

Memorandum



220.0306

To : Mr. Arnold Fong

Date : May 15, 1987

From : Barbara G. Elbrecht

Subject: Grant Deeds - County

This is in response to your memorandum of January 30, 1987, which was recently referred to me. Attached to your memorandum were two grant deeds. The first grant deed, dated April 23, 1984, recites that Robin and Barbara , his wife, grant certain real property to Robin and Barbara , his wife, and Susan , an unmarried woman, as joint tenants. On the second grant deed, dated January 9, 1987, Robin and Barbara , his wife, and Susan , an unmarried woman, as joint tenants, grant the same real property to Robin and Barbara , his wife, and Susan , an unmarried woman, as community property. Since the second grant deed recites that the three grantees, a husband, his wife and an unmarried woman, have taken the property as community property, you have asked how we should evaluate the second deed for change in ownership purposes.

ANALYSIS

Transfer No. 1

Section 60 of the Revenue and Taxation Code (all section references contained herein are to the Revenue and Taxation Code unless otherwise specified) states that:

A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Section 65 deals with the transfer of joint tenancy interests and states, in pertinent part:

(a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change

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in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.

(b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transfer in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants.

The statutory provisions have been interpreted by subdivision (c) of property tax Rule 462. That rule provides, in pertinent part:

(1) Except as is otherwise provided in subdivision (2), the creation, transfer, or termination of a joint tenancy interest is a change in ownership of the interest transferred.

* * *

(2) Exclusions:

(A) The transfer creates or transfers any joint tenancy interest and after such creation or transfer, the transferor(s) is one of the joint tenants.

Such transferor(s) who is also a transferee(s) in this situation is considered to be an "original transferor" for purposes of determining the property to be reappraised upon subsequent transfers. A spouse of an original transferor shall also be considered to be an original transferor. All other initial and subsequent joint tenants are considered to be "other than original transferors".

Example: C and D, as joint tenants, transfer to C, D, E, and F, as joint tenants. No change in ownership because C and D, the transferors, are included among the transferees and are, therefore, "original transferors". (E and F are "other than original transferors".

(B) The transfer terminates an original transferor's interest in a joint tenancy described in (A) and the interest vests in whole or in part in the remaining original transferor(s). For the 1980-81 assessment year and thereafter, any original transferor's interest which was previously reappraised under Section 65(a)(1) of the Revenue and Taxation Code in effect prior to September 26, 1980, shall be reversed if it does not constitute a change in ownership in accordance with the subdivision.

Example: Following the example set forth in (a) (above), C dies or grants his interest to the remaining joint tenants, D, E, and F. No change in ownership because D, an original transferor, remains as a joint tenant.

Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interest in the property held by all transferors.

(C) The transfer terminates a joint tenancy interest held by other than an original transferor in a joint tenancy described in (A) and the interest is transferred either:

(i) to an original transferor(s), or

(ii) to all the remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

Examples: Following the examples set forth in (B) (above), E, not an original transferor, grants his interest to D and F. No change in ownership because E grants to the remaining joint tenants, D and F, and D is an original transferor.

(D) For other than joint tenancies described in (A), the transfer is between or among co-owners and results in a change in the method of holding title but does not result in a change in the proportional interests of the co-owners, such as:

- (i) a transfer terminating the joint tenancy to separate ownerships of the property in equal interests.
- (ii) a transfer terminating the joint tenancy and creating a tenancy in common of equal interest.
- (iii) a transfer terminating a joint tenancy to a legal entity when the interests of the transferors and transferees remain the same after the transfer. (Such transferees shall be considered to be the "original co-owners" for purposes of determining whether a change in ownership occurs upon the subsequent transfer(s) of the ownership interests in the property.)

Under these codes and rule provisions, the transfer of the real property from Robin and Barbara to Robin, Barbara and Susan as joint tenants is not a change in ownership because the transfer created a joint tenancy interest and after such creation, the transferors, Robin and Barbara, were among the joint tenants.

Transfer No. 2

In the second transfer, Robin, Barbara and Susan as joint tenants transfer to Robin and Barbara, his wife, and Susan, an unmarried woman, as community property.

Community property is defined by Section 678 of the Civil Code as "property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either" husband or wife. Under this definition, property can only be characterized as community property if it is acquired by a husband and wife during their marriage. Therefore, Susan, an unmarried woman, cannot take title to property as community property since she is not part of the marital community. Susan's inability to take title to the property as community property raises the issue of how to construe the language of the second grant deed.

In construing the language of a deed, the primary purpose of such an interpretation is to ascertain and give effect to the intent of the parties (Mammoth Gold Dredging Co. v. Forbes

(1940) 39 Cal.App.2d 739, 746; Palos Verdes Corp. v. Housing Authority (1962) 202 Cal.App.2d 829, 835). The intention of the parties is to be determined, if at all possible, from a proper construction of the language found in the conveyance itself (Palos Verdes Corp. v. Housing Authority, supra, at p. 835).

In view of the fact that Robin and Barbara are husband and wife and that they, as well as Susan, are both grantors and grantees on the second deed, a logical interpretation of this grant is that Robin and Barbara each intended to transmute his or her interest in the real property from a joint tenancy interest into a community property interest. Therefore, the second grant can be interpreted to read: from Robin and Barbara, his wife, and Susan, as joint tenants, to Robin and Barbara, his wife, as community property, and to Susan, an unmarried woman.

This interpretation of the second grant leaves the nature of Susan's interest undetermined. Section 686 of the Civil Code states that:

Every interests created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interests, as provided in Section 683, or unless acquired as community property.

Since the second deed creating the interest in Susan did not indicate that Susan's interest was a joint tenancy or an interest in partnership, and since it could not be a community interest, under Section 686 the interest created must be considered to be a tenancy in common.

Section 65 indicates that the termination of a joint tenancy interest is a change in ownership, unless one of the exclusions provided by statute applies. Although the creation by the first deed of Susan's joint tenancy interest did not result in a change in ownership because the transferors were among the joint tenants (Section 65(b)), the termination of that same interest constitutes a change in ownership of the 33 1/3 percent interest transferred.

The exclusion provided by Section 65(c) to the termination of a joint tenancy interest which vests in the original transferors excepts the transfer of Robin and Barbara's interest from joint tenancy to community property from the change in ownership provisions.

Mr. Arnold Fong

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In summary, the termination of Susan's interest in joint tenancy results in a reappraisable transfer of a 33 1/3 percent interest in the property. None of the other transfers constitute a change in ownership.

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'cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Verne Walton

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