



[Property Tax](http://www.cdtfa.ca.gov/proptaxes/proptax.htm) (www.cdtfa.ca.gov/proptaxes/proptax.htm)

[Alcoholic Beverage Tax](http://www.cdtfa.ca.gov/sptaxprog/alcoholic_bev_tax.htm) (www.cdtfa.ca.gov/sptaxprog/alcoholic_bev_tax.htm)

[Tax on Insurers](http://www.cdtfa.ca.gov/sptaxprog/tax_on_insurers.htm) (www.cdtfa.ca.gov/sptaxprog/tax_on_insurers.htm)

[Forms & Pubs](http://www.cdtfa.ca.gov/formspubs/) (www.cdtfa.ca.gov/formspubs/)

[Legal Resources](http://www.cdtfa.ca.gov/lawguides/#Property-Taxes-Legal-Resources) (www.cdtfa.ca.gov/lawguides/#Property-Taxes-Legal-Resources)

Laws, Regulations & Annotations

[PTLG Table of Contents](http://www.cdtfa.ca.gov/lawguides/#Property-Taxes-Legal-Resources) (www.cdtfa.ca.gov/lawguides/#Property-Taxes-Legal-Resources) > [Property Tax Annotations](#) ([property-tax-annotations.htm](#)) > [C](#) ([property-tax-annotations.htm#c](#)) > [220.0000 CHANGE IN OWNERSHIP](#) ([220-0000.html](#)) > entire section

Property Taxes Law Guide – Revision 2017

Property Tax Annotations

[A](#) ([property-tax-annotations.htm#a](#)) [B](#) ([property-tax-annotations.htm#b](#)) [C](#) ([property-tax-annotations.htm#c](#)) [D](#) ([property-tax-annotations.htm#d](#)) [E](#) ([property-tax-annotations.htm#e](#)) [F](#) ([property-tax-annotations.htm#f](#)) [G](#) ([property-tax-annotations.htm#g](#)) [H](#) ([property-tax-annotations.htm#h](#)) [I](#) ([property-tax-annotations.htm#i](#)) [L](#) ([property-tax-annotations.htm#l](#)) [M](#) ([property-tax-annotations.htm#m](#)) [N](#) ([property-tax-annotations.htm#n](#)) [O](#) ([property-tax-annotations.htm#o](#)) [P](#) ([property-tax-annotations.htm#p](#)) [R](#) ([property-tax-annotations.htm#r](#)) [S](#) ([property-tax-annotations.htm#s](#)) [T](#) ([property-tax-annotations.htm#t](#)) [U](#) ([property-tax-annotations.htm#u](#)) [V](#) ([property-tax-annotations.htm#v](#)) [W](#) ([property-tax-annotations.htm#w](#))

C

220.0000 CHANGE IN OWNERSHIP*

See Assessment; Base Year Value Transfer; Escape Assessments; Parent-Child Transfer; State-Assessed Property

* Property Tax Rule 462 was renumbered in May of 1994, effective June 10, 1994. Corresponding provisions are:

Rule 462(a)	Rule 462.001
462(b)	462.020
462(c)	462.040

462(d)	462.060
462(e)	462.080
462(f)	462.100
462(g)	462.120
462(h)	462.140
462(i)	462.160
462(j)	462.180
462(k)	462.200
462(l)	462.220
462(m)	462.240
462(n)	462.260

[220.0001 \(././././././proptaxes/pdf/220_0001.pdf\)](#) **Adverse Possession.** Satisfaction of the five requirements for obtaining title to property by adverse possession constitutes a change in ownership as of the date all five are satisfied, even though title is confirmed subsequently by a court action. C 10/30/1991.

[220.0002 \(././././././proptaxes/pdf/220_0002.pdf\)](#) **Adverse Possession.** Any person claiming the right to be assessed for land may have his/her name placed on the regular assessment roll with that of the assessee, provided that supporting documentation listed in Revenue and Taxation Code section 610(b) is submitted to the assessor. C 12/9/1998.

[220.0003 \(././././././proptaxes/pdf/220_0003.pdf\)](#) **Affiliated Group Transfer.** Under Revenue and Taxation Code section 64(b), any transfer of real property among members of an affiliated group is not a change in ownership. An "affiliated group" is one or more chains of corporations connected through stock ownership with a common parent corporation if: (1) 100 percent of the voting stock (exclusive of that owned by directors) of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and (2) the common parent corporation owns, directly, 100 percent of the voting stock (exclusive of that owned by directors) of at least one of the other corporations. Thus, an affiliated group requires the common ownership to be among corporations. A transfer to a limited liability company is not a transfer among members of an affiliated group so the exclusion under section 64(b) is inapplicable. C 4/20/2012.

[Back to top \(#top\)](#)

[220.0004 \(././././././proptaxes/pdf/220_0004.pdf\)](#) **After-Acquired Title Doctrine.** The doctrine of after-acquired title applies in some circumstances where the deed purports to convey a greater title or estate in property than is actually owned by the grantor. When such a deed is recorded, only the interest actually owned undergoes a change in ownership and is subject to reassessment, unless an exclusion applies. C 11/7/2006.

[220.0005 \(././././././proptaxes/pdf/220_0005.pdf\)](#) **Agent/Principal Relationship.** The question of whether the person whose name appears on a deed is the true owner of the property is a question of fact. Normally, the person whose name appears on the deed would be presumed to be the owner of the property in question. However, if one could prove that that person is merely acting as an agent of another, then the true owner of the property would be the agent's principal. Therefore, a transfer of the property from the agent's name to his principal would not be regarded as a change in ownership. C 7/11/1980.

[220.0010 \(././././././proptaxes/pdf/220_0010.pdf\)](#) **Air Rights.** A change in ownership of real property occurs pursuant to Revenue and Taxation Code section 60 upon the transfer of air rights located directly above the land surface which establishes their legal description. Air rights are considered real property by Property Tax Rule 124, which classifies them as land; a transfer of a present fee interest in air rights separate from the surface rights is legally possible since such rights are real property and part of land; and there should be a reappraisal of that portion of the land (air rights) that changes ownership. LTA 7/3/1986 (No. 86/50).

[220.0025 \(././././././proptaxes/pdf/220_0025.pdf\)](#) **Bankruptcy.** Although the filing of a petition for bankruptcy under United States Bankruptcy Code Chapters 7, 11 or 13 creates a separate and distinct estate, the estate of the bankrupt, beneficial use of a bankrupt's assets is not transferred and thus, no change in ownership occurs upon the creation of the estate. LTA 7/26/1988 (No. 88/55).

[220.0030 \(../..../proptaxes/pdf/220_0030.pdf\)](#) **California Department of Veteran Affairs.** When property is sold to a veteran by the Department of Veterans Affairs, the Department holds legal title as security for the payment of the purchase price, but beneficial title is in the veteran and the property is subject to property tax. If the veteran breaches the contract and the property is repossessed by the Department, there is a change in ownership but the property becomes exempt. C 2/27/1985.

[220.0031 \(../..../proptaxes/pdf/220_0031.pdf\)](#) **California Department of Veterans Affairs.** A purchase by the Department of Veterans Affairs of residential property for sale to a veteran creates a situation that is analogous to a transfer to a trust for the benefit of the purchasing veteran. The Department takes legal title to the property only to secure payment of the purchase price. When the person(s) selling the property to the Department is the parent(s) of the purchaser of the property from the Department, the parent-child exclusion is available, provided the transfers are completed on or after November 6, 1986, and all other requirements for the exclusion are met. C 9/19/1988.

[220.0032 \(../..../proptaxes/pdf/220_0032.pdf\)](#) **Change in Control.** Under section 64(c)(1) and Property Tax Rule 462.180, subdivision (d)(1)(B), a change in ownership occurs when a new entity obtains control, whether *directly* or *indirectly*, of an entity that owns real property. When a new person or legal entity obtains direct control of an entity, a change in control occurs, even if a formerly direct owner maintains indirect control through its ownership of the new entity that obtained direct control. C 1/22/2015.

[220.0033 \(../..../proptaxes/pdf/220_0033.pdf\)](#) **Change in Control on Date of Death of Beneficiary.** Where a trust owns voting shares in a corporation and the death of one beneficiary causes a stock transfer that results in another beneficiary acquiring more than 50 percent of the voting shares, the change in control occurs as of the date of death. C 11/20/1995.

[220.0035 \(../..../proptaxes/pdf/220_0035.pdf\)](#) **Charitable Gift Annuity.** A change in ownership of real property occurs pursuant to Revenue and Taxation Code section 60 upon the transfer of real property to a charity in exchange for a charitable contribution deduction for the value of the property's remainder interest and a stream of income from an annuity. Although the economic consequences to the donors of such property may be the same as those resulting from transfers to charitable remainder trusts, Revenue and Taxation Code section 62(d) only excludes from reappraisal transfers to trusts. C 6/4/1987.

[220.0040 \(../..../proptaxes/pdf/220_0040.pdf\)](#) **Community Property.** Control and ownership of legal entities acquired as community property by husbands and wives should be treated in the same manner as acquisitions whereby husbands and wives take title as joint tenants, namely, as one-half interests owned and controlled by the husbands and as one-half interests owned and controlled by the wives. The fact of marriage cannot be used to attribute ownership of one spouse to that of the other so as to find that one spouse has directly and indirectly acquired more than 50 percent ownership in a legal entity. Thus, no single person has acquired control within the meaning of Revenue and Taxation Code section 64(c), and such transactions are excluded from reappraisal by section 64(a). LTA 3/5/1985 (No. 85/33); C 5/20/1996; C 4/1/1999; C 9/16/1999.

