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November 7, 1991

Mr. Charles Cliburn
Mendocino County Assessor
Courthouse, Room 102
Ukiah, CA 95482

Dear Mr. Cliburn:

This is in response to your October 24, 1991, letter to Mr. Richard Ochsner wherein you inquired concerning the change-in-ownership consequences of the following events:

1. Owner of real property executes but does not deliver a joint tenancy deed conveying title to the property to himself and another (1982).
2. Owner, while hospitalized, executes a grant deed to the property to the same other person (1982 also).
3. Joint tenancy deed recorded (1982).
4. Grant deed recorded (1986).
5. Property reappraised as a result of recordation of grant deed (1986).
6. Owner files complaint to cancel deeds and to quiet title in property (1986).
7. Superior Court Judge enters judgment cancelling deeds and quieting title in owner (1991).

As you are aware, the creation of a joint tenancy by an owner of property who remains as owner/joint tenant of the property after the creation of the joint tenancy does not give rise to reappraisal of the property. Thus, it is the 1982 grant deed, its 1986 recordation, and its 1991 cancellation that are of import to your inquiry.

According to the owner, he executed the grant deed while under the influence of shock and medication. The Judge concluded the deed was executed while the owner had insufficient mental capacity to understand the nature and effect of the deed and while he was under undue influence, and the Judge canceled the deed, as indicated.

In instances such as this, it has been our opinion that a change in ownership occurs upon the execution of the grant deed; that the property is reassessed and continues to be assessed at the reassessed value, plus appropriate inflation adjustments, until the deed is cancelled; that no refund in taxes should be made for the years the deed was in effect; and that upon the cancellation of the deed and the return of title to the owner, the property reverts back to its previous base year value and should be enrolled at such value plus the appropriate inflation adjustment as of the date of judgement for cancellation. See Staff Counsel Margaret S. Shedd's December 9, 1983, letter in the regards, copy enclosed. As indicated therein, the bases for her conclusions are that deeds that are voidable pass title, subject to being set aside in appropriate proceedings for specific, recognized reasons, one of which is undue influence. Until set aside, such deed are operative.

Very truly yours,

James K. McManigal, Jr.
Senior Tax Counsel

JKM:jd
4207H

Enclosure

cc: Mr. Richard H. Ochsner
Mr. John W. Hagerty
Mr. Verne Walton
Mr. Dick Johnson

(916) 323-7712

December 9, 1983

Dear (REDACTED):

This is in response to our telephone conversation and the documents sent by Mr. W (REDACTED), Deputy County Counsel of Humboldt County in the case of Dixon v. Wright. In that case, Judge J. Michael Brown adjudged and decreed that (1) the deed executed on August 1, 1977, which conveyed real property from C (REDACTED) to T W (REDACTED) and M W (REDACTED) be cancelled and set aside, and (2) the title to the property be vested in S (REDACTED), Conservator of the Person and Estate of C (REDACTED). The Judgement was signed, filed and recorded in August 1983. In his Memorandum of Tentative Decision, Judge Brown found that the conveyance by C (REDACTED) to the W's (REDACTED) was the result of undue influence.

As a general rule, deeds that are voidable pass title, subject to being set aside in appropriate proceedings for reasons which include undue influence (Cox v. Schnerr (1916) 172 Cal. 371; see generally Civil Code, sections 1566-1579, 1689). Accordingly, it is our opinion that a change in ownership occurred when the grant deed was executed by C (REDACTED) conveying the property to the W's (REDACTED) in 1977. In the interim period from August 1977 to August 1983, the date the deed was cancelled, the deed was in effect and no refund of taxes should be made. It is our opinion, however, that upon the cancellation of the deed and conveyance of title to C (REDACTED)'s conservator there was no change in ownership and that the property reverts back to its previous base year value and should be enrolled at such value (plus the appropriate inflation adjustment) as of the date of judgement for cancellation.

I trust the foregoing is responsive to your inquiry. If we may be further assistance to you in this matter, please do not hesitate to contact this office.

Very truly yours,

Margaret S. Shedd
Tax Counsel

MSS: jlh
3539D