

SUPREME COURT COPY

S222329

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

926 NORTH ARDMORE AVENUE, LLC,

Plaintiff and Appellant (Petitioner)

vs.

COUNTY OF LOS ANGELES,

Defendant and Respondent

SUPREME COURT
FILED

OCT 07 2015

Frank A. McGuire Clerk

Deputy

After an Opinion by the Court of Appeal,
Second Appellate District, Division 7, (Case No. B248536)

On Appeal from the Los Angeles County Superior Court,
(Case No. BC476670)

**APPLICATION OF CALIFORNIA ASSOCIATION OF REALTORS®
FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF
IN SUPPORT OF PETITIONER**

California Association of REALTORS®
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I. INTRODUCTION AND NATURE OF C.A.R.'S INTEREST

The California Association of REALTORS® (C.A.R.) respectfully requests leave, under Rule 8.520(f) of the California Rules of Court, to file the attached *amicus curiae* brief.

C.A.R. is a non-profit trade association representing the interests of approximately one hundred seventy-five thousand (175,000) real estate brokers and salespersons licensed by the State of California. “The purpose of the [C.A.R.] is to serve its membership in developing and promoting programs and services that will enhance the members' freedom and ability to conduct their individual businesses successfully with integrity and competency, and through collective action, to promote real property ownership and the preservation of real property rights.”¹ C.A.R. pursues this Mission in many ways, including advocating for legislation and writing *amicus* briefs on issues of statewide importance to REALTORS®.

The issue in the above-referenced case is whether the local government can impose a tax based on the transfer of an ownership interest in an entity that has an ownership interest in another entity that itself owns real property. It has already been established that property itself can sometimes be reassessed if there is a transfer of such an ownership interest. Indeed, C.A.R. is supportive of some of these efforts.² That is not what this case is about. Here, the owner itself is directly charged even though title to the property has not changed and none of the documents that have been generated to transfer the sub-owners' ownership interests require recordation. The net effect of the Appellate Court's decision, if upheld, would be to increase transaction costs which ultimately increase the cost of property ownership, which negatively impacts real property rights. Such a

¹ C.A.R. Mission Statement. <http://www.car.org/aboutus/mission/>

² <http://www.car.org/meetings/carmeetings/summary-of-action-items/2014fallsummary/>
See, Split Roll Tax Task Force, item # 2.

holding that limits the rights of property owners is inconsistent with C.A.R.'s mission to preserve real property rights.

The case before the Court may involve a multi-unit residential apartment building; however, this Court's decision will not only affect owners of apartment buildings or commercial property in general. The impact of this case and any new-found authority of the taxing agencies to raise revenue under like circumstances will just as surely affect ordinary homeowners who place residences in trusts and thereafter make transfers to sub-trusts and children's and grandchildren's trusts. It does not matter whether the purpose of such a transfer is to minimize the effects of potential liability or estate, inheritance and income taxes, or for other reasons. As REALTORS® assist the public in buying and selling (and managing) most of the 400,000 plus sales transactions³ involving residential real estate every year in California, C.A.R. is well aware, through the collective experience of its members, of the increasing use of trusts, LLCs and other ownership vehicles used regularly by everyday, ordinary, homeowners. Far from having a limited applicability to only high net worth individuals, an affirmation of the Appellate Court's decision will be felt across the real estate ownership board.

II. Identification of Authors and Monetary Contributors

No party or counsel for a party in the pending appeal authored the proposed *amicus* brief in whole or part. No party or counsel for a party in the pending appeal made a monetary contribution intended to fund the preparation or submission of the brief. C.A.R. has

³ 414,900 single-family residential properties were sold in 2013, and 383,320 single-family homes were sold in 2014. California Association of REALTORS® 2015 Annual Historical Data Summary, p. 6, *California and U. S. Existing Single-Family Home Annual Median Sales Price and Annual Sales Activity 1968-2014*, available at http://www.car.org/3550/pdf/econpdfs/2015_Annual_Historical_Data_Summary_Final.pdf

entirely funded the preparation and submission of this proposed *amicus* brief without any monetary contribution from any other person or entity.

III. REQUEST FOR PERMISSION TO FILE AMICUS BRIEF

C.A.R. has read the Opinion below and the Opening, Answering, and Reply briefs and is familiar with the issues presented to this Court. For the reasons stated above, C.A.R. respectfully requests that this Court accept the accompanying *amicus curiae* brief.

