

**ALTERNATIVE LANGUAGE/COMMENTS  
CHANGE IN OWNERSHIP – RESCISSION  
December 18, 2018 Interested Parties Meeting**

<b>NO.</b>	<b>PAGE/LINE REFERENCE</b>	<b>SOURCE</b>	<b>PROPOSED LANGUAGE/COMMENTS</b>	<b>BOE STAFF POSITION</b>
1	2	1-2 Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<b>Add subtitle:</b> Add a subtitle such as "Summary" to match the other subtitles.	Not accepted – a subtitle is not appropriate at the beginning of a letter.
2	2	2 Plumas County Assessor Chuck Leonhardt (CAA President)	<p><b>Add summary:</b> Begin the letter with a "Summary" of the change in ownership ramifications of a rescission:</p> <p>In Assessors' Handbook section 401, <i>Change in Ownership</i>, when a county assessor recognizes the rescission of a transfer, the transferor's name is laced 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 because of rescission is not subject to supplemental assessment.</p> <p>This would serve the dual role of confirming the information in AH 401 on Rescinded Transfers has not changed, and providing a change in ownership synopsis for quick reference at the beginning of the letter.</p> <p><b>BOE Rewrite:</b></p> <p>This letter summarizes the various written opinions by the State Board of Equalization's Legal Department<sup>FN1</sup> that address a property owner's ability to rescind a recorded deed that triggered a reassessable change in ownership, and the property tax effect of such a rescission.<sup>FN2</sup></p> <p><sup>FN1</sup> Property Tax Annotations 220.0595, et seq.</p> <p><sup>FN2</sup> Assessors' Handbook Section 401, Change in Ownership (September 2010), Chapter 1, regarding Rescinded Transfers.</p>	See BOE Rewrite and Item 22.

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3	2      4-5	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p><b>Add paragraph:</b> Add language same as or similar to Page 6 Lines 9 through 13. This is good information to have in a Summary at the beginning of the document.</p> <p>See also Item 12 below. We recommend adding a reference to and perhaps content from the discussion of Rescinded Transfers from the Assessors' Handbook section 401, <i>Change In Ownership</i>, on page 10 in the Summary portion of the LTA on Rescissions.</p> <p>Suggested Alternative Text (from Page 6 Lines 9 – 13):</p> <p><u>Once a transfer of real property is rescinded and the parties are placed in the same position they were in before the contract was executed, the value of the real property reverts to its previous adjusted base year value prior to the transfer. However, the liabilities established while the contract was in existence are not extinguished. Therefore, placing the parties in the position they held before the transfer will not result in a refund of taxes paid while the contract was in effect.</u></p>	Not accepted – the LTA is itself a summary.
4	2      5	Plumas County Assessor Chuck Leonhardt (CAA President)	<p><b>Add heading:</b> The following four paragraphs might be given the heading: <i>Legal Background</i></p> <p><b>BOE Rewrite:</b> Add heading "Background."</p> <p><b>Background</b></p> <p>A grant or quitclaim deed is a written instrument conveying or transferring title to real property; it is an executed conveyance and operates as a present transfer of the real property. ...</p>	See BOE Rewrite.
5	2      9	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p><b>Delete Word:</b> Delete the word 'a' at the end of Line 9. Suggested Alternative Text:</p> <p><u>... subject to all rules of law concerning contracts in general; except that consideration is not necessary to its validity.</u></p>	Accepted.

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6	2      14-23	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p><b>Move Content:</b> Move the content of Lines 14 – 23 ["Civil Code section 1688 provides that a contract is extinguished...should return each other to the position they were in prior to the execution of that contract."] and place it below Line 24 under Agreement Between Parties subtitle, so that the content above "Agreement Between Parties" subtitle remains a Summary.</p> <p><b>BOE Rewrite:</b> Move heading:</p> <p><b><u>Agreement Between Parties</u></b></p> <p>Civil Code section 1688 provides that a contract is extinguished by its rescission. A contract may be rescinded either mutually if all the parties consent, or unilaterally under certain circumstances. Upon rescission, "the contract becomes a nullity; it and each of its terms and provisions cease to be subsisting or enforceable against the other party."<sup>1</sup> Section 1691 explicitly requires the restoration of the parties to the <del>status quo position they were in prior to the execution of the contract</del> for unilateral rescission. Although the Civil Code contains no similar explicit requirement for mutual rescission, case law is supportive of a requirement to return the parties to the <del>status quo position they were in prior to the execution of the contract</del> for mutual rescission.<sup>2</sup> Also, since a mutual rescission has the effect of nullifying the contract, it follows that the parties to an executed contract should return each other to the position they were in prior to the execution of that contract.</p> <p><b><u>Agreement Between Parties</u></b></p> <p><del>As noted above, a</del> contract may be rescinded <i>mutually</i> under section 1689(a) if all the parties consent and if all parties are restored to their original position prior to the execution of the contract. ...</p>	<p>See BOE Rewrite.</p> <p>(See Item 7 for "status quo")</p>

<sup>1</sup> *Scollan v. Government Employees Ins. Co.* (1963) 222 Cal.App.2d 181, 183.

<sup>2</sup> See, for example, *Green v. Darling* (1925) 73 Cal.App. 700, 704 ("If the minds of the parties met on the proposition that they would rescind, it was not necessary that the defendant stipulate to return to the plaintiff the money which he had received, for the law requires him to do this as a consequence of having agreed that the contract be abrogated"); *Dugan v. Phillips* (1926) 77 Cal.App. 268, 278 ("upon a mutual rescission of a contract the law requires each party to restore whatever he has received under it"); *Larsen v. Johannes* (1970) 7 Cal.App.3d 491, 503 ("without rescission, and restoration of benefits received, a party may not avoid such a contract").

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7	2	18, 20  Plumas County Assessor Chuck Leonhardt (CAA President)	<b>Replace Term:</b> Remove the term "status quo" from the letter and replace it with "position they were in prior to the execution of the contract."  "Status quo" does not appear to be an accurate term in this context.  <b>BOE Comment:</b>  The phrase "position they were in prior to the execution of the contract" will replace "status quo" throughout the LTA except where "status quo" is defined and in the heading "Restoration of Status Quo: Rescission or New Contract?"	Accepted – see BOE Comment.
8	3	10  Turner Law (Greg Turner)	Reasonable Time / Accepting of Benefits  <i>See Attachment A</i>	No alternative language provided; discussion item.
9	4	20  Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	Comment: Reconsider or more clearly define and explain the use of the term "status quo" in the context this document. The term "status quo" means 'existing state of affairs'. A rescission, by contrast, is attempting to go back to a pre-existing state of affairs.  We are concerned that the use of the term "status quo" may invite the interpretation that the intervening tax bills should actually be cancelled, possibly supplementally.  Locations of the term "status quo" occur in several other places throughout the draft LTA document.	See Item 7.
10	4	20, 36, 39  Plumas County Assessor Chuck Leonhardt (CAA President)	<b>Remove term:</b> Remove the term "status quo" from the letter and replace it with "position they were in prior to the execution of the contract."  "Status quo" does not appear to be an accurate term in this context.	See Item 7.
11	4	20  Turner Law (Greg Turner)	Rescission by Mutual Consent: A Return to Status Quo  <i>See Attachment B</i>	No alternative language provided; discussion item.