[Back to top \(#top\)](#)

[220.0041 \(../..../proptaxes/pdf/220_0041.pdf\)](#) **Community Property.** If a husband or wife owns as separate property a 49 percent ownership in a legal entity, and his or her spouse purchases a 5 percent interest with community property funds, a change in ownership of all property owned by the legal entity would occur since the original owner would obtain direct or indirect ownership of more than 50 percent of the total interests in the entity. C 4/12/1988.

[220.0043 \(../..../proptaxes/pdf/220_0043.pdf\)](#) **Community Property.** Community property is not transmuted to separate property unless the requirements under Family Code sections 850-853 are met. Where spousal consents did not meet these requirements, the transfer of real property from a limited liability company in which the membership interests were community property to revocable trusts created by each husband and wife qualified for the exclusion from change in ownership under Revenue and Taxation Code section 62(a)(2). The transfers resulted solely in a change in the method of holding title to real property in which proportional ownership interests of the transferors and transferees remained the same in each and every piece of real property transferred. C 8/4/2006.

220.0044 **Community Property.** C 10/27/2010. (Deleted 2020)

[220.0050 \(../..../proptaxes/pdf/220_0050.pdf\)](#) **Condominium Conversion.**

1. The conversion of an apartment into a condominium unit is not, by itself, a change in ownership.

2. A sale of a converted condominium unit to the present apartment tenant having a lease for a period less than 35 years is a transfer of the lessor's interest and, under Revenue and Taxation Code section 61(c)(2), a change in ownership. Conversely, if the lease is for a period of 35 years or more, there is no change in ownership. C 2/7/1980; C 2/14/1980.

[220.0051 \(../..../proptaxes/pdf/220_0051.pdf\)](#) **Condominium Conversion.** The conversion of a cooperative housing unit into a condominium unit is not a change in ownership when the owner of the unit retains the same ownership interest in the unit after the conversion that he had before the conversion. Under Revenue and Taxation Code section 62(a)(2), such transfers are changes in the method of holding title to the units only. C 7/30/1985; C 4/21/1989.

[220.0052 \(../..../proptaxes/pdf/220_0052.pdf\)](#) **Condominium Conversion.** The transfer of the common area appurtenant to cooperative housing units converted into condominium units is not a change in ownership if the conversion of the units is not a change in ownership. C 3/26/1987.

[220.0053 \(../..../proptaxes/pdf/220_0053.pdf\)](#) **Condominium Conversion.** The conversion of a community apartment project to a condominium, which provides each former owner of an equal undivided interest in the apartment property with ownership of the apartment he/she occupies and an undivided interest in the common area as a tenant in common, results only in a change in the method of holding title which does not change the proportional interests of the co-owners and is excluded from change in ownership under Revenue and Taxation Code section 62(a)(1). C 1/23/1991.

[220.0055 \(../..../proptaxes/pdf/220_0055.pdf\)](#) **Condominium Creation.** The filing of a tract map, the obtaining of a bond guaranteeing tax payment, and even the mapping of the individual units by the assessor do not create a condominium. Only after the conveyance of at least one unit may each condominium owned in fee be separately assessed. The same conclusion is applicable to the conversion of an apartment complex to condominiums. C 11/18/1988.

[220.0060 \(../..../proptaxes/pdf/220_0060.pdf\)](#) **Cooperative Housing Corporation.** A transfer of stock in a cooperative housing corporation which conveys the exclusive right to occupancy of all or part of the corporate property constitutes a change in ownership requiring reappraisal of the unit transferred and establishment of base year value thereon. C 10/7/1982.

[220.0061 \(../..../proptaxes/pdf/220_0061.pdf\)](#) **Cooperative Housing Corporation.** A transfer of stock in a cooperative housing corporation which conveys the exclusive right to occupancy of all or part of the corporate property is not a change of ownership if:

- (1) The cooperative was financed or insured under state or federal programs specified in Revenue and Taxation Code section 62(i);
- (2) The regulatory and occupancy agreements have been approved by the appropriate state or federal agency; and
- (3) The transfer is to a person or family qualifying for purchase by reason of limited income as defined by the law authorizing the financing or insuring of the cooperative in the regulations of the governmental agency administering the program. C 8/30/1990.

[Back to top \(#top\)](#)

[220.0063 \(../..../proptaxes/pdf/220_0063.pdf\)](#) **Cooperative Housing Corporation—Limited Equity Cooperative.** The transfer of a membership interest in a limited equity cooperative is a transfer of a present interest in a specific portion of the property and is a transfer of beneficial use, and the interest transferred is substantially equivalent to the value of the fee. Thus, the transfer of a membership interest in a limited equity cooperative is a transfer of an ownership interest in a cooperative housing corporation pursuant to Revenue and Taxation Code section 61(i) and within the meaning of section 60, and it constitutes a change in ownership for property tax purposes. C 7/30/2001.

[220.0065 \(../..../proptaxes/pdf/220_0065.pdf\)](#) **Corporate Merger.** The merger of two corporations results in a change in ownership of the property previously owned by the merged corporation unless excluded as a corporate reorganization under Revenue and Taxation Code section 64(b), or under Revenue and Taxation Code section 62(k) as a transfer between two nonprofit corporations regulated by laws, rules, regulations or canons of the same religious denomination. The fact that two nonprofit corporations have overlapping boards of directors, similar goals and are interactive is not sufficient to exclude transfers of property between them. C 4/19/1988.

[220.0066 \(../..../proptaxes/pdf/220_0066.pdf\)](#) **Corporate Merger.** A "reverse triangular merger" occurred between Corporation A, a publicly owned bank, and Corporation B, owned by a holding company. As a result of the merger, Corporation B ceased to exist and Corporation A succeeded by operation of law to all of the property of Corporation B. Thus, a change in ownership occurred as to the real property that was owned by Corporation B before the merger and subsequently transferred to Corporation A via the merger.

The exclusion provided by Revenue and Taxation Code section 62(a)(2) is not available because the post-merger stock ownership of Corporation A is not the same as the pre-merger stock ownership of Corporation B. And since Corporations A and B were not affiliated corporations within the definition of Revenue and Taxation Code section 64(b), and since the holding company was not a common parent corporation, the exclusion from change in ownership provided by section 64(b) also is not available.

In addition, the pre-merger real property owned and retained by Corporation A underwent a change in ownership pursuant to Revenue and Taxation Code section 64(c) upon the transfer of all of Corporation A's stock to the holding company during the merger. C 8/30/1999.

220.0067 **Corporate Merger.** C 10/30/2009. (Deleted 2020)

[220.0070 \(../..../proptaxes/pdf/220_0070.pdf\)](#) **Corporate Ownership.** Only corporate reorganizations which meet the requirements of Revenue and Taxation Code section 64(b) are not changes in ownership: all of the corporations involved must be members of an affiliated group before the reorganization takes place, the reorganization must qualify as a reorganization under Internal Revenue Code section 368, and the reorganization must be accepted as a nontaxable event by similar California statutes. LTA 4/12/1983 (No. 83/49).

[220.0071 \(../..../proptaxes/pdf/220_0071.pdf\)](#) **Corporate Ownership.** A merger of Corporation B into Corporation A (both own real property) is excluded from change in ownership under Revenue and Taxation Code section 64(b) where before the transaction: Corporation A was 44.76 percent shareholder but not a director of Corporation B; the remaining six shareholders (individuals) of Corporation B were directors of Corporation B; the nine shareholders of Corporation A (all individuals) included the six shareholders of Corporation B who were directors; and after the transaction, Corporation B no longer existed and Corporation A had the identical shareholders it had before the transaction but with different share percentages than before. C 11/28/1995.

[220.0073 \(../..../proptaxes/pdf/220_0073.pdf\)](#) **Corporate Ownership.** The liquidation of a subsidiary corporation and transfer of its assets to its 100 percent owner parent corporation followed by a liquidation of that parent corporation and a transfer of its assets to its 100 percent owner parent corporation constitute transfers among an "affiliated group" and would not qualify as changes in ownership.

It may be argued that since individual shareholders are the ultimate owners of all property owned by all the corporations, there has been only a change in the method of holding title and therefore, the exclusion of Revenue and Taxation Code section 62(a)(2) is applicable. However, if the transfers of real properties are among members of an "affiliated group", as defined in section 64(b), that section would apply and by its own terms, section 62(a)(2) would not. C 11/5/1990.

[220.0074 \(../..../proptaxes/pdf/220_0074.pdf\)](#) **Corporate Ownership.** A corporation's transfer of an interest it owns in a partnership to one of its wholly owned subsidiaries is not a change in ownership unless the partnership interest prior to its transfer qualifies as one owned by an "original co-owner" within the meaning of Revenue and Taxation Code section 64(d). C 4/18/1989.

[220.0075 \(../..../proptaxes/pdf/220_0075.pdf\)](#) **Corporate Ownership (Property Value).** When an owner of corporate stock obtains ownership of additional shares that gives him or her control of a corporation, the corporate property should be reappraised at a value that reflects what it would sell for if sold on the open market. The price paid for the stock and the corporate debt could well reflect something other than the real property value. C 10/30/1984.