Respectfully submitted,

California Association of REALTORS®

By:  _____

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Neil Kalin, Assistant General Counsel, SBN 119920

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TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIESii

I. THOUSANDS OF SINGLE FAMILY RESIDENCE OWNERS WILL
POTENTIALLY BE AFFECTED BY THIS CASE1

II. CHARGING THE FEE IN THIS CASE IS NOTHING MORE THAN A TAX
GRAB WITH NO CORRESPONDING SOCIETAL VALUE.....4

III. CONCLUSION.....7

TABLE OF AUTHORITIES

Statutes

Revenue and Taxation Code	
Section 64(d).....	5
Section 11911.....	2
Section 11925.....	5, 6

Other Materials

California Association of REALTORS® 2015 Annual Historical Data Summary, p. 6, <i>California and U. S. Existing Single-Family Home Annual Median Sales Prices and Annual Sales Activity 1968-2014</i> , available at http://www.car.org/3550/pdf/econpdfs/2015_Annual_Historical_Data_Summary_Final.pdf	ftnt 5
California Association of REALTORS®, <i>Legal Webinar</i> , http://www.car.org/legal/LegalWebinars/live/SeePowerPoint ™ screen located at 46.15 minutes	ftnt 3
California Association of REALTORS®, <i>April 2014 Form Release Quick Summary</i> , http://www.car.org/media/pdf/legal/standard-forms/822260	ftnt 4
California Department of Finance, <i>E-5 Population and Housing Estimates for cities, Counties, and the State, January 2011-2015, with 2010 Benchmark</i> , http://www.dof.ca.gov/research/demographic/reports/estimates/e-5/2011-20/view.php [Excel table with Los Angeles County data accessed via link for “Cities and Counties 2015”].....	ftnt 1
Tannenbaum, Larry, Pfaff, Stephanie L., 2014, <i>Watch out for California Transfer Taxes in Transactions Involving Real Estate Holdings</i> , https://www.dlapipper.com/en/us/insights/publications/2014/04/watch-out/	ftnt 7
U.S. Census Bureau, <i>Historical Census of Housing Tables</i> , https://www.census.gov/hhs/www.housing/census/historic/units.html	ftnt 1

I.

THOUSANDS OF SINGLE FAMILY RESIDENCE OWNERS WILL POTENTIALLY BE AFFECTED BY THIS CASE

In the case before this Court, the property in question is a multi-unit residential apartment building. Perhaps some observers of this case presume that Los Angeles County's imposition of the documentary transfer tax ("DTT") will have only limited applicability to the general public, or will really only affect people who are wealthy enough to own apartment buildings. However, because the legal authority asserted by the taxing agencies responsible for collecting the DTT is not dependent upon a property's use, this Court's decision will affect not only owners of apartment buildings, or commercial property in general, but also owners of single family residential dwellings. A lot of properties fall within that residential category. In Los Angeles County, there are approximately 1.7 million single family homes, and there are approximately 6.8 million such properties in California.¹ Given the thirst in recent years to raise additional local revenue, it is probable that other cities and counties will follow Los Angeles County's actions regarding DTT, if they haven't done so already. Accordingly, the impact of this case, and any new-found authority of the taxing agencies to raise revenue under like circumstances, will just as surely affect thousands of ordinary homeowners who place their residences in holding vehicles like trusts and limited liability companies ("LLCs"), and thereafter, for personal reasons, may decide to make transfers to sub-trusts and children's and grandchildren's trusts. It does not matter

¹ See "E-5 Population and Housing Estimates for Cities, Counties, and the State, January 2011-2015, with 2010 Benchmark," published by the California Department of Finance, at: <http://www.dof.ca.gov/research/demographic/reports/estimates/e-5/2011-20/view.php> [Excel table with Los Angeles County data accessed via link for "Cities and Counties 2015"]. See also, "Historical Census of Housing Tables" by the U.S. Census Bureau, at: <https://www.census.gov/hhes/www/housing/census/historic/units.html>

whether the purpose of such a transfer is to minimize the effects of potential liability or limit estate, inheritance and income taxes, or for other reasons. The statute at issue, Revenue and Taxation Code §11911² is not dependent upon the reason for the transfer or the type of property involved. The statute itself is property-type neutral and undoubtedly will be applied just as dispassionately and uncaringly by taxing agencies to all who arguably fall within their realm. Thus, the scope of the statute, if applied as argued by Respondent, County of Los Angeles, will be far-reaching.

C.A.R. is well aware, through the collective experience of its members, of the increasing use of trusts, LLCs and other ownership vehicles used regularly by everyday, ordinary, homeowners. Indeed, because of the widespread use of such ownership vehicles in residential transactions, over the last few years C.A.R., the leading provider of standard real estate forms in California, has created new forms and modified existing forms to take such ownership arrangements into account. In 2014, the C.A.R. “Residential Purchase Agreement” (the contract between buyer and seller for the purchase and sale of residential real estate) was modified to specifically indicate if either buyer or seller is signing in a representative capacity, including as a trustee or authority for an entity such as an LLC or partnership.³ Earlier this year, the “Residential Listing Agreement” (the contract between a seller and a real estate broker to market the seller’s residential property) was similarly modified.