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12	4	Plumas County Assessor Chuck Leonhardt (CAA President)	<p>The letter states, "Civil Code section 1691 also requires the party requesting rescission to 'restore to the other party everything of value which he has received from him <u>under the contract</u> or offer to restore the same upon condition that the other party do likewise.' "</p> <p>For assessment purposes the contract is the recorded deed, and in a large number of cases, there is no money changing hands. From this we could infer the value is not monetary, but intangible. It might be for better liability protection (non-proportional transfer into a legal entity), for estate planning (severing an original transferor in a joint tenancy), for family reasons (removing or adding a sibling), etc. Would the recording of a deed back to the title held prior to the execution of the original deed necessarily prove that everything had been restored, including the intangible "value"?</p> <p>Suppose that A grants to A and B and joint tenants, so A is an original transferor. Ten years later, B grants to B's Trust. B then wants to rescind the transfer by deeding back to him/herself as a joint tenant with A. How does A retain original transferor status again? Would A of Trustee of A's Trust deed back to A as a joint tenant with B? (Joint tenancy with a cotenant cannot be created unilaterally, unless the Trust deeded to A and B as joint tenants, which would then create a new joint tenancy only in B's 50% interest.)</p>	No alternative language provided; discussion item.
13	4	Plumas County Assessor Chuck Leonhardt (CAA President)	<p>The letter states, "Thus, if the rescission agreement includes terms different from a return to the status quo, a question may arise as to whether a rescission or a new contract was effected."</p> <p>Does this mean that all valid rescissions must have a written agreement regarding the terms so the Assessor can determine whether there has been a new contract effected? If there is no written agreement, would the Assessor be justified in determining there was no valid rescission?</p>	No alternative language provided; discussion item.

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14	4	36-41	Turner Law (Greg Turner)  The section of the LTA entitled "Restoration of Status Quo: Rescission or New Contract" implies that a rescission by mutual consent that does not return the parties to their "status quo" (their original positions) constitutes a new contract. While an agreement to transfer property back to the former owner may in certain circumstances constitute a new contract for the sale of the property, <i>Aderholt</i> makes clear that a mutual rescission can occur absent a restoration to status quo. This is because an agreement to rescind is an agreement in and of itself, the terms of the agreement will control whether it is a new contract (which must necessarily preserve the vitality of the initial agreement) or one of rescission (where the parties express a desire to vitiate their rights and obligations under the initial agreement). While appropriate to direct Assessors to consider whether an agreement constitutes a rescission or a new contract for the sale of the property, the LTA implies that a rescission by mutual consent that does not return the parties to their status quo (their original positions) is <i>ipso facto</i> a new contract for a buyback of the same property. Adding restoration to a prior status quo is an arbitrary condition that is not supported by the statute or the case law, and the LTA should be revised accordingly.	No alternative language provided; discussion item.
15	5	9-10, 15, 23, 25-26	Turner Law (Greg Turner)  In several places the LTA references the nature and implications of rescission "for property tax purposes." (See ex., pg. 5, ln. 9-10, ln. 25-26). While perhaps this language is not intended to imply a divergence between contract law and property tax law, it could be interpreted otherwise and therefore should be revised. Whether or not a valid a rescission occurs is a matter of contract law. When a valid rescission occurs as a matter of contractual law, there are no separate or unique rules that apply in order to determine whether the rescission is also valid for property tax purposes. Certainly, when presented with a rescission claim the Assessor has the obligation to determine whether a rescission has in fact occurred, at least where there is no court order deeming it so. However, if the circumstances supporting a valid contractual rescission are present, the rescission is valid in every respect as to the rights of the parties in regard to that contract. The LTA seems to imply that there might exist a circumstance in which a contract of sale is rescinded for one purpose but not another, which would be in error.	No alternative language provided; discussion item.
16	5	11-21	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)  Comment: This part is really hard to follow, see questions in item 17 below.	No alternate language provided. See Item 17.

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17	5      22-27	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: We really struggled with this part.</p> <p>Questions: How are a sham and a valid rescission different from each other? The included reference to Fashion Valley Mall (FVM) court case, without further explanation or an example, does not totally clarify the point in our minds.</p> <p>What does a valid rescission effected solely to achieve certain property tax consequences look like in real life? What kind of components added or not added to the contract will turn a valid rescission into a "sham"?</p> <p>Request: Is it possible to put a bit more information from the FVM case to help clarify, or perhaps even better from a staff perspective, compose an A – B – C scenario based on FVM to illustrate a situation where the rescission was not valid and they don't get their prior base value back at all?</p>	No alternative language provided; discussion item.
18	5      17	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p><b>Insert Word:</b> Insert the word 'reformation' before the word 'transaction' so it reads: The court considered the <u>reformation</u> transaction to be a "sham" and "a mere fiction" that "cannot be given effect for the purposes of determining . . . property tax liability."</p> <p><b>BOE Rewrite:</b></p> <p>For example, although the Civil Code provisions governing rescission were not specifically at issue, in <i>Fashion Valley Mall v. County of San Diego</i> (2009) 176 Cal.App.4th 871, the parties to a contract involving a transfer of real property attempted to effect a "reformation" of the agreement that was operative ". . . solely for property taxes." The parties specified that the contract, while "reformed" for property tax purposes, would remain in full force and effect for all other purposes, including income tax and securities purposes and commercial and real estate activities. The court considered the <u>transaction-reformed agreement</u> to be a "sham" and "a mere fiction" that "cannot be given effect for the purposes of determining . . . property tax liability."</p>	See BOE Rewrite.

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19	5      34-39	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p><b>Revise Sentence:</b> Starting on Line 34, it would be easier to read and digest if the sentence were converted to a bulleted or numbered list, similar to below. Also, with reference to Item 5 above, please consider a re-write of the last point so it does not have the term 'status quo'.</p> <p><b>Suggested Alternative Text:</b></p> <p>In our view, a mutual rescission should be recognized if:</p> <ul style="list-style-type: none"> <li>• all parties to the transaction consent,</li> <li>• all parties are restored to their original positions before the transfer,</li> <li>• the rescission is made promptly and within a reasonable time (to be determined <u>by the assessor</u> on a case-by-case basis).</li> </ul> <p><u>The assessor should also give</u> with consideration given to whether the parties have availed themselves of the benefits under the contract, <u>and whether</u> the rescission agreement does not include terms different <u>than what originally existed before the rescinded transfers occurred</u>, from a return to the status quo.</p> <p><b>BOE Rewrite:</b></p> <p>Thus, for instance, if parties contract to transfer real property and subsequently discover that the transfer results in an unintended change in ownership, the parties may rescind the contract in order to avoid the change in ownership reassessment if all statutory requirements are met. In our view, a mutual rescission should be recognized if:</p> <ul style="list-style-type: none"> <li>• <u>All</u> <u>all</u> parties to the transaction consent,</li> <li>• <u>All</u> <u>all</u> parties are restored to their original positions before the transfer,</li> <li>• <u>The</u> <u>the</u> rescission is made promptly and within a reasonable time (to be determined on a case-by-case basis <u>by the assessor</u>).</li> <li>• <u>with consideration</u> Consideration should also be given to whether the parties have availed themselves of the benefits under the contract, and <u>whether a</u> <u>the</u> rescission agreement <u>does not include</u> <u>includes</u> terms different from a return to the <u>status quo</u> position the parties were in prior to the execution of the contract.</li> </ul> <p>Conversely, if the parties to a contract or deed to transfer real property have failed in fact to meet a requirement of rescission provided in the Civil Code, the assessor may deny the rescission for property tax purposes.</p>	See BOE Rewrite

