2009)
90	83	8-10	San Luis Obispo County Assessor's Office (Edginton)	<p>Delete Sentence: Where a life estate terminates as a result of the death of the life tenant, the transfer to the remainderman is from the transferor of the remainder interest, not from the life tenant. This is because the statutory language in sections 61(g), 61(h), and 62(d) identify the grantor of a life estate as the "transferor" of the remainder or reversionary interest. Assuming the parent-child claim is timely filed, the property will not be reassessed upon the termination of the life estate and the property will retain G's base year value.</p> <p>Comment: Delete interim sentence. This is only true if there is no subsequent transfer by a remainderman. If there is a transfer by a remainderman, then the grantor of the remainder interest is the "transferor," not the creator of the remainder interest.</p>	Not accepted. Sentence is correct for this example. Ref: Annotation 625.0121
91	84	17-20	San Diego County Counsel's Office (De Lorell)	<p>Revise sentences (Example 12-5): X dies, leaving an estate valued at \$1,500,000 to be equally shared by her two children, A and B (\$750,000 to be distributed to each child). Child A receives real property with an equity value of \$810,000 and \$280,000 of other assets, for a total of \$1,090,000. <u>Child B receives the balance of the estate.</u></p> <p>The entire trust assets determine what each child's share should be. In this situation, the value of \$1,500,000 is split equally between two children so that each should get \$750,000 of assets each. To determine if a reassessment is necessary, the market value of the real property is compared to that child's share of the estate, disregarding the distribution of any other assets. The value of the real property exceeded Child A's share by \$60,000. The difference between \$810,000 and \$750,000 is \$60,000. Dividing \$60,000 by \$810,000 equals .074074. Thus, the property was subject to a 7.4% change in ownership.</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
92	84	16-25	San Luis Obispo County Assessor's Office (Edginton)	<p>Comment: Example 12-5—This information is new. Is there a pending LTA to advise assessment staff about this new method of calculation? If not, then this example needs to be removed or amended, since it is creating precedent?</p>	<p>Not accepted. This is not a new method of calculation, merely a more detailed explanation.</p> <p>An LTA is not required to set precedent.</p>
93	85	1-5	Janet Fairchild, Attorney	<p>Revise sentences: However, the trustee must be the party encumbering the property, and <u>The trustee may not encumber the property with a loan from the beneficiary who will receive the property by accepting a Promissory Note and Deed of Trust made to the Trustee;</u> or the trustee may obtain a loan secured by the property from a third-party lender, such as a bank, or from any beneficiary who will not receive the property as part of the trust distribution.</p> <p>Comments: At a BOE presentation to the Alameda County Bar Association Trusts & Estates Section in August, 2004, the speaker cited the uncodified statement of legislative intent regarding California Probate Code Sec. 63.1 which was set out in Sec. 2 of Stats. 1987, c. 48:</p> <p style="padding-left: 40px;">"[the Sec.63.1 exclusion] shall be fully recognized and shall not be ignored or given less than full recognition under a substance-over-form or step-transaction doctrine"</p> <p>The lines to which I propose changes would, as currently written, apply a substance-over-form requirement which would, in practical terms, gut the parent-child and grandparent-grandchild exemptions for the families to whom it is most vital: families in which the elder generation leaves only a home and not enough other assets to equalize the total distribution to the children not receiving the home.</p> <p>In such families, and particularly where the children are young adults and not fully established in their own economic lives, a Note and Deed of Trust from the child receiving the parents' home is virtually <u>always</u> the only way the transaction can take place.</p> <p>The other children are unlikely to be able to raise enough cash to make a loan to the trust or estate; and <u>commercial lenders will never lend to an entity</u>, such as a trust or estate, which exists only for the purpose of transferring a decedent's property. This is because such an entity will, by definition, be transferring the property to a 3rd party who will not be directly obligated under the Note and Deed of Trust. This is a situation which lenders try to avoid in all circumstances, by, among other ways by the well-known "due on sale [i.e., on transfer]" clause.</p> <p>In the 30 years since I began practicing law (in the area of real estate and decedent's estates), I have only once seen a commercial lender lend directly to a trust or estate. (I</p>	<p>Not accepted.</p> <p>Draft handbook is consistent with published SBE opinions.</p> <p>See LTAs 91/08 and 2008/018, (question 36), and Annotations 625.0235, 625.0235.005, 625.0235.010, 625.0235.015</p> <p>Discussion item</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
93 [cont.]				<p>believe in that case that the loan was approved by an ill-trained broker.) And in today's lending climate, when lenders are refusing loans to any borrower whose situation is even remotely irregular, it is safe to say that a decedent's Trustee will never be able to obtain a commercial real estate loan. (This is not to say that the hard-money lenders who specialize in estate loans don't exist -- but their rates are generally double the going interest rate, with extremely high inception costs, and would not be practical for a child who didn't have the economic standing to qualify for a regular purchase loan.)</p> <p>In my experience of small estates (those consisting primarily of the family home), none of the children is likely to be sufficiently credit worthy to lend to the trust or to obtain a purchase loan for the home. Children of parents who die owning only or primarily just a home can typically become homeowners ONLY by inheriting a parent's home, and then only if the cost the property tax doesn't rise dramatically.</p> <p>Thus text of Sec. 401 as it appears in the 2nd Draft would effectively prohibit most lower-income children's ability to retain the home at all, and would effectively gut the parent-child exemption in the smallest estates in the cases where the exemption is most needed.</p>	
94	86	15-16	San Diego County Counsel's Office (De Lorell)	<p>Revise sentence: The step transaction doctrine allows a county assessor to disregard, for taxation purposes, a series of real property transfers when the facts suggest the transfer might have been accomplished in fewer steps and the purpose for using additional steps was to circumvent the intent of the change in ownership statutes. In multiple-transaction situations involving parent-child or grandparent-grandchild transfers, if the transfer of the real property out of the legal entity is for the purpose of qualifying for the exclusion under section 63.1, the step transaction doctrine does not apply pursuant to the statement of legislative intent.</p> <p>Comment: The motivation or purpose for using additional steps may be relevant, but not determinative. The doctrine is used to look at the substance of the transaction. <i>Shuwa</i> at 1648-1649. The step transaction doctrine may still apply in order to comply with the intent and spirit of the Revenue and Taxation Code even accepting the merit of a party's assertions for using a series of transactions. <i>Shuwa</i> at 1657. The language as edited is consistent with the language used on page 50 at lines 4-5 at the beginning of Chapter 7.</p>	Accept
95	88	2	Orange County Assessor's Office (Cohen)	<p>Change date: Application of <i>Larson v. Duca</i></p> <p>An exception exists where the date of death occurred prior to November 5, 1986 <u>November 6, 1986</u> and a decree of distribution is filed after this date. In <i>Larson v. Duca</i>, the Court of Appeal held that although the decedent died prior to the effective date of Proposition 58, the change in ownership in the real property from the decedent to her son did not occur on the date of her death, but instead resulted from the decree of distribution of the probate court issued after the effective date of Proposition 58.</p>	<p>Not accepted.</p> <p>The <i>Larson</i> court used the effective date of Prop. 58 (11/5/86) in its holding, not the effective date of sec. 63.1 (11/6/86).</p> <p>Ref: LTA 89/79</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
96	90	29-31	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: For properties that have a current market value enrolled due to a decline in value (Proposition 8 value), the value counted toward the \$1 million limit is the adjusted base year value, not the current market value on the roll, which would be the lien date value on the date preceding the effective date, plus any value changes for change in ownership or new construction between lien date and the event date. The "value on the roll" may or may not be a Prop. 8 value.</p> <p>Comment: We were advised in 1996 that when property was subject to a Prop. 8, we were to report the "value on the roll," which in some cases would mean the Prop. 8 value, if that is what was on the roll at last lien date. When did the opinion change about what should be reported, or does this sentence need to be changed?</p>	<p>Not accepted.</p> <p>Section 63.1(c)(5) specifies full cash value as defined in section 110.1, which describes it as the fair market value as of the last date of CIO or completion of NC plus factoring. Section 110.1 does not account for Prop 8 values.</p> <p>See LTA 2008/018, Question 13.</p> <p>Anno. 625.0143 was deleted in 2008.</p>
97	91	4	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: Each parent can transfer up to \$1 million in value of what <u>real property</u> they own to a child or children.</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
98	91	13-23	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise Example 12-12:</p> <p>M is the mother of D and S. D owned real property outright and then added M, her mother, and S, her brother, to title as joint tenants. M and D died and their her interest passed to <u>M and S</u> by right of survivorship. The property <u>interest passing to S</u> is not eligible for the parent-child exclusion and is subject to 100 <u>a 50</u> percent change in ownership as a sibling transfer.</p> <p>When D added M and S as joint tenants, there was no change in ownership because D remained on title as a joint tenant. Thus, D became an original transferor and M and S became other than original transferors.</p> <p>However, when D and M died, M's interest that passed <u>suppose that some time after D had added M and S as joint tenants that M had transferred her one-third interest to S. The interest M transferred to S does not qualify for the parent-child exclusion because when M's interest was excluded from reassessment under the joint tenancy rules, and M was an other than original transferor.</u></p> <p>Comment: For change in ownership, two people cannot die simultaneously. One is always presumed to die first. Therefore, this example makes no sense, since either D or M died first, and her interest transferred by operation of law to the two surviving joint tenants.</p> <p>SBE Rewrite: M is the mother of D and S. D owned real property outright and then added M, her mother, and S, her brother, to title as joint tenants. M and D died and their interest passed to S by right of survivorship. The property is not eligible for the parent-child exclusion and is subject to 100 percent change in ownership as a sibling transfer. When D added M and S as joint tenants, there was no change in ownership because D remained on title as a joint tenant. Thus, D became an original transferor and M and S became other than original transferors.</p> <p><u>Subsequently, M transferred her one-third interest to S. The interest M transferred to S does not qualify for the parent-child exclusion because when M's interest was excluded from reassessment under the joint tenancy rules, M was an other than original transferor.</u></p>	Not accepted. See SBE Rewrite See LTA 89/16
99	92	11	San Diego County Counsel's Office (De Lorell)	<p>Revise example: Land = \$400<u>300</u>,000</p> <p>X inherits an investment property (not a principal residence) from her parents. The property had an adjusted base year value of \$1.2 million, allocated as follows:</p> <p style="padding-left: 40px;">Land = \$400<u>300</u>,000</p> <p style="padding-left: 40px;">Improvements = \$900,000</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
100	95	17 et seq.	San Luis Obispo County Assessor's Office (Edginton)	<p>Comment: Example given is inconsistent with opinion from Legal, unless they have revised their interpretation without notification to county offices. See unannotated letter dated August 7, 1998 written by Kristine Cazadd to Santa Clara County. It states in part, "By the definition noted above, partition requires all of the co-tenants to segregate and terminate their co-owner interests in the property so that after the partition, there is a division in the method of holding title but each tenant-in-common has exactly the same proportional interest that he held previously. Here, only one co-tenant seeks 100 percent ownership of one lot,..."</p> <p><i>Example 13-1</i></p> <p>A, B, C, and D own a four-acre parcel of land <u>that is a single appraisal unit as joint tenants. They split the parcel into two lots: a one-acre and a three-acre parcel four one-acre lots. A takes title to the one-acre parcel and B, C, and D take title to the three-acre parcel. A, B, C, and D each take title to one of the one-acre parcels solely.</u> These transfers can be excluded from reassessment as long as A's parcel <u>each parcel</u> is equivalent in value to 25 percent of the whole before the parcel split.</p> <p><u>However, suppose A, B, C, and D own a four-acre parcel of land as joint tenants. They split the parcel into two lots: a one-acre parcel and a three-acre parcel. A takes title to the one-acre parcel and B, C, and D take title to the three-acre parcel. These transfers do not qualify for the exclusion, and there will be a 75 percent change in ownership of A's parcel, and a 25 percent change in ownership of B,C, and D's parcel.</u></p>	<p>Not accepted. Current legal opinion indicates that value of ownership interests is criteria for partition, not lot size or manner of holding title.</p> <p>This is consistent with current opinion in proposed annotation 220.0469 (CLD 2009-4). Letter C 8/7/98 is not published opinion. The factual situations between the 1998 letter and the 2009 letter are dissimilar enough each should be viewed in the context in which it is written.</p> <p>Discussion item.</p>
101	96	16,17	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentences: If X's partitioned six parcels has <u>have</u> a current fair market value of \$600,000, and B's partitioned four parcels has <u>have</u> a current fair market value of \$400,000, there has been a change in ownership of a 10 percent interest (X now holds 60 percent and B now holds 40 percent ownership interest whereas prior to the partition each owned 50 percent).</p>	Accept
102	97	7	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: The section 62(a)(1) exclusion from change in ownership still applies <u>may still apply</u> even though the partition takes more than one assessment year to fully execute.</p>	Accept
103	100	5	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: Propositions 60, 90, and 110 amended section 2(a) of article XIII A of the California Constitution to allow persons who are over the age of 55 or <u>who are</u> severely and permanently disabled to sell a principal place of residence (original property) and transfer the base year value of that property to a qualifying principal residence (replacement dwelling).</p>	Not accepted – duplication of words