[Back to top \(#top\)](#)

[220.0076 \(../..../proptaxes/pdf/220_0076.pdf\)](#) **Corporate Ownership.** The transfer by a corporation of its 60 percent ownership interest in a partnership which owns real property to its wholly-owned subsidiary is not a change in ownership, even though following the transfer the subsidiary will own an 85 percent interest in the partnership. Under Revenue and Taxation Code section 64(b), the parent corporation's affiliation with and 100 percent ownership of the subsidiary means there is no change in

the majority ownership of the partnership. The affiliation requirement in section 64(b) is met if the corporations making the transfers are members of the same affiliated group, and does not necessitate corporate reorganization. C 10/15/1990; C 3/23/1994.

[220.0077 \(../..../proptaxes/pdf/220_0077.pdf\)](#) **Corporate Ownership.** Generally, when property is transferred to a newly formed corporation in return for shares of stock, the corporation issues stock certificates certifying the transferor's ownership of the agreed to number of shares soon after the property is received. However, it is common for there to be some delay between the date that a new shareholder transfers property to a new corporation and the date the corporation issues the new stockholder's stock certificates. In such cases, issues may arise as to the time when a particular person became a shareholder. Traditionally, the courts have not looked solely to the date that stock certificates were issued to determine the date that a particular person became a shareholder in a new corporation because it is not necessary for a corporation to issue stock certificates in order for the corporation to make a person a shareholder. Instead, the courts have said that the time when a share of stock originally comes into existence, and is deemed issued, is controlled by the intent of the parties and is ascertained by examining the contract which they have executed concerning such issue. C 9/24/2007.

220.0078 **Corporate Ownership.** C 4/4/2008. (Deleted 2020)

[220.0080 \(../..../proptaxes/pdf/220_0080.pdf\)](#) **Corporate Property Transfers.** A change in ownership of real property does not occur upon the transfer of property from X Corporation to Y Corporation where A and B each own 50 percent of the outstanding shares of X Corporation, Y Corporation issues all of its shares to X Corporation in return for the property, and X Corporation immediately distributes 50 percent of such shares to A and 50 percent to B. Since the proportional ownership interests of A and B remain the same after the transfer, Revenue and Taxation Code section 62(a)(2) and Property Tax rule 462(j)(2)(B) and (m)(5) are applicable. C 8/16/1984.

[220.0081 \(www.cdtfa.ca.gov/proptaxes/pdf/220_0081b.pdf\)](#) **Corporate Property Transfers.** Property transferred between public benefit corporations is excluded under Revenue and Taxation Code section 62(a)(2) if the members of the transferor corporation were identical to the members of the transferee corporation before and after the transfer. In the event that neither corporation has members, section 62(a)(2) applies if the transferor corporation's board of directors was identical to the transferee corporation's board of directors both before and after the transfer. Although the plain language of sections 62(a)(2) and 64 each require the tracking of *ownership* interests in legal entities, it is reasonable to equate public benefit corporation membership, or directorship when there are no members, to ownership for purposes of section 62(a)(2) and section 64. The members or directors of the transferee corporation then become "original co-owners" in the surviving entity and each member or director's percentage of ownership is measured by his or her voting interest percentage. If a voting interest change of more than 50 percent in the members or directors of the public benefit corporation occurs, there would be a change in ownership of the property previously excluded under section 62(a)(2). If a single member or director obtains more than 50 percent of the voting interest, the public benefit corporation would undergo a change in control pursuant to section 64(c)(1).

Section 64(b) is inapplicable to public benefit corporations because public benefit corporations cannot meet the definition of an affiliated group since they do not issue stock, and therefore, cannot be connected through stock ownership. C 8/5/1983; C 6/2/2010.

[220.0082 \(../..../proptaxes/pdf/220_0082.pdf\)](#) **Corporate Property Transfers.** Revenue and Taxation Code section 62 provides that when two or more people, e.g., a husband and wife, acquire property from a corporation they own, retaining the same proportional ownership interest in the property as they have in the corporation, the transfer is excluded from change in ownership. The payment of consideration for the property is not material to the decision of whether or not a change in ownership has occurred or whether the transfer is within the exclusion. C 9/8/1989.

[220.0083 \(../..../proptaxes/pdf/220_0083.pdf\)](#) **Corporate Property Transfers.** In order for transfers of real properties from a corporation to its shareholders to be excluded from change in ownership, the shareholders' ownership interests after the transfers must be the same as the ownership interests, as represented by stock, were prior to the transfers. The test is proportional ownership of any property received, not the value of the property received. C 10/31/1989.

[Back to top \(#top\)](#)

[220.0085 \(../..../proptaxes/pdf/220_0085.pdf\)](#) **Corporate Property Transfers.** If a corporation transfers properties to its shareholders as tenants in common, so that each shareholder receives an interest in each property equivalent to his/her previous interest in the corporation, a change of ownership does not occur. However, if some of the shareholders subsequently

transfer their ownership interests in a property or properties to their fellow shareholders, the assessor should regard the original transfer(s) as a change(s) in ownership and assess 100 percent of the property or properties that was or were the subject of the second transfer(s). Substance, not form, determines change in ownership questions. C 9/25/1985.

[220.0086 \(../..../proptaxes/pdf/220_0086.pdf\)](#) **Corporate Property Transfers.** For transfers of property to qualify as transfers made among members of an affiliated group, the affiliation must exist before and after the transfer. A transfer made as part of a split-up of affiliated corporations is not within the provisions of Revenue and Taxation Code section 64(b). C 5/14/1985.

[220.0087 \(../..../proptaxes/pdf/220_0087.pdf\)](#) **Corporate Property Transfers—Affiliated Corporations.** In order that a transfer of property from one affiliated corporation to another be considered other than a change in ownership because of such affiliation pursuant to Revenue and Taxation Code section 64(b), the transferor corporation and transferee corporation must be affiliated before and after the transfer. C 3/19/1984.

[220.0088 \(../..../proptaxes/pdf/220_0088.pdf\)](#) **Corporate Property Transfers—Affiliated Corporations.** In order that a transfer of property from one affiliated corporation to another be considered excluded from change in ownership pursuant to Revenue and Taxation Code section 64(b), the transferor corporation and the transferee corporation must be affiliated before and after the transfer. If the affiliation results from the transfer, exclusion from change in ownership is possible pursuant to Revenue and Taxation Code section 62(a)(2) if the transfer results only in a change in the manner of holding title to the property. C 7/3/1987.

[220.0090 \(../..../proptaxes/pdf/220_0090.pdf\)](#) **Corporate Reorganization.** A corporate reorganization effected by a series of stock transfers among corporations that have common owners will not result in a change in ownership of the real property of any of the corporations if each transfer either does not constitute a change in ownership or is excluded from change in ownership. For purposes of applying Revenue and Taxation Code section 64(b), if affiliation is one of multiple steps in the reorganization, then the provisions of that section are not applicable. In order to qualify for that exclusion, the corporations involved must be affiliated prior to the first step in the reorganization. Additionally, the step transaction doctrine may be applicable in analyzing such a series of transfers. C 2/14/1992.

[220.0091 \(../..../proptaxes/pdf/220_0091.pdf\)](#) **Corporate Reorganization.** Parent Corporation is owned 51.06 percent by a revocable husband and wife trust. Subsidiary B owns real property in California. Under a proposed corporate reorganization pursuant to Internal Revenue Code sections 355 and 368(a)(1)(D), commonly referred to as a "non-pro rata split off," Parent Corporation would transfer all the stock of Subsidiary B to the revocable trust in exchange for a percentage of nonvoting stock of Parent. Following the proposed reorganization, the revocable trust would continue to own 51.06 percent of the outstanding voting stock of Parent, but the trust's share of nonvoting stock and total outstanding stock would be reduced to less than 50 percent. The trust would also own 100 percent of all the outstanding stock of Subsidiary B. Such a reorganization would not result in a change in ownership of the real property of Subsidiary B pursuant to Revenue and Taxation Code section 64, subdivision (a). Section 64, subdivision (b), does not apply because Subsidiary B would not be part of the "affiliated group" both before and after the transaction. Further, section 64, subdivision (c), does not apply because the revocable trust is not a separate legal entity that owned a controlling interest in Subsidiary B through the revocable trust and Parent Corporation prior to the reorganization. C 9/23/2004.

[220.0100 \(../..../proptaxes/pdf/220_0100.pdf\)](#) **Corporate Stock Transfers.** A change in ownership of real property occurs upon the transfer of all of the shares of X Corporation, which owns the real property, by Y Corporation to Z Corporation, even though Y and Z Corporations have some common owners, since after the transfer, a change in control of the land contemplated by Revenue and Taxation Code section 64(c) has occurred. C 2/14/1984.

[220.0101 \(../..../proptaxes/pdf/220_0101.pdf\)](#) **Corporate Stock Transfers.** A change in ownership of real property occurs upon the transfers of shares of stock in X Corporation, which owns the real property, and in Y Corporation to a newly-formed holding company in exchange for shares of stock in the holding company since, after the transfer, a change in control of the kind contemplated by Revenue and Taxation Code section 64(c) has occurred. C 3/3/1983.

[220.0102 \(../..../proptaxes/pdf/220_0102.pdf\)](#) **Corporate Stock Transfers.** A change in ownership of real property does not occur upon H's transfer of all the outstanding shares of stock in S Corporation, which owns the real property, to P Corporation in return for all the shares in P Corporation. Since the proportional ownership interest of H in the real property remained the same after the transfer, Revenue and Taxation Code section 62(a)(2) is applicable. C 6/26/1984.

[Back to top \(#top\)](#)

[220.0103 \(../..../proptaxes/pdf/220_0103.pdf\)](#) **Corporate Stock Transfers.** A change in ownership of real property occurs upon the redemption of shares by a corporation where, after the redemption, a shareholder who previously held less than 50 percent of the corporation's stock now holds more than 50 percent thereof. Such is a change in control of the kind contemplated by Revenue and Taxation Code section 64(c). C 12/12/1983; C 4/1/1999.