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20	5	38-39  Plumas County Assessor Chuck Leonhardt (CAA President)	Remove the term "status quo" from the letter and replace it with "position they were in prior to the execution of the contract."  "Status quo" does not appear to be an accurate term in this context.	See Item 7
21	6	3-7  Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p><b>Revise Sentence:</b> Convert the sentence to a bulleted list, and use a different term at the end than 'status quo'.</p> <p>Suggested Alternative Language:</p> <p>Of course, an assessor may request documentation to verify whether a rescission was valid and the parties were restored to <u>their positions prior to the rescinded transactions</u>. the status quo.</p> <p>For example, an assessor might request:</p> <ul style="list-style-type: none"> <li>• copies of deeds,</li> <li>• a declaration or other evidence from the parties that consideration was in fact restored,</li> <li>• an explanation and description of the steps taken to effect the rescission, or</li> <li>• tax returns that demonstrate income from the property in question was reported by the proper party.</li> </ul> <p><b>BOE Rewrite:</b></p> <p>Of course, an assessor may request documentation to verify whether a rescission was valid and the parties were restored to the <u>status quo position they were in prior to the execution of the contract</u>. For example, an assessor might request:</p> <ul style="list-style-type: none"> <li>• <u>Copies</u> <del>eopies</del> of deeds;</li> <li>• <u>A</u> <del>a</del> declaration or other evidence from the parties that consideration was in fact restored;</li> <li>• <u>An</u> <del>an</del> explanation and description of the steps taken to effect the rescission; <del>or</del></li> <li>• <u>Tax</u> <del>tax</del> returns that demonstrate income from the property in question was reported by the proper party.</li> </ul>	See BOE Rewrite

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22	6      9	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Please refer to assessor handbook 401 Change in Ownership, Rescinded Transfers page 10, in the Summary at the beginning of this LTA, and at the conclusion as well.</p> <p>In Sacramento County, we get about two rescissions per month so this is a timely topic. We believe the LTA on this topic needs to be written in the plainest language possible while properly considering the complexity in order to best serve the intended audience comprised of assessors' offices deed transfer processing staff as well as attorneys for taxpayers.</p> <p><b>BOE Rewrite:</b></p> <p>Once a transfer of real property is rescinded and the parties are placed in the same position they were in before the contract was executed, the value of the real property reverts to its previous adjusted base year value prior to the transfer. <u>We note that when a county assessor recognizes the rescission of a transfer, the transferor's name is placed on the assessment roll as the assessee and the former base year value (plus factoring as may be appropriate for the intervening period) is enrolled on the ensuing lien date since the restoration of a base year value as a result of rescission is not subject to supplemental assessment.<sup>FN</sup></u> However, the liabilities established while the contract was in existence are not extinguished. Therefore, placing the parties in the position they held before the transfer will not result in a refund of taxes paid while the contract was in effect.<sup>FN</sup></p> <p><sup>FN</sup> See Assessors' Handbook Section 401, <i>Change in Ownership</i> (September 2010), Chapter 1, regarding Rescinded Transfers.</p> <p><sup>FN</sup> For further clarification, the former base year value is enrolled on the ensuing lien date, rather than on a later lien date (i.e., the lien date following a request to the assessor to rescind the transfer or the assessor's receipt of written notice of the deed) because recording a deed imparts constructive notice of the deed to the assessor and knowledge of its contents is presumed as of the date of the recording.</p>	See Item 2 and BOE Rewrite.
23	6      9	Santa Clara County Assessor Lawrence Stone	<p>We request the LTA further clarify that property tax relief is prospective only, and that the change in value (while retroactive to the rescission date) takes effect as of the next lien date.</p> <p>We request that the BOE make clear that the effective date cannot be the date of the signed rescission, as that would lead to unnecessary delay and potentially invite abuse. Instead, the effective date should be upon written notice to the Assessor or when the Assessor confirms receipt of the rescission.</p>	See Item 22, BOE Rewrite  No alternative language provided on effective date

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24	6	14-34  Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: A diagram for each A – B - C scenario described in the text would be really helpful. We discussed and roughed out the first one on a whiteboard; see the photo image below. Let us know if our conclusions are accurate and reasonable.</p> <p><i>See Attachment C for attached photo image.</i></p>	Not accepted; a diagram is unnecessary.

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25	6      29	Jeff Olson, San Diego County Assessor's Office	<p>"Thus, as a result of the two rescissions effected concurrently in this example, in our opinion, <u>the county assessor should enroll the property at its factored base year value as of the original transfer from Party A to Party B, as of the date of the rescission</u>, with appropriate adjustments for inflation. <u>No refund of taxes should be made</u> by the county assessor to the rescinding parties for the time during which the transfers were in force." [Emphasis added]</p> <p>Revenue and Taxation Code (R&amp;T) Section 75.10 provides generally in subdivision (a), "whenever a change in ownership occurs or new construction resulting from actual physical new construction on the site is completed, the assessor shall appraise the property changing ownership or the new construction at its full cash value". A rescission is neither a change in ownership nor new construction, and therefore no reassessment as of that date is warranted. Property Tax Annotation 220.0598 clearly states, in part, "A rescission is not a reappraisable event; it merely restores the parties to their positions prior to the contract".</p> <p>It has been previously understood (in San Diego County) that the FBYV is to be enrolled on the lien date following the date of rescission. As such there would be no refunds. In the typical rescission scenario the original transfer resulted in a change in ownership and reassessment. Upon the recordation of the rescission the property's base value prior to the original transfer is restored, plus the annual inflation adjustments for the interim period, effective on the lien date following the date of the rescission. Therefore the property's assessed value today is the same as it would have been had the original documents never been executed. For example, if a rescission deed is recorded on July 15, 2018, the property's base value prior to the recordation of the deed now being rescinded will be enrolled (plus indexing) as of January 1, 2019 (lien date), for the 2019-2020 roll.</p> <p>Is this new letter intended to instruct Assessor's to restore values supplementally versus on the following lien date?</p> <p><b>BOE Rewrite:</b></p> <p>Thus, as a result of the two rescissions effected concurrently in this example, in our opinion, <u>on the lien date following the rescission</u>, the county assessor should enroll the property at its factored base year value as of the original transfer from Party A to Party B, <u>as of the date of the rescission</u>, with appropriate adjustments for inflation. No refund of taxes should be made by the county assessor to the rescinding parties for the time during which the transfers were in force.</p>	See BOE Rewrite