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION								
104	100	14-15	SBE Staff	<p>Add El Dorado County to list of counties with ordinances:</p> <p>As of January 1, 2009 February 15, 2010, the following seven <u>eight</u> counties currently have adopted ordinances implementing these provisions:</p> <table border="0" style="width: 100%; text-align: center;"> <tr> <td>Alameda</td> <td>Los Angeles</td> <td>San Diego</td> <td>Santa Clara</td> </tr> <tr> <td><u>El Dorado</u></td> <td>Orange</td> <td>San Mateo</td> <td>Ventura</td> </tr> </table> <p>Comment: El Dorado County enacted an ordinance effective February 15, 2010.</p>	Alameda	Los Angeles	San Diego	Santa Clara	<u>El Dorado</u>	Orange	San Mateo	Ventura	Accept
Alameda	Los Angeles	San Diego	Santa Clara										
<u>El Dorado</u>	Orange	San Mateo	Ventura										
105	100	24	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence:</p> <ul style="list-style-type: none"> The original property is sold and reassessed to current market value, <u>or receives a base year transfer under section 69, 69.3, or 69.5.</u> 	Not accepted – this is a basic summary of the requirements. Details of what encompasses a sale are contained on pages 105-107.								
106	100	28	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence:</p> <ul style="list-style-type: none"> The replacement dwelling is of equal or lesser value, <u>as defined,</u> than the original property. 	Not accepted – this is a basic summary of the requirements. Details of what "equal or lesser value" means are contained on pages 107-109.								
107	101	4	SBE Staff	<p>Add citation to footnote: A claimant is any person claiming the relief under section 69.5. A <i>person</i> means any individual and does not include a partnership, association, corporation, company, or other legal entity or organization of any kind. ³¹³</p> <p>³¹³ Section 69.5(g)(11); <i>Grotenhuis v. County of Santa Barbara</i> (2010) B212264 .</p>	Accept								
108	101	7	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: However, if title of either the original property or the replacement dwelling is held in a trust and the claimant is be the present beneficial owner of the trust, then the base year value transfer is available.</p>	Accept								