[220.0104 \(../..../proptaxes/pdf/220_0104.pdf\)](#) **Corporate Stock Transfers.** "Exclusive of any shares owned by directors", as used in Revenue and Taxation Code section 64(c) refers to the directors of the acquiring corporation. LTA 3/7/1980. (No. 80/39).

[220.0106 \(../..../proptaxes/pdf/220_0106.pdf\)](#) **Corporate Stock Transfers.** If a group of people acting individually purchase all of the stock of a corporation, a change in ownership does not occur unless one person obtains more than a fifty percent interest in or control of the corporation. Likewise, a subsequent conversion of the stock to a greater number of shares or a change in the designation given to the new issue(s) does not result in a change of ownership if there is no change in the voting rights attached to the old and new shares. The conversion would qualify as a reorganization.

Neither a change in the state of incorporation from Nevada to California accomplished by a statutory merger into a California corporation formed for the purpose nor a subsequent merger of the California corporation into a wholly owned subsidiary corporation followed by a corporate name change constitute a change in ownership if there is no change in control. C 9/22/1989.

[220.0107 \(../..../proptaxes/pdf/220_0107.pdf\)](#) **Corporate Stock Transfers.** Transfers of corporate stock which result in a change in control of a parent corporation result in a change in ownership of the property or properties owned by that corporation and all of the subsidiary corporations it controls directly or indirectly. *Sav-on Drugs, Inc. v. Orange County* (1987) 190 Cal.App.3d 1611, settled this issue. C 9/29/1987.

[220.0108 \(../..../proptaxes/pdf/220_0108.pdf\)](#) **Corporate Stock Transfers.** Property transferred to a newly formed corporation in exchange for 100 percent of its stock results in a change in the manner of holding title, not a change in ownership. Likewise, a subsequent transfer of 50 percent or less of the stock of the new corporation to an unrelated person will not result in a change in the direct or indirect control of the new corporation. Any additional distribution of stock by the original owner will result in a change in ownership as provided in Revenue and Taxation Code section 64(c) or (d). Transfers of partnership interests are subject to the same analysis. C 5/22/1987; C 12/30/1987.

[220.0109 \(../..../proptaxes/pdf/220_0109.pdf\)](#) **Corporate Stock Transfers.** The purchase by an unrelated foreign corporation of 100 percent of the stock of a second foreign corporation results in the purchaser obtaining indirect control of all property owned by the subsidiary or subsidiaries of the second corporation whose stock was purchased. A change in ownership of all of a subsidiary's property located in California occurs regardless of the state or nation in which the buyer or seller is incorporated and regardless of the fact that the local corporation may be a fourth-tier or fifth-tier subsidiary. LTA 4/26/1989 (No. 89/39); C 12/20/1989.

[220.0110 \(../..../proptaxes/pdf/220_0110.pdf\)](#) **Corporate Stock Transfers.** The sale by corporation X of 50 percent of the stock in wholly owned subsidiary Y to an unrelated third corporation does not transfer ownership of Y corporation's assets. There could be a change of control if more than 50 percent of the stock were sold, in which case all of subsidiary Y's real property, including leaseholds, would be subject to reappraisal.

Mineral leases are to be treated like all other leases in such circumstances. Only when a mineral lease itself is created, renewed, assigned or otherwise transferred is the special treatment afforded such a lease under Revenue and Taxation Code section 61(a) appropriate. C 7/23/1987.

[220.0112 \(../..../proptaxes/pdf/220_0112.pdf\)](#) **Corporate Stock Transfers.** If a corporation owning less than 50 percent of another corporation obtains control of the other corporation through no action on its part, there is a change in ownership requiring reappraisal. The fact that the controlled corporation caused the change by redeeming outstanding shares owned by others, a reverse stock split, etc., is of no significance. The statute does not require the person or entity obtaining control to actually purchase stock itself; nor must there be an intent to obtain control. The fact of the change in control is determinative. C 4/1/1985.

[Back to top \(#top\)](#)

[220.0113 \(../..../proptaxes/pdf/220_0113.pdf\)](#) **Corporate Stock Transfers.** When a new corporation obtains indirect ownership or control of a corporation which owns real property, there is a change in ownership of such real property notwithstanding the fact that the parent corporation at the top of the corporate chain held indirect ownership or control of the acquired corporation before and after the acquisition. C 6/12/1995.

[220.0114 \(../..../proptaxes/pdf/220_0114.pdf\)](#) **Corporate Stock Transfers.** Corporation A is owned 96.3 percent by Corporation B and 3.7 percent by individual Z. Corporation B is owned 99.5 percent by individuals X and Y and 0.5 percent by individual Z. Corporation B is merged into Corporation A by stock cancellations and transfers that will provide newly issued voting stock in Corporation A to the owners of Corporation B. After the merger, the former owners of Corporation B, X and Y, will retain their majority interest in and control of Corporation A through ownership of the newly issued voting stock in Corporation A.

The real property transferred from Corporation B to Corporation A as a result of the merger would undergo a change in ownership. After the merger, the proportional ownership interests of the transferors in the real property does not remain the same and, therefore, Revenue and Taxation Code section 62(a)(2) does not apply. Furthermore, the stock transfers do not constitute a reorganization of corporations in an affiliated group and, thus, the exclusion of section 64(b) is inapplicable. The corporations were not connected through stock ownership with a common parent corporation owning 100 percent of the voting stock prior to the merger. However, there is no change in ownership of the real property owned by Corporation A because that real property continues to be held by Corporation A and because Revenue and Taxation Code sections 61(b), 64(c), and 64(d) are inapplicable. C 5/18/1993.

[220.0115 \(../..../proptaxes/pdf/220_0115.pdf\)](#) **Corporate Stock Transfers.** A redemption of all outstanding corporate stock that is concurrent with the sale of stock representing a 50 percent ownership interest in the corporation to each of two unrelated individuals does not constitute a change in ownership under Revenue and Taxation Code section 64(a) since neither of the two new shareholders has obtained a majority interest in or direct or indirect control of the corporation. C 4/18/1989.

[220.0116 \(../..../proptaxes/pdf/220_0116.pdf\)](#) **Corporate Stock Transfers.** All the voting capital stock of Corporation X is held by an irrevocable trust of which individuals S, A, B, and C are the income beneficiaries. Corporation X owns real property which it has held prior to the formation of the trust in 1969. Income from the trust is paid 75% to S with the remaining 25% paid equally to A, B, and C. The trust provides that upon the death of S, the trust is terminated and the stock of Corporation X will be distributed in equal shares to A, B, and C.

The distribution of corporate stock held by an irrevocable trust to the trust beneficiaries will not result in a change in ownership under Revenue and Taxation Code section 60 because one of the necessary elements of a change in ownership, the transfer of the beneficial interest, is lacking. Furthermore, the distribution of the stock of Corporation X to A, B, and C will not result in a change in ownership under Revenue and Taxation Code section 64(c) because neither A, B, nor C would obtain control of the voting stock of Corporation X after the transfer; each would have 33.33% of such stock after the transfer. C 6/21/2000.

[220.0117 \(../..../proptaxes/pdf/220_0117.pdf\)](#) **Corporate Stock Transfers.** For property tax purposes, the date of a change in control under Revenue and Taxation Code section 64(c) occurs on the date that the purchasing corporation is deemed to have effectively purchased more than 50 percent of the selling corporation's voting stock. C 10/18/2000.

[220.0120 \(../..../proptaxes/pdf/220_0120.pdf\)](#) **Corporate Voting Stock Proxies.** The transfer of an irrevocable right to vote shares of stock owned by the transferor of the right is allowed only under circumstances described in Corporations Code section 705. When the transfer satisfies the Corporations Code requirements and involves more than 50 percent of the voting stock of the corporation, a change in control occurs and reappraisal of all corporate real property is in order.

Where the transferee of the proxy has only limited discretion when exercising the voting rights, those limitations must be examined to determine whether true control has actually transferred. Additionally, a transfer solely to secure a debt is excluded from change of ownership by Revenue and Taxation Code section 62(c)(1). C 2/20/1985.

[220.0125 \(../..../proptaxes/pdf/220_0125.pdf\)](#) **Custodianship.** Under California law, a minor may own real property or an interest therein, but a minor may not convey or make contracts relating to real property. Since a minor cannot sell or purchase property held directly in his or her own name, transactions involving a minor's interests in real property are usually conducted indirectly through a guardianship or trust. The California Uniform Transfers to Minors Act (CUTMA) provides a statutory mechanism for transferring property to an adult "custodian" for the benefit of a minor. A CUTMA custodian holds, controls, manages, and invests the custodial property. When the custodianship terminates, title to the custodial property is transferred to the minor or the minor's estate.

When property is transferred to a minor's custodian under the CUTMA, a minor has beneficial ownership of the property, and the custodian only has legal title with powers and limitations similar to that of a trustee. Therefore, for property tax purposes, an assessor should treat a CUTMA custodianship in the same manner as a trust and "look through" to identify the transferor and the present beneficiary. A CUTMA custodian is not considered the beneficial owner.

Thus, there is no exclusion from change in ownership for a transfer of real property from a grandmother to her daughter as a custodian for her grandson under the CUTMA. Such a transfer is considered a transfer from a grandmother to the grandson, and not from the grandmother to the daughter that qualifies for the parent-child exclusion. Neither is the grandparent-grandchild exclusion available since the mother of the grandchild is still living. C 9/14/2007.