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26	6 13, 23, 33-34	Plumas County Assessor Chuck Leonhardt (CAA President)	<p>The letter indicates there is no refund "while the contract was in effect" and while "the transfer was in force." Presumably, once deeds record to return the parties to the position they held prior to the contract, the contract is no longer in effect. One might conclude from this phrasing that the deeds reverting title back is supplementally effective. (See above comment from Jeff Olson, San Diego County.)</p>	See Items 2 and 24
27	6 31	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p>Comment: In the LTA on Rescissions, please specify whether the restored base year value after a valid rescission should be enrolled supplemental or non-supplemental, and why. This aspect is discussed in the Assessor Handbook 401 Change In Ownership at page 10. We think that references to page 10 of AH 401 in the Summary section of the LTA on Rescissions and at the end would be really helpful.</p> <p>The text on Rescinded Transfers from AH 401, page 10 is copied in below:</p> <p><b>RESCINDED TRANSFERS</b></p> <p>A transfer may be <i>rescinded</i> by the parties. That is, the parties to the transfer agree to undo the transaction and are placed in the same position in which they stood before the transfer took place. However, the original transfer remains valid until the rescission occurs.</p> <p>The legal effect of a rescission is that it relates back to the creation of the deed—it is as though the transfer had never been made. When a county assessor recognizes the rescission of a transfer, the transferor's name is placed on the assessment roll as the assessee and the former base year value is enrolled on the ensuing lien date. Restoration of a base year value as a result of rescission is not subject to supplemental assessment.</p> <p>Accordingly, any increase in the assessment prior to the rescission remains in effect until the lien date following the effective date of the rescission. Thus, a rescission is not retroactive with respect to the taxes due and owing prior to the date of rescission. There is no refund or cancellation of unpaid taxes assessed for the period prior to the rescission since property taxes are determined by the facts existing on the lien date.</p>	Accepted. See Items 2, 24, 25

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No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE/COMMENTS	BOE STAFF POSITION
28	6      7 38 – 39      1 – 2	Sacramento County Assessor's Office (Janet Lewis and Nina Valder)	<p><b>Revise sentence:</b> Add the word 'both' between 'after' and 'availing' in Line 38, and add a comma between 'transfer' and 'and' in Line 39 on page 6.</p> <p>Also if possible in the final version of the LTA on Rescissions, it would be good to have this entire paragraph all on the same page. Otherwise it gets pretty confusing trying to distinguish the separate elements of the concept and who gave up their right to rescind the transfer.</p> <p>Suggested Alternative Text:</p> <p>This is because Party B, after <u>both</u> availing himself or herself of the benefits of the original property transfer, and for failing to exercise his or her right to rescind within a reasonable time, may be considered to have waived his or her right to rescind such transfer.</p>	Not accepted. Either factor, if present, may preclude a rescission, depending on the facts.
29	6	Sacramento County Assessor's Office (Janet Lewis) and Sacramento County Counsel's Office (Keith Floyd)	<p>The draft LTA is very good overall. However, I think a distinction needs to be made under "Effect Upon Property Taxes" on page 6, between mutually rescinded transfers which are voidable contracts and those which are unilaterally rescinded and considered void. The County has had this issue come up a few times within the last couple of years.</p> <p>Pages 2-3 of the LTA notes that contracts may be rescinded under Civil Code section 1689 either mutually or unilaterally. The bases for unilateral rescission are given in Civil Code 1689(b). Those reasons include mistake, duress, fraud, menace, or undue influence. California courts have consistently held that contracts obtained through duress, fraud, menace or undue influence are void at their inception, rather than voidable by later agreement of the parties.</p> <p>The examples provided on pages 6-7 of the draft LTA only involve rescission by mutual consent. In such cases, the pre-transfer value is restored (adjusted for inflation), but no refunds of property taxes paid while the agreement was in place are due.</p> <p>In contrast, it is recognized that where a change in ownership is void from the outset because of duress, fraud, menace, incapacity, undue influence, etc., excess taxes paid on the value of the property based on the void transfer should be refunded. (See Property Tax Annotation 220.0871 in this regard.)</p> <p>I think there should at least be a footnote reference to this distinction on page 6.</p>	No alternative language provided; discussion item.

**ALTERNATIVE LANGUAGE/COMMENTS  
CHANGE IN OWNERSHIP – RESCISSION  
December 18, 2018 Interested Parties Meeting**

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE/COMMENTS	BOE STAFF POSITION
30		Anderson Yazdi (Mark Mullin)	<p>Your letter takes the position that the reasonable time/accepting benefits requirement applies to mutual rescissions as well as unilateral rescissions. I was left wondering whether this is really the case; Civil Code §1693 appears to only allow this limitation on rescission where the delay would prejudice one of the parties to a contract. But it would seem to me that a mutual rescission should never result in prejudice to a party, as that party would otherwise not agree to the rescission. And even if there could be prejudice to a party, I do not understand how an assessor could realistically have superior knowledge of this than the parties.</p> <p>The courts do have further case law elaborating on §1693, but I note that you only discuss case law involving unilateral rescission. I think the letter would be far more persuasive if you were able to point out how case law supports limitations on mutual rescissions. If none exists, this should be discussed as well.</p> <p>Also, as regards the accepting benefits prong, I read with the impression that you think that once a person has accepted benefits for long enough, that person cannot disgorge all such benefits and rescind. I do not see support for that view; it seems to me that if there is no prejudice, a person is always free to rescind, so long as they fully honor the requirements of rescission.</p> <p>I am curious as to how rescission fits in with the substance over form doctrines, as they have been imported into property tax law. While the letter nicely addresses <i>Fashion Valley Mall</i>, it strikes me that there are more difficult fact patterns.</p> <p>For example, how does the step transaction doctrine work with the rescission doctrine? Say in year 0, A sells real property to B. In year 4, A and B realize the transfer of real property should be rescinded as it interferes with a potential future transaction beneficial to both of them. What result if they rescind and then enter into that potential transaction soon after in year 4? Under one view, if the rescission is truly honored, it is as if A owned the real property the whole time—there is nothing for that potential transaction to be stepped together with. Under another view, one could see the rescission plus the potential transaction as a single integrated transaction, with the result that the rescission is effectively ignored and instead A and B are deemed to have entered into a new contract.</p>	No alternative language provided; discussion item.
31		Placer County Assessor's Office (M. Sierra-Sammons)	<p>We do have one question that we hope can be addressed in the final version of the LTA. How would the step transaction doctrine work with the rescission doctrine? Examples would be appreciated.</p>	No alternative language provided; discussion item.

**ALTERNATIVE LANGUAGE/COMMENTS  
CHANGE IN OWNERSHIP – RESCISSION  
December 18, 2018 Interested Parties Meeting**

No.	PAGE/LINE REFERENCE	SOURCE	PROPOSED LANGUAGE/COMMENTS	BOE STAFF POSITION
32		Daphne Mordamus	<p>I have several issues with the Rescission Draft LTA (LTA). My main concern is that it is not supported by the law. The LTA refers only to contract law; contract law only applies to contracts. Property Taxes are governed by property tax laws. If the BOE is going to endorse reducing property taxes shouldn't they use property tax law? There is no mention of Property Tax Law. The LTA does not support its conclusion with any relevant property tax law; property tax law can be found in the California Constitution, Revenue and Taxation Code sections 60 -69.5 and Property Tax Rules 462.001 - 462.500. The LTA grossly misinterprets and misapplies contract law.</p> <p>What property tax laws did the BOE rely on to conclude: that a rescission deed is not a change of ownership?; that an assessor has the authority to declare a valid deed void/cancelled?; that a property's base year value will revert to its prior base year value because of a rescission?</p> <p>Please see my presentation for the August 2017 Tax Payer Bill of Rights Hearing: my submission was on this very topic, and I argued then as I argue now, that a rescission deed is a transfer of an interest in real property that is subject to the property tax laws and that the law does not permit the assessor to revert a prior base year value because property was transferred pursuant to a rescission.</p> <p>See Attachment D for additional comments.</p>	No alternative language provided; discussion item.