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
109	101	14	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence (Example 14-1): M, who is over 55, transferred her current principal residence to a revocable living trust. M's daughter P is the trustee. M would like to sell her current residence and transfer the base year value to a qualified replacement dwelling which she would also like to hold in the trust.</p> <p>Assuming that all other conditions are met, M is an eligible claimant because she is the present beneficiary <u>beneficial owner</u> of the trust, and she is considered the owner of both her current residence and her replacement dwelling. P, as trustee and holder of legal title, may sell the original property and purchase a replacement dwelling in the name of the trust, and file a claim on behalf of M, who is an eligible claimant.</p>	Not accepted – either <i>present beneficiary</i> or <i>beneficial owner of trust property</i> is used. First phrase is better in this sentence.
110	102	20	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: In general, each claimant is eligible to transfer his or her base year value only once. If a claimant makes a transfer under section 69.5 and his or her spouse is the record owner of the replacement dwelling, the spouse will also <u>be</u> considered to have received relief under this section.</p> <p>SBE Rewrite: In general, each claimant is eligible to transfer his or her base year value only once. If a claimant makes a transfer under section 69.5 and his or her spouse is the <u>a</u> record owner of the replacement dwelling, the spouse will also <u>be deemed a claimant and</u> considered to have received relief under this section.</p>	Accept – See SBE Rewrite
111	102	33,34	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence (Example 14-3): Husband H (age 57) and his wife W (age 50) sold their original property and purchased a replacement dwelling. The couple transferred their base year value. Four years later, W becomes severely arthritic and cannot climb the stairs to the bedrooms on the second floor, qualifying her as severely and permanently disabled. They sell the replacement dwelling and purchase another home to accommodate W's disability.</p> <p>Since the disability arose after the date of the over age 55 claim for base year value transfer, H or W can transfer the base year value a second time on the basis of the disability. <u>In this case,</u> W does not have to be over 55 to qualify for the relief based on her disability, <u>since her spouse lives with her, and is over 55.</u></p>	Not accepted – added language is incorrect since H is not the qualifier. Example focuses on the ability to transfer the base year value a second time and that a disability transfer is not age related.