And two years ago, another C.A.R. Standard form, the “Representative Capacity Signature Addendum,” was specifically created to document that a buyer or seller

² All further references are to the Revenue and Taxation Code unless indicated otherwise.

³ See C.A.R. Legal Webinar at: <http://www.car.org/legal/LegalWebinars/live/> See PowerPoint™ screen located at 46:15 minutes. . .

was signing in a representative capacity.⁴ That form was recently modified, and its name changed to “Representative Capacity Signature Disclosure,” to coincide with the additional language added to the purchase and listing agreements just mentioned. See footnote 3, *supra*. That form is used to identify the name of the individual signing a contract document and the name of the formal purchaser or seller on whose behalf the individual is signing. Four options are presented on the form, to indicate whether the signer is executing the contract on behalf of a trust, estate, pursuant to power of attorney, or for an entity such as a corporation, LLC or partnership. While statistical data is not present, C.A.R. members indicate that the most common usage of the “Representative Capacity Signature Disclosure” is for transactions involving trusts, corporations and LLCs.

The widespread impact of the potential application of Respondent’s tax collection practices is evidenced by C.A.R. members’ collective anecdotal experiences and the statistical data on C.A.R. forms usage. C.A.R. members’ use of the “Representative Capacity” forms has increased from approximately 11,000 incidents of use in 2014 to over 51,000 incidents during just the first half of 2015. If these numbers are projected out over the course of the year, this would mean that approximately 25% of residential transactions involve someone signing in a representative capacity.⁵ Similarly, use of one C.A.R. form that is specifically designed for sales involving trusts, called the “Trust Advisory,” has increased

⁴ See “April 2014 Form Release Quick Summary” at <http://www.car.org/media/pdf/legal/standard-forms/822260/>

⁵ Just over 400,000 single family residential properties were sold in 2013 and just under 400,000 were sold in 2014. See *California Association of REALTORS® Annual Historical Data Summary (2015)*, p. 6, California and U. S. Existing Single-Family Home Annual Median Sales Prices and Annual Sales Activity 1968-2014 at: http://www.car.org/3550/pdf/econpdfs/2015_Annual_Historical_Data_Summary_Final.pdf

significantly from 30,000 incidents of use in 2013, to 53,000 incidents in 2014, to over 36,000 incidents in just the first half of 2015. ⁶

As more and more properties change hands, the use of holding vehicles becomes more and more prevalent. Far from having a limited applicability to only high net worth individuals, or corporate or business type transactions, an affirmation of the Appellate Court's decision will be felt across the real estate ownership board.

II.

CHARGING THE FEE IN THIS CASE IS NOTHING MORE THAN A TAX GRAB WITH NO CORRESPONDING SOCIETAL VALUE

As indicated in Petitioner's Opening Brief, the history behind the creation of the DTT was the creation of a system that allowed ease of transfer of property through documents and ultimately recording. Society as a whole benefits from such a system allowing for easy transferability of ownership of real property. Thus, the tax and its benefit, public recordings, go hand-in-hand.

The County in its Answering Brief describes the difference between an excise tax, such as the DTT, and a property tax. The former is for the "privilege of ownership." Historically, that privilege had a linkage to the recording system for real property. That linkage made sense, given that all members of society benefit from having real property ownership easily identified, as easy access to such information facilitates the free flow of capital and prevents disputes related to

⁶ Data on C.A.R. forms' usage is proprietary and not publicly available. However, while this amicus brief is not offered for evidentiary purposes, at the request of the Court, C.A.R. would willingly provide a declaration from the appropriate employee verifying the above representations.

property ownership claims. Therefore, a local government charging a tax upon a transaction involving transfer of real property in its jurisdiction has a causal connection. But there is no linkage shown here. While the County asserts that certain cases stand for the proposition that recording is not a prerequisite to the imposition of the DTT (Answering Brief, pages 13 and 25), it is disingenuous to argue that legal title to the underlying land is not a core issue in those cases. Therefore, their application to the case at hand where legal title to the underlying land remains unchanged is dubious at best.

Unlike the DTT excise tax, Proposition 13 affects property taxes. Unfortunately, after Proposition 13 was implemented in California, it was discovered that some had learned how to “game the system” to avoid paying the annual legal burden, full freight, on their property’s value. The creation of entities and sub-entities was generally confined to corporate interests and the uber-wealthy. Indirect transfers threatened to undermine both the actual and perceived fairness of the property tax assessment system adopted by the California public and the fundamentals of government finance. When the legislature modified the statute, and added §64(d), to allow for reassessment of property tax upon change in ownership of more than 50% of an entity, the net effect was that the playing field was leveled in that each person or entity paid their fair share. But just because a policy makes sense in the context of property tax implementation does not mean it also makes sense in the context of imposition of the DTT. The Legislature clearly knows how to draft language addressing change of ownership in entities but chose not to do so for the DTT, except in the case of partnership interests as specified in §11925.