**Reasonable Time / Accepting of Benefits:**

This section of the LTA recites both the Civil Code and several cases for the proposition that a rescission is effectual only if acted upon promptly, and within a reasonable period of time. Both the Civil Code and case law cited support this general proposition, but only with respect to the *right to unilateral rescission*. The LTA erroneously extends these concepts to rescission by mutual consent, when no such requirement exists under the Civil Code or relevant case law.

In the context of unilateral rescission, time plays an important role. Unilateral rescission is forged in equity, and since the common law era the Courts have recognized that "Equity aids the vigilant, not those who slumber on their rights." Mutual rescission is not forged in equity, but the law of contract. If the parties by mutual consent agree to rescind an earlier contract, the terms of that rescission agreement will be tested by other traditional rules with respect to the validity of contracts. The concern for the Assessor in the context of a rescission by mutual consent is only the legitimacy of the contract to rescind. Was there an agreement to rescind, a meeting of the minds, and was that agreement to rescind supported by adequate consideration? Certainly, the facts of a particular matter may raise questions concerning the legitimacy of the agreement to rescind. But, these are only factors in ascertaining the legitimacy of the rescission agreement, to avoid a sham, a fraud, or other malfeasances; not preconditions to be met before effectuating the parties' intent.

As presented by the LTA, complete restoration and a limited duration of time act as *per se* bars to effectuating the legitimate intent of the parties to a contract to mutually rescind. Under the currently drafted language the Assessor may feel compelled, or at least strongly encouraged, to deny rescissions by mutual consent on the technical absence of complete restoration or a duration of time having elapsed that some might deem unreasonable.

The time at which a mutual rescission occurs, the circumstances giving rise to the mutual rescission, and the terms of the mutual rescission itself may all be relevant factors in determining whether a mutual rescission is valid. I understand the desire to provide Assessors with guidance in making these determinations, but such guidance should not be presented as firm, strict, and unwaivable requirements that find no support in the Civil Code or applicable case law.

## Rescission by Mutual Consent: A Return to Status Quo

The LTA properly recognizes that a contract may be rescinded if all the parties consent, or unilaterally under certain circumstances. Civil Code section 1689 provides as much. Subdivision (a) expressly provides that a contract may be rescinded if all parties thereto consent, while subdivision (b) sets forth those circumstances in which a party may unilaterally rescind a contract. And, as the LTA notes, Civil Code section 1691 explicitly requires the restoration of the parties (or at least an offer thereof) for unilateral rescission. However, the LTA then departs from the express provisions of the Civil Code, stating that "Although the Civil Code contains no similar explicit requirement for mutual rescission [restoration of the parties to the status quo], case law is supportive of a requirement to return the parties to the *status quo* for mutual rescission." (*Emphasis added*). As support for this proposition, the LTA cites *Green v. Darling* (1925) 73 Cal.App. 700, 704, *Dugan v. Phillips* (1926) 77 Cal.App. 268, 278, and *Larsen v. Johannes* (1970) 7 Cal.App.3d 491, 503.

The LTA does not define what constitutes "status quo," though later sections suggest this means "restored to their original positions." (See pg. 5, ln. 35). Nevertheless, the departure from the express statutory language regarding mutual rescission is not actually supported by the case law generally or those cases specifically cited in the LTA, and consequently the LTA unnecessarily implies that returning the parties to "their original positions" is a *pre-condition* to the Civil Code's authorization of rescission by mutual consent. That is inconsistent with the law.

First, we begin with the statute. Civil Code section 1689(a) expressly and unequivocally provides that a contract can be rescinded by mutual consent. Because the statutory law controls the nature of the rights and obligations of contract, case law which appears to contract or alter the scope of that law, or add conditions not reasonably inferred from the text of the statute, should be viewed with some skepticism. Particularly, when such requirements are imputed from other provisions as is the case here. The Civil Code expressly requires restoration under section 1691 which addresses unilateral rescission; no such requirement exists under section 1689, which also provides for rescission effected by mutual consent.

There are valid reasons for the Civil Code's differing requirements for mutual and unilateral rescission. Where a party seeks unilateral rescission as a matter of right to an otherwise valid contract, they in essence are asking the court to abrogate existing rights and obligations in exercise of its equitable powers. This is not a light undertaking by the court, for obvious reasons. It naturally follows that restoration in this context becomes necessary before judicial relief is provided; it helps ensure fair outcomes. "Equity is equality" and "One who seeks equity must do equity" are traditional maxims reflective of this. Consequently, Civil Code section 1691 expressly provides for both prompt notice of rescission and restoration in the context of a unilateral rescission. It should be noted, however, that Civil Code section 1691 itself acknowledges that, under certain circumstances, perfect restoration is not required for unilateral rescission.

Court cases seldom stem from matters involving rescission by mutual consent as those matters rarely evolve into disputes necessitating litigation. While footnote 6 of the LTA identifies three cases where the court discussed mutual rescission, in order to properly understand the context of the courts' discussion it is first important to understand that a mutual rescission is a meeting of the minds which itself must be a valid contract. *Tuso v. Green* (1924) 194 Cal. 574, 582 ("A rescission when effected by mutual consent is a new contract, to effect which there must be a meeting of the minds."); *Harriman v. Tetik* (1961) 56 Cal.2d. 805, 810 ("Mutual rescission involves formation of new contract, and issues include same questions of law and fact regarding offer and acceptance that occur in any other problem of contract formation."). Mutual consent to rescind is not an exercise in equity, but merely a recognition that the parties to an agreement have expressed an intent to rescind (there is a "meeting of the minds" to rescind) that is supported by adequate consideration.

In *Green v. Darling*, the question before the Court was whether the allegations pled by the plaintiff were sufficient to constitute a cause of action supporting the lower court's finding of mutual rescission. The plaintiff had pled that the contract was rescinded, and that all restoration had been returned. The defendant argued his stipulation to restoration was not alleged, and was necessary to support the allegation of mutual rescission. The Court disagreed, noting that the plaintiff's

allegations claimed the rescission agreement itself required restoration, and therefore the law required restoration as a consequence of the parties' agreement to rescind. Because the allegations pled that the terms of the contract governing

the mutual rescission required restoration and that restoration was made, the lower court's finding of mutual rescission was affirmed. The LTA's quotation of *Green* is therefore out of context. *Green* held that restoration was required under the parties' agreement to mutually rescind; not that restoration is *per se* required for a valid mutual rescission.