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
112	104	After 5	San Luis Obispo County Assessor's Office (Edginton)	<p>Add new example: “<i>Example 14-5-A</i></p> <p><u>T purchases a vacant lot in 2000. T sells his original residence in October, 2007, and begins construction of a replacement dwelling on his vacant lot at the same time. T completes the construction of his replacement dwelling in June, 2009, and it becomes his principal residence. Assuming all other conditions are met, T is eligible to transfer his base year value.</u></p> <p><u>Supposing, however, that T purchases a lot with a replacement dwelling in 2000 that needs some fixing up. After selling his original residence in October 2007, he begins to renovate the replacement dwelling before moving in June 2009. T is not eligible to transfer his base year value, since he purchased the replacement dwelling more than two years before the time he sold his original residence.”</u></p> <p>SBE Rewrite: Timing [page 103, line 26]</p> <p>A replacement dwelling must be purchased or newly constructed within <i>two years</i> (before or after) of the sale of the original property. If a replacement dwelling is, in part, purchased and, in part, newly constructed, the completion of new construction must occur within two years of the sale of the original property, regardless of when the land is purchased.</p> <p><u>Example 14-X</u></p> <p><u>T purchases a vacant lot in 2000. T sells his original residence in October, 2007, and begins construction of a replacement dwelling on his vacant lot at the same time. T completes the construction of his replacement dwelling in June, 2009, and it becomes his principal residence. Assuming all other conditions are met, T is eligible to transfer his base year value.</u></p>	<p>Accept first paragraph as new example under "Timing" on page 103, line 26.</p> <p>Accept second paragraph as a new example and add discussion of new construction after sale and purchase requirement on page 107. See Item #114.</p>
113	104	33	San Luis Obispo County Assessor's Office (Edginton)	<p>Add sentence: Many types of residential property, not just single-family homes, can qualify as original properties or replacement dwellings. An eligible property includes a unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. Additionally, a manufactured home may also qualify as an eligible property. <u>(See further discussion of manufactured homes on page 109.)</u></p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
114	107	10	SBE Staff	<p>Add section: <u>Newly Constructed Replacement Dwelling</u></p> <p><u>To qualify for a base year value transfer, a replacement dwelling must be purchased or newly constructed. A newly constructed dwelling means an entirely new dwelling is built or an existing residence is gutted and remodeled to the extent that it is considered the substantial equivalent of a new structure. Minor construction, such as a room addition or the addition of a swimming pool, does not bring the dwelling to the level of a newly constructed building. To receive relief under section 69.5, the construction of a new residence must be completed within two years of the sale of the original property. Pursuant to Property Tax Rule 463.500, the date of completion of new construction is the date upon which the property has been inspected and approved for occupancy by the local building department.</u></p> <p><u><i>Example.</i> T purchases a lot with a residence in 2000. After selling his original residence in October 2007, he added a bedroom and bathroom before occupying the residence in June 2009. T is not eligible to transfer his base year value, since he purchased the replacement dwelling more than two years before the time he sold his original residence. The addition of a bedroom and bathroom did not render the entire residence to be newly constructed or bring the entire residence to the substantial equivalent of a new structure.</u></p>	<p>Accept</p> <p>Ref: LTA 2006/010 (Question C1, D1, K5)</p>
115	108	18	SBE Staff	<p>Add citation to footnote: <i>The full cash value of a replacement dwelling is its full cash value, determined in accordance with section 110.1, as of date of purchase or the date of completion of new construction. If the replacement dwelling is, in part, purchased and, in part, newly constructed, the date on which it was purchased or newly constructed is the later of either (1) the date of purchase or (2) the date of completion of construction.</i>³³⁶</p> <p>³³⁶ Section 69.5(g)(5); <i>Wunderlich v. County of Santa Cruz</i> (2009) 178 Cal.App.4th 680.</p> <p>Add example:</p> <p><u>J purchased a lot in 1981. In August 2005 construction of a new residence was completed. The county established a new base year value for the residence at \$650,000. The adjusted base year value of the land was \$52,366. In October 2005, J sold his original property for \$725,000 and applied to transfer the base year value to the replacement dwelling. County determined that the full cash value of the replacement land and improvements as of the date of completion of construction was \$850,000. Because the date of completion of construction occurred prior to the date of sale, the full cash value of the replacement dwelling must meet the 100 percent value standard. The lot and newly constructed residence does not qualify because its full cash value as of the date of completion of construction (\$850,000) exceeds the full cash value of the original property on the date of sale (\$725,000).</u></p>	<p>Accept</p>