[220.0130 \(../..../proptaxes/pdf/220_0130.pdf\)](#) **Date of Change.** For sales of property, the date of change in ownership is rebuttably presumed to be the date the deed is recorded. This presumption may be rebutted by evidence proving a different date, such as the date an agreement of the parties became specifically enforceable.

In general, an oral agreement to sell real property is invalid unless some note or memorandum is in writing and is signed by the party to be charged. However, this rule does not apply when an oral agreement has been fully executed. An executed agreement is not assailable by the parties or by third persons. An agreement written after the fact can confirm a change in ownership as of the date of an oral agreement. C 8/10/1987.

[220.0131 \(../..../proptaxes/pdf/220_0131.pdf\)](#) **Date of Change.** When a party to a real property transfer refuses to execute the contract of sale and a court issues an order for specific performance of the contract, the date of the change in ownership relates back to the date set in the contract, not to the date of the court order. C 12/26/1984.

[Back to top \(#top\)](#)

[220.0132 \(../..../proptaxes/pdf/220_0132.pdf\)](#) **Date of Change.** If a contract for the sale of real property can be specifically enforced, equity regards as done that which ought to be done and considers the purchaser to be owner of the property upon execution of the contract. If a purchaser is required to bring a court action for specific performance and is successful, transfer of title is nevertheless considered to have occurred on the date the contract became enforceable, i.e., when it was signed. C 11/19/1980.

[220.0133 \(../..../proptaxes/pdf/220_0133.pdf\)](#) **Date of Change.** An undelivered deed will not pass title to property. Deeds take effect only when delivered; however, delivery is a question of fact to be determined from all of the circumstances that will divulge a grantor's intent. When a grantor retains the deed, continues to live in the property, and claims the homeowner's exemption thereon, it is reasonable to conclude that ownership changed only on actual delivery and recordation of the deed. C 6/24/1994.

[220.0134 \(../..../proptaxes/pdf/220_0134.pdf\)](#) **Date of Change.** The preparation of a deed, including its notarization, does not pass title of property to the named grantee, unless the grantor so intends. Retention of the deed by the grantor together with a declaration that the grantor intended to transfer title only upon recordation indicates that the date of the change in ownership is the date of recordation. C 5/9/1988.

[220.0135 \(../..../proptaxes/pdf/220_0135.pdf\)](#) **Date of Change.** An unrecorded grant deed conveying title to real property is valid and is presumed to transfer the full fee interest in the property. The requirements for a valid deed are a grantor, a grantee, a writing and subscription, delivery, and acceptance. Recordation is not essential to the validity of a deed. The date of change in ownership resulting from a transfer effected by an unrecorded deed is the date of delivery of the deed. C 12/11/1997.

[220.0136 \(../..../proptaxes/pdf/220_0136.pdf\)](#) **Date of Change.** In the case of a decedent, title to property transfers on the date of death, whether the estate is probated or not. If there is a successful will contest, or if there is a will contest that is settled prior to a rendition of a judgment, the same date of death should be used for change in ownership purposes. C 4/13/1981.

[220.0137 \(../..../proptaxes/pdf/220_0137.pdf\)](#) **Date of Change.** Property Tax Rule 462.200(b) states 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 that property. An agreement executed prior to the date a deed was recorded, which specifically provided that the transfer of beneficial ownership of the deeded property would not occur until construction began, may be considered sufficient evidence to rebut the presumption and to establish that the date of change in ownership occurred on a date other than the recording date, the subsequent date upon which construction commenced. C 8/10/2000.

[220.0140 \(../..../proptaxes/pdf/220_0140.pdf\)](#) **Date of Death.** When a person is missing for seven years, the law presumes he/she is deceased (Evidence Code section 667). The law also presumes that life continues throughout the seven year period. Evidence that death occurred at some other time may be used to overcome this latter presumption and thus establish a more likely date of death and the date to use for change in ownership purposes. C 3/29/1985.

[220.0145 \(../..../proptaxes/pdf/220_0145.pdf\)](#) **Deed Cancellation.** Grant deeds that are voidable pass title, subject to being set aside in appropriate legal proceedings for specific, recognized reasons, one of which is undue influence. Until set aside, such deeds are operative and result in reappraisal. When a deed is voided by court action, the property value should be changed back to its enrolled value at the time it was deeded plus the appropriate inflation adjustments to the date of the judgment. C 11/7/1991.

220.0148 **Deed Correctness Presumption.** C 12/9/2002. (Deleted 2014)

[220.0149 \(../..../proptaxes/pdf/220_0149.pdf\)](#) **Deed Presumption.** While the owner of the legal title to property is presumed to be the owner of the full beneficial interest, this presumption may be rebutted by clear and convincing evidence. Property Tax Rule 462.200(b)(2) sets forth the types of documentary evidence that may constitute clear and convincing evidence sufficient to rebut the deed presumption. C 9/25/2006.

[Back to top \(#top\)](#)

[220.0149.005 \(../..../proptaxes/pdf/220_0149_005.pdf\)](#) **Deed Presumption.** Whether property is owned by a partnership or individuals as tenants in common is a matter of fact for the assessor to determine. Even though no partnership agreement may exist, a written agreement is not required under the Corporations Code. Further, in determining whether a partnership is formed, the intention of the parties is the ultimate test. The intent of the parties can be deduced from a partnership agreement as well as the surrounding circumstances. Where no partnership agreement exists, intent to form a partnership is deduced from the parties' conduct, transaction, and declarations. Property Tax Rule 462.200(b)(2) sets forth the types of documentary evidence that may constitute clear and convincing evidence sufficient to rebut the deed presumption that the owner of the legal title to property is the owner of the full beneficial interest. C 4/19/2007.

[220.0150 \(../..../proptaxes/pdf/220_0150.pdf\)](#) **Deeds of Trust.** Deeds of trust are legal instruments used to secure payment of a note or notes executed by the purchaser or purchasers of property. They do not themselves transfer title to the property but do, upon default, authorize the holder of the trust deed to convey title to the property to which the trust deed relates in order to satisfy the secured obligation.

The transfer to a third party, a redelivery to the trustor, or the cancellation of a trust deed does not constitute a change in ownership. The execution of a deed as part of a foreclosure by the holder of a trust deed does constitute a change in ownership. C 1/27/1992.

[220.0153 \(../..../proptaxes/pdf/220_0153.pdf\)](#) **Delivery of Deed.** Delivery and acceptance of a deed conveying title to the real property are questions of fact and may be inferred from evidence that the grantee has exercised a right of ownership of the property by subsequently transferring his or her interest in the property to a third party. Although the grantee may not take actual physical possession of the property prior to the transfer to the third party, the conveyance itself is an exercise of a right incident to ownership of a present beneficial interest in the property for change in ownership purposes. C 12/11/1997.

[220.0155 \(../..../proptaxes/pdf/220_0155.pdf\)](#) **Development Rights Transfers.** In *Mitsui Fudosan v. Los Angeles County*, 219 Cal.App.3d 525, the court held transferable development rights to be taxable real property interests which, when conveyed, result in a change in ownership requiring reappraisal of the development rights. LTA 2/11/1991 (No. 91/12).

[220.0158 \(../..../proptaxes/pdf/220_0158.pdf\)](#) **Disclaimed Interest.** A beneficiary may disclaim any interest in any property, including an interest created under a will, by meeting the requirements set forth in the Probate Code. A properly executed and filed disclaimer results in the interest disclaimed descending and being distributed as though the disclaimant had predeceased the creator of the interest. Thus, the creation of a life estate in a friend and a remainder interest in the children of the creator of the interest would, on disclaimer by the life tenant, qualify as a parent-child transfer. C 5/23/1989.

[220.0160 \(../..../proptaxes/pdf/220_0160.pdf\)](#) **Easement.** The creation of a conservation easement conveying all rights and interest in the property except legal title, exclusive in perpetuity, and running with and burdening title to the property constitutes a change in ownership under Revenue and Taxation Code section 60 and Property Tax Rule 462(a). Such easement should be treated for assessment purposes as a separately assessable real property interest. C 1/7/1982; C 8/6/2003.

[220.0161 \(../..../proptaxes/pdf/220_0161.pdf\)](#) **Easement.** No change in ownership of real property occurs when an owner transfers the property to a city but retains an easement therein, creating a possessory interest. Property Tax rule 462(e) exempts an interest created by a reservation in an instrument deeding property to a tax exempt public entity. If the owner transferred the

entire property to the city and the city then granted the easement to the owner, however, there would be a change in ownership under Revenue and Taxation Code section 61(b) and rule 462(e). C 8/12/1988.

[220.0162 \(../..../proptaxes/pdf/220_0162.pdf\)](#) **Easement.** The grant of a nonexclusive easement of ingress and egress across one parcel to another is not a change in ownership since the interest transferred is not substantially equal to the fee value of the land encompassed in the easement area. C 12/6/1985.

[220.0163 \(../..../proptaxes/pdf/220_0163.pdf\)](#) **Easement.** The granting of a conservation easement to a nonprofit entity which easement restricts the use by the owner of the property to the existing and historical ranching and farming activity compatible with the preservation and protection of the natural, open space and scenic qualities of the property does not result in a change in ownership regardless of the length of the period for which the easement is to exist. C 2/16/1984; C 7/28/2003.

[Back to top \(#top\)](#)

[220.0164 \(../..../proptaxes/pdf/220_0164.pdf\)](#) **Easement.** When the grant of the right to divert water is attached to the land, an easement is created. An easement is an interest in real property, the transfer of which may constitute a change in ownership. C 10/12/1982.