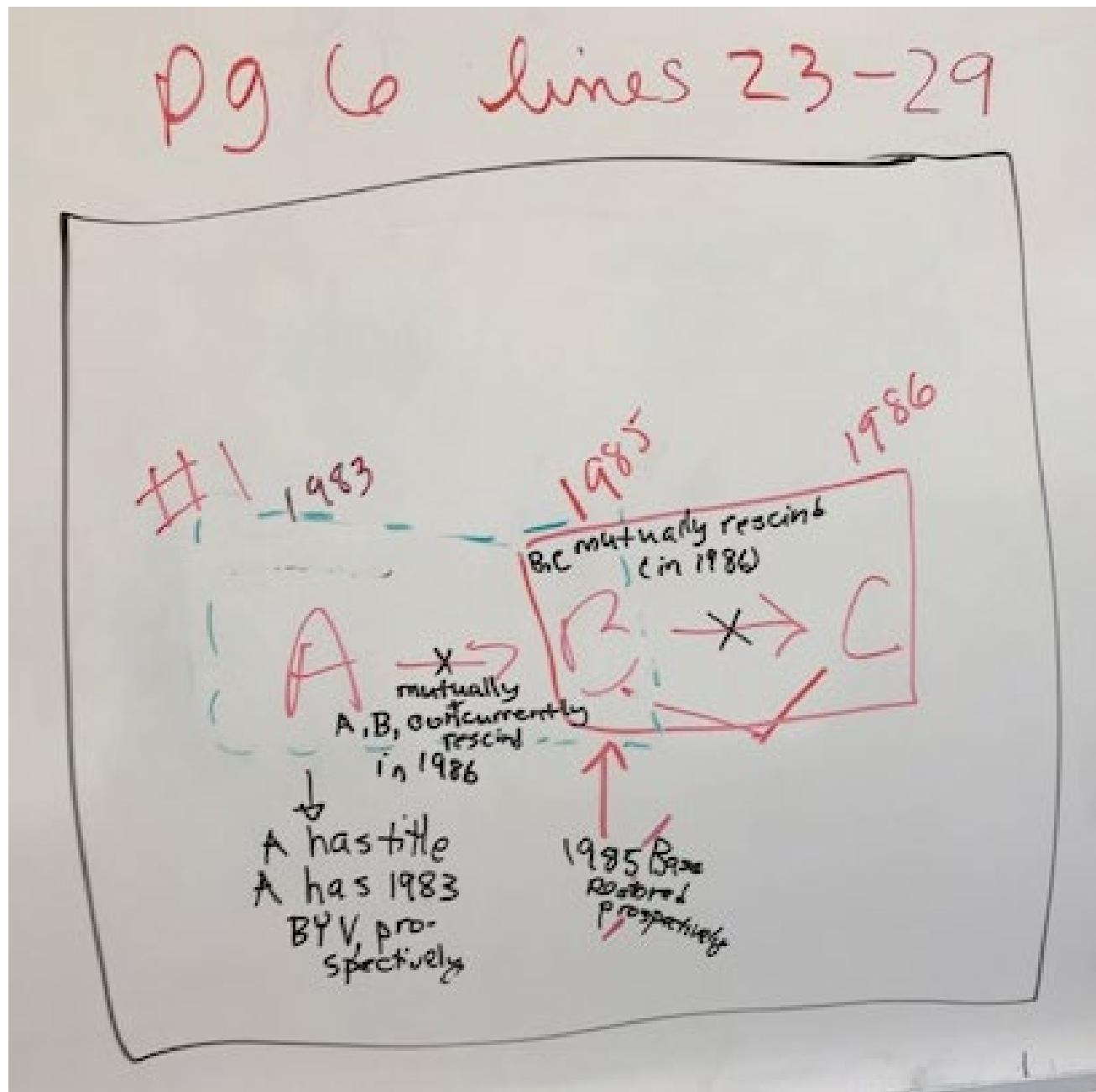
*Dugan v. Phillips*, concerned enforcement of an arbitration award, which the court analogized to mutual rescission as a means of rationalizing the validity of the award. Similar to *Green*, the arbitration award at issue happened to provide for restoration. The sentence in *Dugan* quoted by the LTA is actually cited by the *Dugan* Court to *Green* and *Hooke v. Great Western Lumber Co.* (1921) 54 Cal. App. 681. As discussed above, *Green* is inapposite to the demand of restoration as a precondition to rescission by mutual consent. *Hooke* is also inapposite. *Hooke* expressly recognized that mutual oral rescission is valid and binding *without restoration*, so long as supported by sufficient consideration. *Hooke* did not hold, nor could it, that restoration of consideration is the only means by which mutual rescission can be effected.

*Larson v. Johannes*, the final case cited by the LTA in footnote 6, explicitly recognizes that returning parties to their original condition is often (as it was there) an impossibility, but nevertheless does not frustrate the valid rescission by mutual consent. Each of the cases cited by the LTA involved situations where one party believed it had grounds to rescind the contract, which ultimately led to a mutual rescission by agreement. The disputes arising therefrom all centered around the grounds of the mutual rescission agreements, and not the *per se* validity of mutual rescissions.

The LTA does not cite to or discuss *Aderholt v. Wood* (1924) 66 Cal.App. 666, a case squarely addressing mutual rescission of a contract for the sale of land. In *Aderholt*, the Court of Appeal noted:

The authorities cited by respondent, however, all relate to the rescission of contracts in cases in which the vendor was at fault. In such a case the rule is without conflict that equity will restore the parties to *status quo*. This principle is announced in section 3408 of the Civil Code and has been approved in numerous cases. The theory of these cases is that, where one party rescinds an executory contract on account of the default of the other, he is entitled to recover his outlay under the contract, but at the same time he must restore to the other party whatever of value he has obtained under it. Section 1691 of the Civil Code expressly provides that rescission can be accomplished only in such manner *except where effected by consent*. This exception is the important part in the consideration of cases such as presented in this record. If the parties by consent rescind an executory contract they thereby make a new contract and their rights and obligations thereunder are to be determined by all the rules relating to ordinary contracts. It is not improper and it is not unusual for parties to contracts of this nature to cancel them and to release each other from all mutual obligations. Where the statutes do not provide that in such cases the vendee shall recover the payments made under the contract and where the contract of cancellation is silent on the matter, the intentions of the parties may be determined by reference to the conversations and communications had between them leading up to the execution of the contract of cancellation. *Aderholt*, 66 Cal. App. at 669-70 (emphasis added).

As these cases make clear, an agreement to mutually rescind must be tested by the terms required for every other agreement; a meeting of the minds in regard to rescinding the agreement and sufficient consideration in support thereof. If the parties' agreement to mutually rescind requires that they be restored to *status quo*, then the rescission will only be valid upon such restoration. However, restoration to *status quo* is not a *per se* requirement to mutual rescission. The LTA adds conditions to mutual rescission that are not required under the Civil Code or applicable case law and should be revised accordingly.



### **Additional Comments by Daphne Mordamus**

Without any law to support this draft LTA the guidance provided by it amounts to tax evasion: circumventing the tax law by means not provided by the law (in a sense it is fraud). I am not concluding that this is what the BOE intended but the draft LTA certainly reads as if it were promoting tax evasion.

I am looking at this issue in big picture form: what is best for the state of California. Government employees have a fiduciary duty to the State of California, they are required to uphold and defend the California Constitution and the laws of this state. This draft LTA appears to be in stark contrast to this duty, this pledge that government employees take when they are hired. Attorney and tax agents have similar ethical duty that they must adhere to.

A rescission is a contract. A contract is only binding on the parties to a contract. How then is the government required to act when parties to a private contract decide to rescind the contract? The government is not in privity with the contract or the parties. Unless the law authorizes the government to act (i.e. reduce a valid and lawful reassessment) the government does not act. In this case if the government does act (i.e. reverse a valid and lawful reassessment) it is doing so as a gift to the taxpayer. The government cannot make gifts of public funds.

Remember, a deed is an executed contract and an executed contract can only be voided/cancelled by a court of law and only upon a showing of fraud, duress, material mistake (property taxes are not a material mistake).