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
116	109	14-19	Santa Clara County Assessor's Office (Solseng)	<p>Revise paragraph: Furthermore, if the sale of an original property and the purchase of a replacement dwelling are both recorded on the same day, <u>it is rebuttably presumed that the replacement property was acquired first and the full cash value of replacement dwelling must meet the 100 percent or less standard. The presumption may be rebutted by clear and convincing evidence that the original property was sold prior to the acquisition of the replacement property. Such evidence may include the date the sale contract for the original property and the date the purchase contract for the replacement contract were entered into by all of the parties to each contract. The 105 percent provision requires that the replacement dwelling be purchased within the first year following the date of the sale of the original property, indicating that the replacement dwelling must be purchased at least one day after the sale of the original property to qualify.</u>^{FN}</p> <p>Comment: We believe this language more accurately reflects the actual language of Revenue and Taxation Code section 69.5(g)(5)(A) which refers to the purchase occurring prior to the date of sale, rather than the date the deed is recorded.</p> <p>SBE Rewrite: If the sale of an original property and the purchase of a replacement dwelling are both recorded on the same day, the full cash value of replacement dwelling must not exceed 100 percent of the full cash value of the original property.³³⁸ The 105 percent provision requires that the replacement dwelling be purchased within the first year following the date of the sale of the original property, indicating that the replacement dwelling must be purchased at least one day after the sale of the original property to qualify.³³⁹</p> <p><u>If a deed for the purchase of a replacement dwelling is recorded any time after a deed evidencing the sale of the original property is recorded, even if both are recorded on the same day, the purchase of the replacement dwelling is presumed to have occurred after the sale of the original property. Thus, if the sale of an original property and the purchase of a replacement dwelling are both recorded on the same day and the deed for the sale of the original property is recorded first, then the purchase of the replacement dwelling is presumed to occur after the sale of the original property and the full cash value of the replacement dwelling must meet the 105 percent or less value standard.</u></p> <p>³³⁸ Section 69.5(g)(5)(A). ³³⁹ Section 69.5(g)(5)(B).</p>	Accept concept – see SBE Rewrite Ref: Proposed annotation 200.0029 (C 12/20/2009) on CLD 2010-2
117	118	17	San Luis Obispo County Assessor's Office (Edginton)	<p>Revise sentence: In July 2007, J purchased a home that had a full cash value of \$250,000. J expected that his original property would sell for at least the same amount, and then he would file a claim to transfer her<u>his</u> base year value. However, due to a slow real estate market, his original property finally sold in June 2009 for only \$220,000.</p>	Accept

