

COMMERCIAL LOAN CORPORATION

HELPING MAXIMIZE FAMILY TRUST DISTRIBUTIONS

June 21st, 2021

Mr. Henry Nanjo, Chief Counsel
Board of Equalization Legal Department
450 N Street, MIC 121
Sacramento, CA 94279

Re. Proposed Property Tax Rule 462.520, Exclusion from Change in Ownership -Intergenerational Transfers

Dear Mr. Nanjo,

Assembly Constitutional Amendment Number 11 (ACA 11) was presented to and approved by voters at the November 3, 2020, general election as Proposition 19 (Prop 19). Prop 19 is entitled, "The Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act" and, relevant to the BOE rulemaking, changed the rules of intergenerational transfers that had been established by Propositions 58 and 193 in 1986 and 1996, respectively, and implemented by Revenue and Taxation Code section 63.1

Prop 19 makes changes in the rules governing how the exclusion for reassessment of property taxes on transfers between parents and children as well as grandparents and grandchildren is administered in the counties. In response to these changes, The BOE and County Assessors made changes to the BOE 58-AH "claim for reassessment exclusion for transfer between parent and child" and now require use of the BOE-19-P when exclusion for reassessment is being requested under the intergenerational transfer provisions of Prop-19.

We have done quite a bit of research on requests for exclusion from reassessment under the intergenerational property transfer rules historically under Proposition's 58 & 193, as well as the current rules contained in Prop 19. Our objective in this research is to find ways to help create more consistency in the processing of Claims for Reassessment Exclusions between parents and children throughout the state. Many counties have different requirements when there is a trust or estate that has multiple heirs / beneficiaries, and a 3rd party loan is needed to equalize the distribution. The differing requirements have resulted in very different treatment of these requests depending on which county the property resides in, and the procedures that exist in that county's assessor's office.

The culprit seems to be how parent to child transfers are handled by county assessors when real property is held in a family trust and one of the child-beneficiaries wants to keep the family property. Our research has shown a number of techniques being used around the state to get around or subvert the requirements in Revenue and Taxation Code section 63.1. The methods used to circumvent the requirement of trusts to get third party loans to equalize the distributions of these trusts in order to qualify for exclusions from reassessments include:

- **Taking the property out of the trust to secure conventional financing by the acquiring beneficiary and returning the property to the trust before distribution.** *This is considered a*

sibling buying out other siblings as opposed to a parent to child transfer. The act of taking the property out of the trust once the trust is irrevocable might be considered a distribution.

- **Structuring a loan as a purchase money transaction where the acquiring beneficiary buys the property from the trust.** *This should be considered as a sibling buying the property from himself/herself and the other siblings as opposed to a parent to child transfer.*
- **Inflate assets of the trust to show an equalized distribution.** *This is probably fraud, but at the least a circumvention technique.*
- **Faking a third-party loan.** *A note and deed of trust are created to appear that a third-party loan was obtained, but no money changes hands.*
- **Creation of an LLC or corporation to provide the third-party loan.** *This is a circumvention technique used frequently. The creation of these entities is specifically for the purpose of deception and are not entities that typically provide financing.*


After researching the techniques being used and thoroughly understanding these methods to deceive county assessors, we completed the BOE-58-AH form for all the above scenarios as well as for a normal parent to child transfer that did not require a third-party loan. We found that the BOE-58-AH looked IDENTICAL in each instance. It makes it unclear how an assessor would know what additional information or documents to ask for in order to make sure the law is being followed and requests for exclusion from reassessment are legitimate.

Our research has identified a number of counties that do an exceptionally good job at requiring proof of legitimate third-party loans. But we also found that over the last three years, there were 33 California counties that processed more than 55,245 exclusions and we did not receive an inquiry on any transaction in those counties. This statistic is highly unusual because there are only three known estate trust lenders in California who make loans for the share equalization required under Rev&Tax code 63.1. My company is the most visible in this space, and that leads us to conclude that not all counties are following the same procedures.

We believe that there needs to be uniformity from county to county in the state. It should not matter where a request for exclusion from reassessment under the intergenerational transfer rules takes place. Los Angeles County should follow similar procedures as Monterey, or San Diego, or Colusa. To that end, we are asking the BOE and County Assessors Association to adopt a couple of minor changes to the new BOE-19-P that we believe will help weed out quite a bit of the questionable transactions and promote more uniformity in how these requests are processed around the state. In Section C, we recommend asking two additional questions to help assessors determine if they are dealing with a trust. We recommend some documentation requests be added to page three to help assessors understand the underlying transaction and help assessors determine if the transaction is a proper parent to child transfer. ***Please see our attached sample mockup of the form BOE-19-P – attachment “A”.***

Finally, we have received feedback from some that say additional changes to the form BOE-19-P is not necessary because taxpayers sign the form under penalty of perjury. We note that all Internal Revenue Service (IRS) tax returns must be signed under penalty of perjury as well. However, that does NOT seem to be a deterrent against false, misleading, and inaccurate information and figures being included in taxpayer submittals. For example, in 2018 (please see **attachment “B”**), the most current year data is available, the IRS levied over \$29 billions in civil penalties for taxpayer violations on their returns which were either misleading, inaccurate, or fraudulent. The penalty under perjury requirement does not stop those who intentionally decide to break the rules in order to enrich themselves at the cost to other taxpayers, governments, and citizens.

Sincerely,


Kerry Smith, President