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Under the BOE's Rescission policy nearly every single transfer of real property is subject to rescission; that means, nearly every single transfer of real property will be excluded from reassessment. I can hardly think of any transfers that cannot be rescinded then re-conducted to avoid a reassessment. Maybe some arms-length transactions, or probate transfers, or some other esoteric transfers might get reassessed (and cannot be rescinded) but the vast majority of transfers can be easily be rescinded. Many, many, many unscrupulous individuals (tax agents and attorneys) stand to make a lot of money under this policy, money that they are not entitled, money that belongs to the people of this State. The BOE policy does not make any distinctions between what transfers can and cannot be rescinded.

My argument is this: Under the California Constitution, the Revenue and Taxation Code and the Property Tax Rules a transfer of real property that is the result of a rescission (whether by rescission deed or court order) is subject to reassessment if 1) it meets the legal definition of a change of ownership; and, 2) it is not explicitly excluded under the Constitution or the laws of this State.

Assessors are elected officials, do we want elected officials to have discretion with regard to applying tax law. It makes sense that an Assessor would adopt this policy because lowering property taxes will help when election time rolls around. We know what happened recently with the previous Los Angeles County administration.

**It was the intent of the legislature in drafting Proposition 13 and the intent of the citizens in approving Proposition 13 that transfers by a rescission deed are subject to reassessment if they result in a change of ownership.**

The BOE's Rescission policy is against the California Constitution. The California Constitution, as a result of Proposition 13, requires the reassessment of all real property that undergoes a change of ownership. Under Proposition 13 real property in California is only subject to reassessment for property tax purposes when it undergoes a change of ownership; gone are the days of cyclical assessments when the Assessor was required to reassess all real property in intervals (every four years or so), if it was your year to get reassessed your property taxes for the next four years or so would be based on that year's value. People had serious issues with this because property values in California were skyrocketing and property taxes were getting out of control.

Enter Proposition 13: your property taxes are now going to be based on the value of the property at the time it was last acquired (with a de minimis 2% increase each year). However, if the property ever changes ownership it will be subject to reassessment at its fair market value on the date of the change of ownership. If there are no changes of ownership property tax revenue in California stagnates.<sup>3</sup> While it stagnates the cost of living increases and the State's budget starts to shrink leading to reductions in services. Property taxes are the main source of revenue for the counties.

Property taxes are crucial to the vitality of the State and it is every property owner's obligation to contribute their fair share; it is a burden we must all share. The laws governing property taxation are readily available and easily accessible to anyone in this State. Prior to transferring property a property owner can review the relevant law (or hire a professional to review the law) and see what does and does not result in a change of ownership. Or, the property owner can neglect to do so.

The legislature was aware of the importance of changes in ownership. They needed to balance the intent of Prop 13 (controlling property tax increases) with the fiscal needs of the State: "Of the three [there are three value benchmarks under Prop 13, 1975 Base, Change in Ownership and New Construction] change in ownership is by far the most important, as it is the primary reappraisal 'trigger' under Article XIII A..."*thus, after 1978 the lion's share of the growth in the property tax base will be triggered by, and dependent on, change in ownership...*Change in ownership, therefore, was the most important subject considered by the Task Force. It deserved - and got - more intensive analysis and discussion than any other topic".<sup>4</sup>

The intent of the legislature was to include in the definition of a change of ownership all transfers of real property both foreseeable and unforeseeable, including transfers by rescission: "the problem with any definition of change in ownership, of course, is that no one, no matter how skilled and imaginative, can foresee and classify as a 'change' or 'non-change' every possible form of real property transfer. That fact forced the legislature in 1978 to take the approach of including everything in 'change in ownership' (including some things which would not be considered a transfer under general law) and then carving out a few limited exceptions".<sup>5</sup>

"The definition chosen by the Task Force is the ultimate in simplicity of administration...*the only operative test is whether a given transfer is or is not a 'change of ownership'*".<sup>6</sup> The legislature with the help of the Task Force definitely cast a wide net when it defined a change of ownership as: under

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<sup>3</sup> New construction also results in a reassessment. I am only concerned with changes of ownership. New construction does not bring in anywhere near the revenue that changes of ownership do.

<sup>4</sup> Report of the Task Force on Property Tax Administration, January 22, 1979, pg. 37.

<sup>5</sup> Report of the Task Force on Property Tax Administration, January 22, 1979, pg. 38.

<sup>6</sup> Id. at 55.

Revenue and Taxation Code section 60, "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"; and under Property Tax Rule 462.001, "a transfer of a present interest in the property, including the transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a 'change of ownership' shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, by gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means".

After settling down on a definition of "change in ownership" that would satisfactorily capture all transfers of real property the legislature next explicitly carved out a few narrow and specific transfers that would be excluded from the definition of a "change of ownership". Certain transfers of real property that would otherwise be subject to reassessment because they fall within the legal definition of a change of ownership are not subject to reassessment. The legally recognizable exclusions from the definition of a change of ownership can be found in Revenue and Taxation Code sections 60 - 69.5 and Property Tax Rules 462.000 - 462.500. *If a particular transfer does not fall within one of these enumerated exclusions the California Constitution requires the local Assessor to reassess the transferred property.*

Thus, it was the intention of the legislature and the citizens of California to include within the definition of a change of ownership for Proposition 13 purposes transfers of real property occasioned by a rescission (deed or court order). The legislature was aware of the remedy of rescission when it codified Proposition 13 and intentionally chose not to exclude transfers by rescission from the definition of a change of ownership: the "legislature is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted a state in light thereof".<sup>7</sup>

**The Transfer of an interest in real property by means of a Rescission (deed or court order) is subject to reassessment if it results in a change of ownership and is not explicitly excluded by the Constitution or the laws of the State of California.**

The BOE's rescission policy holds that a rescission deed is not subject to the definition of a change of ownership: "The recording of a rescission deed is not considered a change of ownership".<sup>8</sup>

The California Constitution requires the reassessment of all real property that undergoes a change of ownership. Revenue and Taxation Code section 60 and Property Tax Rule 462.001 define a change of ownership as, "the 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. *Every transfer* of property qualified as a 'change of ownership' shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, by gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means".

Nowhere in the entire property tax scheme (statutes, regulations, case law), nowhere is there any legally binding authority on property taxation that mentions rescissions. Not a single one references Rescission Deeds. There is not a single discussion regarding rescissions. If the legislature intended

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<sup>7</sup> *People v. Neild*, 99 Cal.App.4th 1223

<sup>8</sup> The remedy of rescission does not automatically transfer property. if parties to a contract agree to rescind the contract, or if a court orders a contract rescinded, the parties must transfer the property, the law does not automatically transfer the property. therefore, a rescission deed cannot be view or labeled as a perfection of title because without the deed the property does not get transferred.

transfers via rescission to be excluded from the definition of a change of ownership they would have said so. The fact that the legislature is silent on the matter does not mean the BOE, the Assessor, the Assessment Appeals Board or any other person or entity can go ahead and do it; it is not responsible government behavior, especially considering the fiduciary duty public employees owe their constituents, for the public officials to use the "No one said I couldn't do it" excuse as cover for what is clearly the result of either their willful failure to their negligence.