[220.0165 \(../..../proptaxes/pdf/220_0165.pdf\)](#) **Easement.** Under Revenue and Taxation Code section 65.1, a change in ownership in common areas occurs provided that the interests transferred meet the definition of a change in ownership and those areas are an appurtenance to other real property also experiencing a change in ownership. A parking lot easement that is nonexclusive is not reserved as an appurtenance to a building pad site in a shopping mall as required by section 65.1(b). Since such easement rights are nonexclusive, they are not substantially equal to the value of the fee interest and do not result in a change in ownership. However, section 65.1(b) does not preclude the pad site, upon change in ownership, from being valued to reflect the amenities and the enhancement afforded by the common area, including the parking lot. Even though the agreement provides that the company may obtain an exclusive right to those parking areas if certain provisions are met, that interest is merely contingent and does not represent a present interest in real property. C 7/19/2005.

[220.0166 \(../..../proptaxes/pdf/220_0166.pdf\)](#) **Easement.** In 1997, owners of Property (servient tenement) entered into an agreement with the city to provide an off-site parking area of at least 76 parking spaces for the tenants of Adjacent Property (dominant tenement). The agreement provided that it would run with the land; be binding on future owners, encumbrancers, successors, heirs or assignees; and would continue until released by the city. Thus, the agreement created an appurtenant easement for a minimum of 76 parking spaces for exclusive use by tenants of Adjacent Property. Because the easement is perpetual in nature, for a minimum of a fixed number of spaces, and exclusive, its value is substantially equal to the value of the fee interest. The grant of the easement satisfied all three prongs of Revenue and Taxation Code section 60, and there was a change in ownership of 76 parking spaces in 1997 when the agreement was entered into. As a result, 76 spaces of the total parking spaces on Property are a component of Adjacent Property's appraisal unit, and must be assessed to Adjacent Property. Because those 76 parking spaces are not a component of Property's appraisal unit, they did not undergo a change in ownership when Property was sold in 2007 and should not be assessed to Property's owners. C 10/22/2010.

[220.0170 \(../..../proptaxes/pdf/220_0170.pdf\)](#) **Economic Recovery Tax Act.** A "safe harbor" lease/agreement under which the seller sells only the limited right to be treated as the owner of the property "solely for federal income tax purposes" and, simultaneously, the purchaser leases back only the right to be treated as the lessee of the property "solely for federal income tax purposes" is not a change in ownership under Revenue and Taxation Code section 60. The right to take tax credits and/or depreciation is not substantially equivalent to the fee interest in the property, and there has been no transfer of the beneficial use of the property. C 11/23/1981.

[220.0175 \(../..../proptaxes/pdf/220_0175.pdf\)](#) **Effective Date.** A document binding the signatories thereto to dissolve a corporation on the happening of a specific future event does not result in reappraisal until the event occurs. A binding contract to perform is not performance. C 12/26/1984.

[220.0180 \(../..../proptaxes/pdf/220_0180.pdf\)](#) **Employee Benefit Plan.** When a corporation sells the majority of its stock to its Employee Stock Ownership Plan (ESOP) for cash which it uses to purchase all of the stock in a number of unrelated corporations, a change of ownership does not result from the sale to the ESOP because of the specific exclusion contained in Revenue and Taxation Code section 66.

The acquisitions by the corporation do result in changes in ownership and require reappraisal of real properties owned by the acquired corporations and located in this state. This opinion would not change whether the acquisitions occurred before or following the ESOP acquisition of the employer corporation stock. C 8/18/1988.

[220.0181 \(../..../proptaxes/pdf/220_0181.pdf\)](#) **Employee Benefit Plan.** The intent of Revenue and Taxation Code section 66 was to extend property tax benefits to pension plans. The sole purpose of section 66(a) was to eliminate any possibility of a reappraisal whenever a participant or a participant's beneficiary became eligible for benefits.

Revenue and Taxation Code section 66(b) excludes any contribution of real property to an employee benefit plan. A "contribution" has been defined as a voluntary transfer to a corporation with no consideration involved. See *United Grocer's Ltd. v. U.S.*, 308 F.2d 634, and *Commissioner of Internal Revenue v. Vandaveer*, 114 F.2d 719. It is our opinion, therefore, that the contribution spoken of in section 66(b) is an original gift to the benefit plan.

Where property is transferred by a private firm to an employee benefit plan by conveyance and is then leased back for 15 years, plus options for 30 years, two changes in ownership have occurred, one when the property is conveyed, and the other when the property is leased back for a period, including options, of 35 years or more.

Where a non-California corporation wholly owned by a pension trust conveys title in real property back to the pension trust which, simultaneously, convey the property to several newly formed California nonprofit holding corporations, the pension trust's interest in the holding corporation being in the exact same proportions as its interests in the non-California corporation, a change in ownership has occurred and reappraisal is required. Such is not an original contribution of property to a pension trust, and under the entity theory, a transfer from a trust to a corporation does not qualify for exclusion from change in ownership. C 6/10/1980.

[220.0182 \(../..../proptaxes/pdf/220_0182.pdf\)](#) **Employee Benefit Plan.** Where B, trustor and trustee of a revocable trust owning real property, as trustee conveyed the property to his pension plan, assuming that the transfer was made without consideration, the transfer was a contribution by B excluded under Property Tax rule 462(m) (4). C 2/6/1985.

[220.0183 \(../..../proptaxes/pdf/220_0183.pdf\)](#) **Employee Benefit Plan.** A transfer of real property by an employee benefit plan to trustees of individual retirement accounts (IRAs) owned by employees is not excluded from change in ownership as a contribution to employee benefit plans since the IRAs do not qualify as employee benefit plans for purposes of Revenue and Taxation Code section 66. Neither is the transfer to the trustees excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) since the owners of the transferred property did not have the same proportional ownership interests following the transfer as they had prior to the transfer. C 2/14/1991.

[220.0184 \(../..../proptaxes/pdf/220_0184.pdf\)](#) **Employee Benefit Plan.** The distribution of separate parcels of real property from an employee benefit plan to each of the participants is excluded from change in ownership under Revenue and Taxation Code section 66(a) as long as the value of the parcels or property interests distributed to each of the plan participants represent the present value of the interests each held in the benefit plan. C 2/10/2000.

[Back to top \(#top\)](#)

[220.0185 \(../..../proptaxes/pdf/220_0185.pdf\)](#) **Equity Share Agreement.** An agreement that transfers occupancy of, but not legal title to property in return for the payment of an existing mortgage and other costs of ownership, provides a return to the "investor" of the value of his equity within 48 months, and reserves to the "investor" the right to share in any profit from a sale to a third party does not constitute a change in ownership. It is, in essence, a lease with an option to purchase. C 1/29/1991.

[220.0190 \(../..../proptaxes/pdf/220_0190.pdf\)](#) **Escrow Conditions.** The general rule is that when a deed is delivered or recorded by an escrow holder prior to the time a condition or conditions specified in the escrow instructions are satisfied, the transfer is void and no title passes to the grantee. However, a party may be held to have waived a condition if the escrow closes without objection. When there is a waiver, either by express agreement or by inference from circumstances indicating an intent to waive, a change in ownership occurs. A subsequent default in payment by the buyer results in a second change in ownership. C 8/13/1984.

[220.0195 \(../..../proptaxes/pdf/220_0195.pdf\)](#) **Estate For Years.** A lease agreement that requires the lessee to construct improvements which, on termination of the lease, become the property of the lessor creates in the lessor a reversion interest in the improvements. The lessee's interest is an estate for years which if transferred to a third party at a time when less than 35 years remain on the lease term does not constitute a change of ownership per rule 462(d)(2). The termination of the estate for years and vesting of full ownership in the reversioner-lessor is a change of ownership. C 8/29/1991.

[220.0196 \(../..../proptaxes/pdf/220_0196.pdf\)](#) **Estate for Years.** (1) No change in ownership occurs when an owner transfers real property to the USA, but retains an estate for years of 25 years restricted to single family residential and livestock ranching, (2) Since there is no change in ownership, there is no taxable possessory interest in the transferor. The transfer of the estate for years to a third party, therefore, is not a transfer of nor is it the creation of a taxable possessory interest, nor is its transfer a change in ownership since the term is for less than 35 years. (3) The base year value of the property could be adjusted to reflect the loss of the right to put the property to a higher and better use provided it could be established as a factual matter that the base year value reflected a value for such right. (4) The restrictions on use contained in a deed conveying the property to the USA is an enforceable restriction within the meaning of Revenue and Taxation Code section 402.1. C 7/20/1995.

220.0197 **Estate for Years.** C 2/23/1983 (Deleted 2017)

[220.0197.005 \(../..../proptaxes/pdf/220_0197_005.pdf\)](#) **Estate for Years.** A trust provides that upon Husband's death, the property remains in the trust for Wife's benefit for 18 months, after which the trust directs the trustee to sell the property and distribute the proceeds to remainder beneficiaries: Wife, two daughters, and three grandsons. Pursuant to *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, the entirety of Husband's interest in the property was transferred at his death, even if the interest is divided between an estate for years to Wife and the remainder interest to the remainder beneficiaries. As such, the property underwent a change in ownership at Husband's death.

