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May 13, 2005

Honorable Cris Andrews
Shasta County Assessor-Recorder
1450 Court St., Rm. 208-A
Redding, CA 96001-1694

Attn.: Ms.

Re: *Homeowners' Exemption--Lifetime Right of Occupancy*

Dear Ms. :

This letter replies to yours dated January 20, 2005, addressed to Ladeena Ford, Senior Property Appraiser of the Assessment Policy and Standards Division. Your letter was forwarded to us for a reply. In your letter, you seek the Board legal staff's opinion on the applicability of the homeowners exemption where the grantors have executed a Gift Deed ("Deed") conveying their fee interest in their home to their son, but have also executed an Agreement Regarding Transfer of Home, Life Time Right of Occupancy and Retained Special Power ("Agreement") whereby they retain a personal and exclusive lifetime right of occupancy and a special power of appointment. In our opinion the conveyance does not result in a change in ownership because the lifetime right of occupancy is equivalent to a life estate reserved by the transferor and the transferor's spouse. Therefore, the property remains eligible for the homeowners exemption.

Facts Presented

On September 16, 2003, Eldon ("Eldon") and Thelma ("Thelma") executed the Deed conveying the fee interest in their home to their son Ronald ("Ronald"). Eldon, Thelma and Ronald also signed the Agreement on that date. Eldon and Thelma want Ronald to manage their home if they are no longer able to do so. They also want to retain the right to continue living in the home, and to retain the power to change Ronald's interest in the home as among him, Brian , and Michele .

The Agreement provides that, in spite of the Deed, Transferors--Thelma and Eldon--retain a personal and exclusive lifetime right to the occupancy in the home until the death of both of them. Transferors also reserve the right to appoint, in whole or in part, the home to or for the benefit of the Transferee--Ronald--in such proportions, outright, or in such trusts, terms and conditions as the grantors, or the survivor of them, may specify by a writing executed and acknowledged during their joint or individual lifetime and recorded with the Shasta County Recorder, or by their last will or codicil, specifically referring to the reserved special power of appointment; other provisions state that Transferors shall be responsible during their lifetime for the payment of any mortgage payment, taxes, utilities, maintenance, management costs and any other expenses associated with the upkeep of the home; that Transferee will not sell or transfer

the home, or his interest in it, during Transferor's lifetime; and that, on Transferor's death, the home may be possessed, utilized, or disposed of in Transferee's complete and total discretion.

Legal Analysis

Article XIII, section 3, subdivision (k) of the California Constitution provides that \$7,000 of the full value of a dwelling when occupied by an owner as his principal residence is excluded from property taxation. The question here is whether Eldon and Thelma can continue to qualify for the exemption after transferring their home to their son, but retaining a personal and exclusive right of occupancy.

A life estate is defined as an estate whose duration is limited to the life of a person holding it, or to the life of some other person. *Estate of Smythe* (1955) 132 Cal.App.2d 343. No particular language is required to create a life estate; any language in a recorded instrument that reserves in the land a present interest for the benefit of the grantor or others and gives a remainder man a future interest, is a life estate. *Estate of Smythe* (1955) 132 Cal.App.2d 343, 345-346; *Victory Oil Co. v. Hancock Oil Co.* (1954) 125 Cal.App.2d 222, 232. Here Eldon and Thelma's lifetime right of occupancy is equivalent to a life estate reserved by them because they reserved in the land a present interest for their benefit, and gave Ronald a future interest.

Property Tax Rule 462.060, subdivision (a) provides, in part, that "The creation of a life estate in real property is a change in ownership at the time of transfer *unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. . . .*" (Emphasis added.) The life estate at issue here does not give rise to a change in ownership because it reserves the estate in Eldon and Thelma, the transferors. Based on the provisions of the Agreement, we conclude that the instrument creating the lifetime right of occupancy in Eldon and Thelma does not result in a change in ownership. There being no change in ownership, Eldon and Thelma remain the owner-occupants of the property and may continue to claim the homeowners' exemption.

The Deed ostensibly conveying Thelma and Eldon's fee interest to Ronald does not change our result. Property Tax Rule 462.200, subdivision (b), provides that:

When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in the property, unless an exclusion from change in ownership applies.

In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

"(1) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.

Thus, while the grantors executed a Deed conveying their interest in their home to Ronald on September 16, 2003, giving rise to a rebuttable presumption that Ronald was the new owner of the property, that presumption is overcome by the Agreement which Eldon, Thelma and Ronald executed on that same date, in which they agreed that Ronald did not have an equitable ownership interest. The three of them agreed that Thelma and Eldon retained a

personal and exclusive lifetime right to the occupancy in the home until the death of both of them, that they reserved in themselves the right to appoint the home to or for the benefit of Ronald under such terms as they may specify, and in they also agreed that Ronald would not sell or transfer the home, or his interest in the home, during the transferors' lifetimes.

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

Sincerely yours,

/s/ Rafael Icaza

Rafael Icaza
Tax Counsel

RI:eb

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cc: Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Ms. Mickie Stuckey, MIC:62
Mr. Todd Gilman, MIC:70