No.	PAGE/LINE REFERENCE		SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
118	122	10	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: <i>Category B, Commercial, Investment, Income, or Vacant Property:</i> A single-family residence or duplex used as an investment property may be considered income property if sufficient evidence <u>is provided</u> to the county assessor. Evidence may include, but is not limited to, rental or lease agreements, cancelled checks, income tax returns, and other investment records.	Accept
119	122	14	San Luis Obispo County Assessor's Office (Edginton)	Add comma: <i>Category C, Agricultural Property:</i> Agriculture includes farming in all aspects, including, but not limited to, soil cultivation and tillage; dairy farming; agricultural or horticultural commodity production, cultivation, growing, and harvesting; livestock, bee, furbearing animal, or poultry raising; forestry and lumber operations; and any other ancillary or incidental practices performed with such operations, including market preparation and storage, market delivery, or delivery to carriers for transport to market.	Accept
120	130	8,9	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: The Governor must proclaim the area to be in a state of emergency as a result of the misfortune or calamity. This relief applies to any disaster occurring on or after October 20, 1991 (the Oakland Hills fire) . Comment: Adding "the Oakland Hills fire in parentheses after the date is confusing. In 2009, does it matter why the date was October 20, 1991 if it confuses the issue?"	Accept Identifying the specific disaster explains why this date was chosen.
121	134	8	San Luis Obispo County Assessor's Office (Edginton)	Revise sentence: The owner must provide satisfactory evidence to the county assessor that he or she did not participate in any act or omission that resulted in the contamination or that he or she is <u>not</u> related to an individual or entity that caused the property to be contaminated. The county assessor is not bound by the findings of the lead government agency in determining whether this presumption has been overcome.	Accept
122			Marin County Assessor's Office (Witt)	Comment: We would like information on the sale of golf club memberships and possible reassessments to be included in the handbook. This was a topic in our recent Chief's conference and many of the golf clubs throughout the state have very old base year values even though they regularly sell and resell memberships. I could not find a reference as to how these should be treated and what the reporting requirements are when the memberships change ownership. Are these treated like legal entities?	No alternative text provided – to be included in new AH 515, the golf course handbook Discussion item
123			Marin County Assessor's Office (Witt)	Comment: Add discussion regarding when an easement becomes a lot-line adjustment and a change in ownership of the interest in the deed. We receive deeds that are called "easement deeds" however the terms of the easement are actually a permanent transfer (lot line adjustment). The "easement" deed is used rather than going through the formal process to get approval from the governing agency for a lot line adjustment.	No alternative text provided – discussed in AH 501, Ch. 3, and AH 502, Ch. 1. See annotation 220.0162 Discussion item