Pursuant to Property Tax Rule 462.060(b), which provides that the creation or transfer of an estate for years for less than 35 years is not a change in ownership, Wife did not receive the fee equivalent interest upon Husband's death. Therefore, necessarily, it is the remainder beneficiaries who receive the fee equivalent interest. Thus, the remainder beneficiaries should be deemed partial owners in relation to their respective interests in the proceeds. Pursuant to Property Tax Rule 462.260(d)(1), the date of change in ownership is the date at which the trust becomes irrevocable (Husband's date of death). The percent interest transferred to Wife, as a remainder beneficiary, is excluded from change in ownership, pursuant to the interspousal exclusion. The parent-child exclusion is available for the percent interest transferred to each of Husband's daughters, assuming all other requirements are met. The percent interest transferred to Husband's grandchildren does not qualify for the grandparent-grandchild exclusion, as the parents of the grandchildren were not deceased on the date of Husband's death. C 12/5/2014.

[220.0198 \(../..../proptaxes/pdf/220_0198.pdf\)](#) **Exchange.** An owner of real property contemplated a transfer through the use of a reverse exchange in which the subject property is first transferred to another with instructions to sell the property when a buyer becomes available. The transaction was not consummated within the six-month safe harbor period required by Internal Revenue Code section 1031, however, and the property was reconveyed to the owner by means of a deed in lieu of foreclosure. Neither the conveyance nor the reconveyance resulted in a change in ownership because each of those transfers involved only the transfer of legal title to the property, not a transfer of the beneficial interest in the property, which is a required element of change in ownership. C 8/16/2001.

[220.0199 \(../..../proptaxes/pdf/220_0199.pdf\)](#) **Exchange—Internal Revenue Code Section 1031.** The transfer of real property to a "strawman", i.e., a person who obtains title solely for the purpose of conveying it pursuant to an agreement intended to effect an Internal Revenue Code section 1031 tax-free exchange, does not result in a change of ownership. The transfer by the "strawman" to a third party is a change in ownership unless that third party is an individual or entity who/that owns all interests in the original transferor and the ultimate third party transferee. Since the strawman or strawmen has/have no beneficial interest in the property, neither are owners for change in ownership purposes. C 7/5/1988; C 6/5/1997.

[220.0200 \(../..../proptaxes/pdf/220_0200.pdf\)](#) **Exclusions.**

1. Any transfer of title between an individual and a legal entity or between legal entities which changes only the method of holding title and not the proportional interests of the transferors and transferees is excluded under Revenue and Taxation Code section 62(a).
2. Any transfer between co-owners who held title to property between March 1, 1975, and March 1, 1981, is excluded under section 62(j) if the property in question was eligible for a homeowners' exemption during the entire period of co-ownership. LTA 12/9/1980. (No. 80/180).

Note: AB 152/Stats. 1981, Ch. 1141 extended the cut-off date to March 1, 1981.

[Back to top \(#top\)](#)

[220.0201 \(../..../proptaxes/pdf/220_0201.pdf\)](#) **Exclusions.** Revenue and Taxation Code section 62(a)(1) speaks to transfers of real property, as generally evidenced by recordation of a deed, between co-owners (i.e., tenants-in-common and joint tenants). Section 62(a)(2), on the other hand, refers to transfers of interests in real property, whether represented by stock, partnership interest, or otherwise, between an individual or individuals and a legal entity or legal entities. The transfer of such interests in real property is excluded so long as the proportional ownership interests remain the same in each and every piece of real property before and after transfer. Section 64(b), however, is controlling over section 62(a)(2) since it is a more specific exclusion. Thus, where a transfer is excluded under section 64(b) rather than section 62(a)(2), there are no "original co-owners' " interests created, and section 64(d) would not trigger any change in ownership. LTA 2/18/1983 (No. 83/20).

[220.0202 \(../..../proptaxes/pdf/220_0202.pdf\)](#) **Exclusions.** The exclusion under Revenue and Taxation Code sections 60 through 66 of transfers of certain property interests from the meaning of "change in ownership" is a valid construction of article XIII A of the California Constitution. OAG 4/18/1980 (No. 79-1005, Vol. 63, p. 304).

[220.0203 \(../..../proptaxes/pdf/220_0203.pdf\)](#) **Exclusion.** Transfers of property to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation do not constitute changes in ownership. If, for example, a wife is given a life estate in property and the husband gets a remainder interest in the property, a subsequent conveyance by the now ex-wife to the husband would be considered to have been pursuant to the "Marital Settlement Agreement" and would not result in reappraisal.

Once a judgment of dissolution has become final, transfers between former spouses made pursuant to the property settlement approved by the courts are not changes in ownership; however, transfers made by parties to a property settlement that are not part of the settlement are changes in ownership subject to reappraisal. C 4/14/1987.

[220.0204 \(../..../proptaxes/pdf/220_0204.pdf\)](#) **Exclusions.** Persons claiming a transfer is not a change in ownership because of a common law "marital" relationship entered into in California are not eligible for the "interspousal" exclusion contained in Revenue and Taxation Code section 63. The exclusion does apply if it is factually determined that a common law "marital" relationship was entered into in a jurisdiction that recognizes such "marriages" as valid. C 3/9/1990.

[220.0205 \(../..../proptaxes/pdf/220_0205.pdf\)](#) **Exclusions.** The Revenue and Taxation Code section 62(g) conclusive presumption that all homes subject to property tax, eligible for the homeowners' exemption, and located on leased land have a renewal option of at least 35 years applies regardless of who purchases the land. Further, the transfer of a lessor's interest in real property subject to a lease with a remaining term (whether actual or conclusively presumed) of 35 years or more does not constitute a change in ownership whether the transferee is the lessee or another party. C 8/11/1993.

[220.0206 \(../..../proptaxes/pdf/220_0206.pdf\)](#) **Exclusions.** Transfers by a governmental agency to its wholly owned public facilities corporation result in changes in the manner of holding title and not changes in ownership for reappraisal purposes. Since, however, the corporation is a separate entity, its property, whether a possessory interest or a fee interest, is not exempt under section 3(b) of article XIII of the California Constitution.

Should the public facilities corporation lease or lease-back property to a tax exempt public entity, the property would remain subject to tax unless the use to which it is put e.g., exclusive use for public school purposes, provides a basis for exemption or the exemption requirements of Revenue and Taxation Code section 231 are satisfied. C 4/20/1993.

[220.0207 \(../..../proptaxes/pdf/220_0207.pdf\)](#) **Exclusions.** When determining if a transfer to a legal entity is excluded from change-in-ownership because only a change in the manner of holding title, without any change in the proportional ownership interests of the transferors, has occurred, amounts paid by the legal entity to one partner, stockholder, etc. for extra services rendered are not taken into consideration. Guaranteed payments (the term used in Internal Revenue Code section 707) which are determined without regard to the income of the legal entity and which are paid in consideration of the performance of services by the recipient on an arm's-length basis do not constitute additional ownership interests in the legal entity for purposes of Revenue and Taxation Code section 62(a)(2). C 8/14/1989.

[220.0208 \(../..../proptaxes/pdf/220_0208.pdf\)](#) **Exclusions.** To qualify for the Revenue and Taxation Code section 64(b) exclusion afforded transfers by members of an "affiliated group", it is only necessary that there be at least two corporations related by common ownership. While the word "group" may suggest a necessity for three or more related corporations, there is nothing else to suggest the statutes or rules require more than two; nor does such a limitation appear reasonable or necessary. C 4/15/1987.

[220.0209 \(../..../proptaxes/pdf/220_0209.pdf\)](#) **Exclusions.** An assertion by a transferor of property that a grant deed was required by federal law and hence, transferred only bare legal title to the property does not overcome the presumption that a deed grants full beneficial title to the recipients. Information surrounding the facts of the transfer, including appropriate documents and

references to specific federal statutes, would have to be presented and found sufficient to overcome the presumption. C 4/18/1989.

[Back to top \(#top\)](#)

[220.0211 \(../..../proptaxes/pdf/220_0211.pdf\)](#) **Exclusions.** When a surviving spouse acquires majority ownership of a partnership, through the spousal property order of the probate court granting her the deceased spouse's community property interest, the change in control of the partnership is not a change in ownership triggering reappraisal for property tax purposes. The interspousal transfer exclusion of Revenue and Taxation Code section 63 applies to the transfer. C 8/1/1996; C 2/22/2007.

[220.0236 \(../..../proptaxes/pdf/220_0236.pdf\)](#) **Execution Sales.** As the result of Statutes of 1982, Chapter 1364, the statutory right of redemption on property sold at an execution sale is eliminated, except upon foreclosure of a trust deed or mortgage (Statutes of 1982, Chapter 497). In such case, property may be redeemed within one year after the sale where the proceeds therefrom are insufficient to satisfy the secured indebtedness, or within three months thereafter where the proceeds are sufficient. C 10/3/1984.

[220.0240 \(../..../proptaxes/pdf/220_0240.pdf\)](#) **Foreclosure.** A change in ownership occurs upon the purchase from a trustee of property foreclosed upon under a land sale contract. The purchase results in a transfer of a present interest in property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. C 5/9/1984.

[220.0241 \(../..../proptaxes/pdf/220_0241.pdf\)](#) **Foreclosure.** A change in ownership occurs when property sold under a contract of sale is reclaimed by the seller in a foreclosure proceeding because of the buyer's failure to satisfy the terms of the contract. C 1/4/1991.

