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December 5, 2000

Honorable John H. Scott, MAI, Assessor
County of Alameda
County Administration Building
1221 Oak Street
Oakland, CA 94612-4288

Attn: Irene M. Hagebusch, Assessment Roll Supervisor

**Re: *Request for Legal Opinion - Change in Ownership Consequences of Transfer to
– Rule 462.200(a)***

Dear Mr. Scott,

This is in reply to your letter of October 17, 2000 in which you request our opinion concerning the change in ownership consequences of a transaction in which and (“Mr. and Mrs. S”) made a grant deed transfer of their residential property to the (“Cooperative”) and the Cooperative then entered into a land sale contract for sale of the property back to Mr. and Mrs. S. As the documents enclosed with your letter indicate, the parties entered into this particular transaction because Mr. and Mrs. S’s religious beliefs prohibit them from financing the purchase of the property by means of a conventional interest-bearing loan.

As explained below, on the face of the documents, the grant deed from Mr. and Mrs. S to the Cooperative and the land Contract secured by Deed of Trust between the parties are both rebuttably presumed to transfer the present beneficial interest in the property to the Cooperative and, thereby, result in changes in ownership of the property. However, pursuant to Property Tax Rule 462.200(a), the presumption may be rebutted if, in the assessor’s judgment, the evidence presented demonstrates that Mr. and Mrs. S retained the beneficial interest in the property, and the grant deed transferred mere legal title to the Cooperative as part of a security transaction.

Summary of Relevant Facts

Mr. and Mrs. S took title to the subject property by grant deed dated October 17, 1996 and financed the purchase of the property with a loan from the Bank of America secured by a deed of trust held by the lender. Mr. S subsequently discovered that the tenets of his religion, Islam, prohibited him from being obligated on the loan because the terms of the loan required the payment of interest. For that reason, he joined the Cooperative in order to finance the purchase of the property by means of an interest-free loan and land sale contract.

Mr. and Mrs. S transferred the property to the Cooperative by grant deed dated December 21, 1999 and on or about the same date entered into a "Land Contract Secured by a Deed of Trust" for the sale of the property from the Cooperative to themselves. The Contract has an addendum called the Housing Agreement "which recites in relevant part that the Cooperative has agreed to buy the home chosen by Mr. and Mrs. S and to rent the home to Mr. and Mrs. S pursuant to a separate rental agreement. The Housing Agreement further recites that it is the intent of both parties that the Cooperative will convey the home to Mr. and Mrs. S if they comply with their obligations under both agreements. Their main obligation is to repay the loan extended to them by the Cooperative in the amount of \$172,500 (payable in installments of \$1,950.00 per month).

Law and Analysis

The law generally presumes that a grant deed transfers both legal and equitable title to the property conveyed by the deed. Specifically, Civil Code section 1105 provides "A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended." The presumption of fee simple title is rebuttable and that may be overcome by evidence sufficient to meet the statutory evidentiary legal standard. In this regard, Evidence Code section 662 provides that "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

For purposes of a change in ownership determination resulting from a deed transfer, Property Tax Rule 462.200, subdivision (a) incorporates the foregoing legal standards and sets forth factors for consideration to evaluate whether the presumption has been rebutted by showing that the transaction is a transfer of a security rather than a conveyance of fee simple title. That subdivision provides, in relevant part, that

There are transactions that may be interpreted to be either a conveyance of the property or a mere security interest, therein, depending on the facts. There is a rebuttable presumption under Civil Code section 1105 and Evidence Code section 662 that a grant of title to real property is a transfer of a present interest in the real property, including the beneficial use thereof; equal to a fee interest. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

The existence of a debt or promise to pay.

(4) The grantor remaining in possession with the right to reconveyance on the payment of the debt; and

(5) A written agreement between the parties to reconvey the property upon the payment of the debt.

Although this is a question of fact in each case, by applying the foregoing factors to the terms of the transaction between Mr. and Mrs. S and the Cooperative, the assessor may conclude that Mr. and Mrs. S retained the beneficial interest in the property and that the deed transferred

only legal title to the Cooperative. Mr. and Mrs. S transferred the property by grant deed dated December 21, 1999 to the Cooperative, and on the same date executed the Land Contract Secured by Deed of Trust and entered into the Housing Agreement. The Land Contract recites that the Vendee, Mr. and Mrs. S, promise to pay the purchase price of \$172,500 to the Vendor, the Cooperative, under the terms stated therein. Furthermore, the Housing Agreement provides that Purchaser, Mr. and Mrs. S, acknowledges that the Cooperative has loaned them \$172,500 to purchase the subject property. Thus, the first factor, the existence of a debt or promise to pay, has been established in these documents according to the foregoing provisions.

According to Mr. S's letter to your office dated July 5, 2000, Mr. and Mrs. S did not relinquish possession when the grant deed conveyance was made to the Cooperative in December 1999; they have continued to live in the home since October 1996. In addition, the Housing Agreement recites, on page 1, and the Land Contract Secured by the Deed of Trust states on page 5 (item (a)) that the title to the property shall be re-conveyed to Mr. and Mrs. S, by the Cooperative, if Mr. and Mrs. S comply with their obligations under the provisions of the Housing Agreement and the rental agreement. Therefore, the evidence presented supports the second factor cited above, that is, the grantor has remained in possession with the right to reconveyance upon the payment of the debt.

With respect to the last factor cited above, the Land Contract, on page 2, item (6), provides that Upon payment to Vendor of all sums due to Vendor under the terms of this Agreement and the Deed of Trust securing performance thereof, Vendor shall upon the request of Vendee cause to be delivered to Vendee a Grant Deed and shall cause any and all liens affecting said property to be released or discharged of record save such liens which are attributable to or result from claims against Vendee or which the Vendee by the terms hereof has assumed or agreed to take title subject thereto.

Thus, the Land Contract constitutes a written agreement between the parties to reconvey the property upon the payment of the debt. Read together, all of the documents, the Grant Deed, the Land Contract, and the Housing Agreement, appear to support a conclusion that Mr. and Mrs. S and the Cooperative entered into a security transaction, rather than a true conveyance of beneficial interest to the Cooperative.

To summarize the foregoing application of Rule 462.200, subdivision (a) to the facts presented: The Cooperative made a loan to Mr. and Mrs. S for the purchase of the property which they promised to repay under the terms of the Housing Agreement and the Land Contract. Mr. and Mrs. S remained in possession of the property after the grant deed conveyance to the Cooperative. A written agreement between the parties, the Land Contract, provides that Mr. and Mrs. S have a right to reconveyance of the property upon repayment of the debt. Based on consideration of such evidence, it is our view that an assessor could conclude that Mr. and Mrs. S retained the beneficial interest in the property and that, therefore, the grant deed transfer did not result in a change in ownership, but merely gave the Cooperative a security interest in their property.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Honorable John H. Scott
December 5, 2000
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Very truly yours,

/s/ Louis Ambrose

Louis Ambrose
Tax Counsel

LA:tr
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cc: Mr. Dick Johnson, MIC: 63
Mr. David Gau, MCI: 64
Mr. Charlie Knudsen, MIC:61
Ms. Jennifer Willis, MIC: 70