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE	SBE STAFF POSITION
124		Marin County Assessor's Office (Witt)	Comment: Security Interest Deeds - what steps do we take to differentiate a security interest vs. a transfer of title interest in the property?	No alternative text provided – See Annotations 220.0354, 220.0570, 220.0645 - 220.0649 Discussion item
125		Marin County Assessor's Office (Benson)	Comment: “Shared Equity Loans” and “Shared Appreciation Mortgages” are financing arrangements in which the lender obtains an equity share on the deed. Can some discussion of this topic be included in the handbook?	No alternative text provided – See annotation 220.0185 Discussion item
126		Richard Benson, Marin County	Comment: Can a discussion regarding changes in ownership of club memberships; ex. golf clubs, yacht clubs, hunting clubs, etc. be included?	No alternative text provided – See annotations 220.0334, 220.0437 Discussion item

ELIGIBLE TRANSFERORS AND TRANSFEREES

Only a transfer between an eligible transferor and an eligible transferee qualifies for an exclusion under section 63.1.¹ An *eligible transferor* is a grandparent, parent, or child of an eligible transferee.² An *eligible transferee* is a parent, child, or grandchild of an eligible transferor.³

Article XIII A, section 2, subdivision (h) of the California Constitution delegates to the Legislature the task of defining the terms *parent*, *child*, *grandparent*, and *grandchild*. The terms *parent* and *grandparent* are not specifically defined by statute. Rather, the eligible relationships are defined with respect to *children* and *grandchildren*.

CHILDREN

Section 63.1(c) defines *children* as any of the following:

1. Any child born of the parent or parents, except a child who has been adopted by the age of 18 by another person or persons.
2. Any stepchild or spouse of that stepchild while the relationship of stepparent and stepchild exists, which means until the marriage on which the relationship is based is terminated by divorce or, if terminated by death, until the remarriage of the surviving stepparent.
3. Any son-in-law or daughter-in-law of the parent(s) while the in-law relationship exists, which means until the marriage on which the relationship is based is terminated by divorce, or, if terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law. As of January 1, 2005, an in-law child includes a registered domestic partner. Conversely, a registered domestic partner is a parent to a partner's child.
4. Any child statutorily adopted by the parent(s) by the age of 18.
5. Any foster child of a state-licensed foster parent if that child was not, because of a legal barrier, adopted by the foster parent before the child aged out of the foster care system.

An *adopted* child is a child who was formally adopted pursuant to procedures in the Family Code before reaching the age of 18. This does not include a child who is treated as a child for probate purposes under the doctrine of equitable adoption.⁴

GRANDCHILD [Move from page 81]

Grandchild is defined as any child of the child of the grandparent or grandparents.⁵

¹ Section 63.1(a).

² Section 63.1(c)(6).

³ Section 63.1(c)(7).

⁴ Established through case law, the doctrine of equitable adoption allows a person who was accepted and treated as a natural child, and to whom adoption was promised or contemplated but never performed, to share in the inheritance of the foster parents' property. *Estate of Ford*, 32 Cal.4th 160.

1 For transfers made between March 27, 1996 and January 1, 2006, the grandparent-grandchild
2 exclusion is only available if *all* of the parents of the grandchild or grandchildren, who were the
3 children of the grandparents, were deceased as of the date of transfer.⁶ [As of January 1, 2005, an](#)
4 [in-law child includes a registered domestic partner. Conversely, a registered domestic partner is a](#)
5 [parent to a partner's child.](#)

6 For transfers made on or after January 1, 2006, however, a son-in-law or daughter-in-law of the
7 grandparent who is a stepparent to that grandchild need not be deceased as of the date of
8 transfer.⁷ In addition, these stepparents still remain eligible for the parent-child exclusion as they
9 are parents of the stepchildren and in-law children of the grandparents.⁸

10 For a transfer to qualify for the grandparent-grandchild exclusion, both parents of the grandchild
11 must be deceased or no longer qualify as a child of the grandparents at the time of the transfer
12 (with the exception mentioned above where only a stepparent is living). As a consequence, even
13 if a living parent disclaims any interest in the grandparent's property, the transfer of real property
14 between a grandparent and a grandchild will not qualify for the exclusion.