When it comes to taxes, especially when the legislature has already carved out very specific and very narrow exclusions, if the legislature does not explicitly exclude you must conclude that it is subject to reassessment if the transfer resulted in a change of ownership. Again, the legislature used the words "every transfer". "every" means "all", a transfer by rescission is still a transfer and therefore it falls within the "every transfer" category, the legislature has not specifically excluded it therefore we must conclude that it is subject to reassessment if it results in a change of ownership

And if it results in a change of ownership its makes no difference what impact it has on the past transfer because the property, going forward, will have a base year value as of the date of the rescission deed. Even if we concede that the rescission of a valid and voluntary transfer of real property made outside of the court between the parties, in the absence of fraud, duress, undue influence, or mistake<sup>9</sup> actually does serve to void, invalidate, or cancel the prior transfer, even if we concede that the previous reassessment must be reversed because of the rescission, even if this is true (which it is not), it makes no difference because the rescission deed itself will be reassessed if it results in a change of ownership: prior to the rescission deed Sally owned a present interest in the property including beneficial use thereof, the value of which is equivalent to the fee, after the rescission deed Dave owns a present interest in the property, including the beneficial use thereof, the value of which is substantially similar to the value of the fee interest.

The rescission deed is a valid and voluntary transfer of real property, the law presumes that the transferee is receiving fee simple absolute (unless a lesser estate was intended and the intention stated on the face of the deed), fee simple absolute means that the grantee is receiving a present and an unencumbered interest in real property that includes everything, including the beneficial use thereof.<sup>10</sup> A deed is an executed contract, a contract that has been completed, ownership of the thing transferred has changed: if Sally grants real property to Dave by executing and recording a deed, the law presumes that Sally has transferred complete ownership of the property to Dave, and once Sally executed and recorded the deed the law presumes that Dave has complete ownership of the property (California Evidence Code section 662, the owner of legal title is presumed to be the owner of full beneficial title).

Why would a rescission transfer not result in a change of ownership? The only way a transfer which is the result of a rescission can be excluded from reassessment is if it falls within one of the specific and explicit exclusions found in Revenue and Taxation Code sections 60 - 69.5 (and Property Tax Rules 462.001 - 462.500).

After a careful reading of the relevant law we quickly see that nowhere in the property tax law did the legislature use the word rescission. Correction was used, when a correction deed is recorded there is no change of ownership unless the property is being transferred, if the property is not being

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<sup>9</sup> Mistake as to the essence of the bargain, in this case the essence of the bargain is the property, not how expense owning the property is going to be.

<sup>10</sup> California Civil Code section 1105: 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.

transferred the correction deed serves to correct a mistake such as description, spelling of a name etc... But nowhere else is any substitute or alternative of rescission used.

The cardinal rule of statutory interpretation is to never imply words not used by the legislature and to never ignore words actually used by the legislature: "it is the role of the judiciary to simply ascertain and declare what is in terms of in substance contained in the statute, not to insert what has been omitted or omit what has been included... [T]he courts 'may not, under the guise of construction, rewrite the law or give words an effect different from the plain meaning and direct import of the terms uses."<sup>11</sup> And, "if a statute is clear, the 'plain meaning' rule applies, the legislature is presumed to have meant what is said"<sup>12</sup> and meant to exclude that which it did not include.

The legislature excluded any reference to rescission when it codified Proposition 13 and drafted the Revenue and Taxation Code sections 60 - 69.5 and Property Tax Rules therefore we must conclude that it was intentionally excluded. The legislature included "every transfer" when it codified Proposition 13 and drafted the Revenue and Taxation Code and Property Tax Rules, therefore we must conclude that the Legislature meant "every transfer" was subject to the dictates of Proposition 13. The BOE rescission policy is the BOE including words into the law that the legislature intentionally excluded (Rescission) as well as ignoring words the legislature intentionally included (every transfer).

The only logical and lawful conclusion is that a transfer of real property by Rescission (deed or court order) is subject to reassessment if it results in a change of ownership and it is not explicitly excluded by the Constitution or the laws of the State of California.

**The California Court of Appeals holds that a property owner must accept the tax consequences of her actions.**

According to the California Court of Appeals the remedy of rescission cannot serve to "undo" or "avoid" what is otherwise a lawful reassessment of real property under Proposition 13.

*Penner v. County of Santa Barbara*, 37 Cal.App.4th 1672, is the leading case on this subject. The case does not deal with rescissions but it is the closet piece of law that we have on the issue of whether or not a property owner can avoid or undo a lawful reassessment that has already occurred.

None of the Annotations or opinions that make up the BOE's Rescission policy mention *Penner*.

In *Penner* real property was transferred to a legal entity, it was reassessed under Revenue and Taxation Code section 61(j). The transfer did not qualify for any legally recognizable exclusions. The property owner was not happy about the increase in property taxes. The Court held:

"*Penner* argues that the tax consequences of her transaction should be determined by pretending that she took steps which, in reality, she did not. We cannot base our decisions on hypotheticals. '[A] transaction is to be given its tax effect in accord with what actually occurred and not in accord with what might have occurred. Having chosen to transfer the property directly from herself to the partnership, *Penner* ' must accept the tax consequences of [her] choice whether contemplated or not, and may not enjoy the benefit of some other route [she] might have chosen to follow but did not".

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<sup>11</sup> *Peake v. Underwood*, 227 Cal.App. 4th 428, at 443.

<sup>12</sup> *Sea World, Inc. v. County of San Diego*, 27 Cal.App.4th 1390, at 1402.

The BOE rescission policy erroneously advises property owners to "take steps that were not taken", to redo their transfer "in accord with what might have occurred". The BOE rescission policy allows tax payers to "enjoy the benefit of some other route [she] might have chosen to follow but did not". According to the BOE you do not have to accept your tax consequences, just record a rescission deed and re-conduct the transfer this time taking the steps you didn't take in the first place.

Again, none of the annotations or opinion letters make any mention of *Penner*. Holdings by the California Court of Appeals are law, they are binding on individuals and entities. The law says you "must accept the tax consequences of your choices whether they were contemplated or not". How did the BOE reconcile the holding in *Penner* with its Rescission policy? It just does not make sense that a Government agency that is tasked with knowing and understanding property tax law would ignore or brush aside *Penner* when dealing with an issue like rescission.

Thus, according to the California Court of Appeals -according to the law- the BOE's rescission policy is unlawful because taxpayers must accept the tax consequences of their actions. Under the BOE rescission policy the BOE is informing property owners that they do not need to accept their tax consequences, and the BOE has drawn taxpayers a road map on how to get out of lawful reassessments.

**Rescission is a remedy between the parties to a contract only.**

Rescission is a legal remedy available to parties to a contract. The remedy is between those parties only. If one party does not want to continue on with the contract, or both parties want to discontinue the contract they are free to do so. Rescission is one of several options the parties can choose. If the parties decide on a rescission the result between the parties is that each party is to return to the other party whatever they have received thus far (also known as returning to the status quo) and the parties go on as if the contract has never been entered into: meaning, one party cannot later on demand that the other party perform some obligation under the contract because as between them, the contract has disappeared. The remedy of rescission has no application / impact on third parties (parties not part of the contract rescinded).

If the contract is still in its executory stages then ownership of the thing bargained for has not transferred. However, if the contract being rescinded is an executed contract, like a deed, ownership of the thing bargained for has transferred and vested in the grantee.

In the case of an executed contract, like a deed, a rescission is nothing more than a re-transfer of ownership of the property back to a prior owner. However, if a court of law determines that the executed contract / deed was executed under duress, fraud, or undue influence then a different scenario would occur and what happens next is up to the courts.