The County seems to argue that because the Legislature gave the County Recorder access to assessor records “to determine whether a DTT is to be imposed” (Answering Brief, page 12, *emphasis added*) the County therefore has free rein to impose a DTT whenever a reassessment occurs by way of a transfer of an

ownership interest. The County's own witness stated that the "County had started assessing a DTT *whenever* a legal entity had undergone a change in ownership within the meaning of California property tax law." (Answering Brief, pages 6-7, *emphasis added*) The County acknowledges in its brief the legislative purpose in granting access was to enable the County to exercise discretion but the evidence demonstrates the County does not practice the discretion it preaches. In practice, the County's own evidence demonstrates that it ignores the word, "whether" and appears to substitute in its place the word "that" so that an assessment for property tax purposes commands an assessment pursuant to the DTT.

When the State Legislature considered and wrote the law that grants local governments access to assessor records, rather than merely hoping courts would infer from that legislation that counties could charge a DTT upon a change in ownership of an entity holding title to real property, wouldn't it have made more sense for the lawmakers to actually write that permission into the legislation itself, as they did years earlier with §11925? One could just as easily, and more logically, infer that the Legislature had no such intention, and that failure to address the issue meant that the rules that apply to property tax do not apply to DTT.

In Los Angeles County, the DTT is the ultimate opaque act in an age of transparency. In arguments below, it was noted that the County posted a notice on its webpage of its intention to charge the DTT in the circumstances applicable here; but that notice in all likelihood is not accessed by anyone other than the most ardent tax advisors or those property owners who know what to specifically look for. San Diego apparently has charged the fee "through random notices to

unsuspecting taxpayers”-- essentially at its whim.⁷ The fact that major metropolitan areas see fit to be so veiled about their tax collection practices may speak volumes about whether such practices are legitimate.⁸

III. CONCLUSION

Charging a tax for an unrecorded document, that does not need to be recorded, does not advance the cause or purpose of the DTT Act. It is nothing but a tax grab that is pursued for no reason other than the local government agency believes it can get away with it. If this Court sanctions such taxes, they will be imposed throughout the State on every mom, pop and grandparent engaged in lawful estate planning, whether the beneficiary is a child, relative, friend or charity. Rather than easing the free flow of property, as was originally envisioned by DTT enactments or their predecessor, transfers will become onerous and expensive. Value will be lost not just for the biggest property owners, but for any ordinary individual who is able to accumulate something to leave to another. For all the reasons stated above, and in Petitioner’s Opening and Reply briefs, the Opinion of the Court of Appeal should be reversed.

⁷ See “Watch Out for California Transfer Taxes in Transactions Involving Real Estate Holdings;” Larry Tannenbaum, Stephanie L. Pfaff (2014) at: <https://www.dlapiper.com/en/us/insights/publications/2014/04/watch-out/>

⁸ Moreover, the fact that other cities, such as San Francisco, enacted an ordinance authorizing the DTT does not make the tax any less of a grab; it merely lets citizens know whom to hold responsible. (See Tannenbaum and Pfaff article cited above.)

Date: September 29, 2015

Respectfully submitted,

CALIFORNIA ASSOCIATION OF REALTORS®

June Babiracki Barlow, Vice President and General Counsel, SBN 093472

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court Rule 8.204(c)(1))

The text of this brief consists of 2251 words (including footnotes, and excluding Table of Contents and Authorities) as counted by the Microsoft Office Word 2010 word-processing program used to generate this brief.

Dated: September 29, 2015

Respectfully submitted,

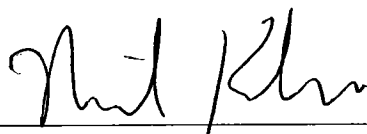
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Attorneys for CALIFORNIA ASSOCIATION OF REALTORS® as

Amicus Curiae

PROOF OF SERVICE BY MAIL

I, **Patricia Sellers**, am employed in the City and County of Los Angeles, and over the age of eighteen years. I am not a party to the within action. My business address is: 525 South Virgil Avenue, Los Angeles, California, 90020.

On September 29, 2015, I served the within *amicus curiae* brief, addressed to the California Supreme Court from the California Association of REALTORS® regarding:

***926 North Ardmore Avenue, LLC v. County of Los Angeles.
Supreme Court, Case No. S222329
Second Appellate District, Division 7, Case No. B248536
Los Angeles County Superior Court, Case No. BC476670***

on interested parties in this action by placing one true copy thereof in a sealed envelope, postage thereon fully prepaid, in the United States Postal Service, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 29, 2015, at Los Angeles, California.



Patricia Sellers
Patricia Sellers