15 A *disclaimer* is a writing which declines, refuses, renounces, or disclaims any interest that would
16 otherwise be taken by a beneficiary.⁹ A properly executed and filed disclaimer results in the
17 interest disclaimed descending and being distributed as though the disclaimant had predeceased
18 the creator of the interest. However, being treated as deceased and being deceased are not the
19 same. Accordingly, for purposes of the grandparent-grandchild exclusion, the parent must
20 actually be deceased prior to the transfer in order for the transfer of real property from the
21 grandparent to the grandchild to qualify for exclusion.

22 **Registered Domestic Partnerships**

23 Transfers of real property on or after January 1, 2005 between parents and their child and that
24 child's registered domestic partner are eligible for the parent-child exclusion. Effective
25 January 1, 2005, Family Code section 297.5(a) provides that registered domestic partners have
26 the same rights, protections, and benefits and are subject to the same responsibilities, obligations,
27 and duties under law, whether they derive from statutes, administrative regulations, court rules,
28 government policies, common law, or any other provisions or sources of law, as are granted to
29 and imposed upon spouses. This section goes on to state in subdivision (j) that it does not amend
30 or modify any provision of the California Constitution or any provision of any statute that was
31 adopted by initiative.

32 Thus, registered domestic partners are not eligible for any property tax exclusion based on an
33 aspect of a spousal or marital relationship for which the terms *spouse* and *marriage* are defined
34 by constitutional provision or by statute adopted by initiative. However, since the definition of

⁵ Section 63.1(c)(4).

⁶ Section 63.1(a)(3)(A).

⁷ Section 63.1(a)(3)(A).

⁸ Section 63.1(c)(3)(B) and (3)(C).

⁹ Probate Code section 265

1 *child* in section 63.1 was enacted by the Legislature and not by a ballot initiative or constitutional
 2 provision, Family Code section 297.5 controls the definition of "children" in terms of the rights
 3 of registered domestic partners. Thus, beginning January 1, 2005, any relationship between
 4 parents and children established by registered domestic partnership is accorded the same
 5 treatment as if established by marriage for purposes of the parent-child exclusion.

6 Moreover, since Family Code section 297.5(d), recognizes that registered domestic partners have
 7 the same rights and obligations as spouses with respect to a child of either of them, the
 8 parent-child exclusion should also apply to transfers from a registered domestic partner to a child
 9 of that person's partner.

10 **GRANDCHILD** [move to page 80]

11 ~~*Grandchild* is defined as any child of the child of the grandparent or grandparents.¹⁰~~

12 ~~For transfers made between March 27, 1996 and January 1, 2006, the grandparent grandchild~~
 13 ~~exclusion is only available if *all* of the parents of the grandchild or grandchildren, who were the~~
 14 ~~children of the grandparents, were deceased as of the date of transfer.¹¹~~

15 ~~For transfers made on or after January 1, 2006, however, a son-in-law or daughter-in-law of the~~
 16 ~~grandparent who is a stepparent to that grandchild need not be deceased as of the date of~~
 17 ~~transfer.¹² In addition, these stepparents still remain eligible for the parent-child exclusion as they~~
 18 ~~are parents of the stepchildren and in-law children of the grandparents.¹³~~

19 ~~For a transfer to qualify for the grandparent grandchild exclusion, both parents of the grandchild~~
 20 ~~must be deceased or no longer qualify as a child of the grandparents at the time of the transfer~~
 21 ~~(with the exception mentioned above where only a stepparent is living). As a consequence, even~~
 22 ~~if a living parent disclaims any interest in the grandparent's property, the transfer of real property~~
 23 ~~between a grandparent and a grandchild will not qualify for the exclusion.~~

24 ~~A *disclaimer* is a writing which declines, refuses, renounces, or disclaims any interest that would~~
 25 ~~otherwise be taken by a beneficiary.¹⁴ A properly executed and filed disclaimer results in the~~
 26 ~~interest disclaimed descending and being distributed as though the disclaimant had predeceased~~
 27 ~~the creator of the interest. However, being treated as deceased and being deceased are not the~~
 28 ~~same. Accordingly, for purposes of the grandparent grandchild exclusion, the parent must~~
 29 ~~actually be deceased prior to the transfer in order for the transfer of real property from the~~
 30 ~~grandparent to the grandchild to qualify for exclusion.~~

31

¹⁰ Section 63.1(c)(4).

¹¹ Section 63.1(a)(3)(A).

¹² Section 63.1(a)(3)(A).

¹³ Section 63.1(c)(3)(B) and (3)(C).

¹⁴ Probate Code section 265