[220.0242 \(../..../proptaxes/pdf/220_0242.pdf\)](#) **Foreclosure.** A change in ownership does not occur if a court finds a foreclosure sale void from the onset. Where a trial court found that (1) a property had been erroneously foreclosed upon due to the trustee's failure to comply with Civil Code section 2924f, which requires that a trustee give notice of the foreclosure to the party being foreclosed upon before he can legally sell the property, and (2) the defect in notice rendered the foreclosure invalid and the subsequent deed purporting to transfer the property to a third party void from the onset, no change in ownership occurred. If the assessor also reassessed the property upon the trustee's erroneous sale to a third party, the assessor is required, pursuant to Revenue and Taxation Code section 51.5, to reinstate the prior base year value, factored to its current assessable value, and enroll that value. Any taxes paid as a result of the erroneous reassessment should also be refunded. C 1/21/2009.

[220.0243 \(../..../proptaxes/pdf/220_0243.pdf\)](#) **Foreclosure.** Due to default by the property owner on a loan secured by deed of trust against the property, a non-judicial foreclosure proceeding took place on November 2, 2012, at which the existing owner was the successful bidder and paid \$650,000 to the trustee on the deed of trust.

Pursuant to Revenue and Taxation Code section 62 and Rule 462.240, deeds of trust do not themselves transfer title to property, but upon default, authorize the holder of the trust deed to convey title to the property. Therefore, trustee on deed of trust was never the owner of the property for property tax purposes. In a typical foreclosure sale, the conveyance of title to a third-party purchaser would constitute a change in ownership as defined in section 60, as it would transfer the interest in real property, including the beneficial use thereof, to the third party. In this case, however, the buyer was both the existing holder and the purchaser of the interest and beneficial use of the property. Since there was never a transfer of the right to occupy or receive income from the property, no beneficial use was transferred. As such, the transaction on November 2, 2012 did not constitute a change in ownership. C 8/19/2013.

[220.0250 \(../..../proptaxes/pdf/220_0250.pdf\)](#) **Holding Agreements.** Although Property Tax rule 462(k)(3) contemplates a holding agreement created by a transfer of title from a principal, it makes clear that a transfer from the entity holding title to the principal is not a change in ownership. The rationale for the conclusion is that the beneficial use is in the principal, while only legal title is in the holding agent. The result would not differ in a situation in which the holder received legal title from a source other than the principal and thereafter transferred it to the principal. C 8/17/1989.

[220.0251 \(../..../proptaxes/pdf/220_0251.pdf\)](#) **Holding Agreements.** Under Property Tax Rule 462(k)(3), a holding agreement is an agreement between an owner of property and another entity whereby the owner conveys the property to the entity merely for the purpose of holding title. The rule contemplates a written agreement between the owner and entity, indicating that at all times the entity is subject to the terms of the agreement and is permitted to hold record title only. Lacking a written agreement, an owner may claim the existence of a constructive or resulting trust (Code of Civil Procedure section 1972), in which case he or she must establish the existence and the validity of such a trust. C 5/14/1993.

[220.0252 \(../..../proptaxes/pdf/220_0252.pdf\)](#) **Holding Agreements.** A limited liability company (LLC) owned real property. The LLC entered into a holding agreement with one of its members that legal title to the property would be conveyed to the member solely for the purpose of refinancing the loan on the property and that upon completion of the refinance, the member was to immediately reconvey the property back to the LLC. Subsequently, the LLC transferred the property to the member and his wife as joint tenants. Upon completion of the refinance, another grant deed was prepared to reconvey the property from the member and his wife back to the LLC.

Under Property Tax Rule 462.200, the owner of legal title is presumed to also be the owner of beneficial title to the property. This deed presumption may be rebutted by clear and convincing evidence. The holding agreement constitutes clear and convincing evidence, in conformity with the requirements of Rule 462.200(c), of a rebuttal to the deed presumption, such that the transfers from LLC to the member and back to the LLC are not changes in ownership. However, when husband and wife take title to property as joint tenants, the ownership interest of a spouse is the separate property of the spouse. Therefore, in the absence of any documents that constitute clear and convincing evidence that at all times wife was also subject to the terms of a holding agreement and permitted to hold record title only and that all beneficial use and control remained in LLC, a reassessable change in ownership occurred as to wife's 50 percent ownership of the property, and will occur again if she transfers the property back to LLC. C 3/12/2013.

[220.0253 \(../..../proptaxes/pdf/220_0253.pdf\)](#) **Housing Cooperative.** To take advantage of the exclusion from change in ownership in Revenue and Taxation Code section 62(i), a housing cooperative must show the assessor three things: (1) that the cooperative mortgage was insured under, or the cooperative was purchased, financed, or assisted by, funds from the applicable federal housing act or financed by a direct loan from the California Housing Finance Agency; (2) that the applicable government lender or insurer had approved regulatory and occupancy agreements; and (3) that the transfer is to the member household qualified for purchase by reason of limited income. If federal funding was not used to insure the cooperative mortgagee, or to purchase, finance or assist the cooperative and there was no loan from the California Housing Finance Agency, the transfer of stock or membership certificates is not eligible for exclusion under section 62(i). C 10/1/2001.

[220.0255 \(../..../proptaxes/pdf/220_0255.pdf\)](#) **Incorporation of Partnership.** No change in ownership occurs on the contribution of partnership property to a newly organized corporation in exchange for shares of stock in the corporation, where the partnership dissolves and distributes the shares to the partners such that they have the same proportional ownership interests in the corporation as they had in the partnership.

No change in ownership occurs on the contribution of partnership interests to a newly organized corporation in exchange for shares of stock in the corporation, where the partners have the same proportional ownership interests in the corporation and its assets as they had in the partnership. Upon such contribution, the partnership, having the corporation as its sole member, ceases to exist.

No change in ownership occurs on the distribution of partnership property to the partners in accordance with their proportional partnership interests or on the subsequent contribution of their proportional interests in the property to a new corporation in exchange for shares of stock in the corporation, where the shareholders have the same proportional ownership interest in the corporation as they had in the partnership. C 8/4/1983.

[Back to top \(#top\)](#)

[220.0258 \(../..../proptaxes/pdf/220_0258.pdf\)](#) **Individual Retirement Account.** When a taxpayer is both the custodian and only beneficiary of her individual retirement account (IRA), a transfer of real property from the IRA to herself as an individual is merely a change in the method of holding title without any change in the right to beneficial use. Since taxpayer has the same beneficial ownership before and after the transfer, there is no change in ownership. C 12/8/2006.

[220.0260 \(../..../proptaxes/pdf/220_0260.pdf\)](#) **Inheritance.** Except for transfers which take effect upon the death of a spouse, there is a change in ownership upon the date of death of an individual. When there has been a delay in the assessor's discovery of an individual's death, an escape assessment levied against the heir or heirs is proper. C 5/13/1982.

[220.0261 \(../..../proptaxes/pdf/220_0261.pdf\)](#) **Inheritance.** Where property of a decedent is transferred as a result of settlement of a contested probate matter, the date of the change in ownership is the same as it would have been had the matter been fully litigated and the property awarded in the same manner, namely, the date of the decedent's death. C 4/13/1981.

[220.0262 \(../..../proptaxes/pdf/220_0262.pdf\)](#) **Inheritance.** Probate Code section 6144 contains what is referred to as a doctrine of equitable conversion, to the effect that if a will directs conversion of real property into money, the property and its proceeds are deemed personal property from the time of the testator's death. However, when an executor is authorized but not mandated to

sell real property, there is no equitable conversion and a change of ownership occurs at the time of the testator's death and again at the time of a sale by the executor. C 6/4/1990.

[220.0263 \(../..../proptaxes/pdf/220_0263.pdf\)](#) **Inheritance.** A testamentary transfer to a child by a parent was held by the court in *Larson v. Duca* (1989) 213 Cal.App.3d. 324 to have occurred on the date of distribution of the estate rather than on the date of death for purposes of applying the parent/child exclusion from change in ownership. This was contrary to an opinion issued by Board staff based upon Probate Code section 300. Subsequently, Revenue and Taxation Code section 63.1(c)(1) was amended to provide that as of January 1, 1993, transfers between parents and their children under will or by intestate succession are, for change in ownership purposes, made as of the date of the decedent's death, if the decedent died on or after November 6, 1986. C 7/10/1987.

220.0267 **Interspousal Transfer.** C 5/31/2007. (Deleted 2020)

[220.0268 \(../..../proptaxes/pdf/220_0268.pdf\)](#) **Interspousal Transfer.** A transfer of a joint tenancy interest in real property to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of marriage is excluded from change in ownership under Revenue and Taxation Code section 63. A mother conveyed property to herself, her daughter, and her son-in-law as joint tenants. The mother became an "original transferor" and the daughter and the son-in-law became "other than original transferors." Subsequently, the daughter and the son-in-law divorced and the son-in-law deeded his interest in the property to his wife (the daughter) in connection with a property settlement agreement or decree of dissolution of marriage. The termination of a joint tenancy interest is a change in ownership as to the one-third interest transferred, however, the interspousal exclusion applies. C 2/21/2007.

[220.0269 \(../..../proptaxes/pdf/220_0269.pdf\)](#) **Interspousal Transfer.** A wife's purchase of her husband's life estate is excluded from change in ownership as an interspousal transfer under Revenue and Taxation Code section 63. C 6/14/2006.

[220.0270 \(../..../proptaxes/pdf/220_0270.pdf\)](#) **Interspousal Transfers.** As the result of Statutes of 1981, Chapter 1141, Revenue and Taxation Code section 63, which pertains to interspousal transfers, takes precedence over all other change in ownership provisions. And the distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of such spouse in the legal entity, in connection with a property settlement agreement or a decree of dissolution of a marriage or a legal separation, is excluded under section 63(e). LTA 11/6/1981 (No. 81/152).

[220.0271 \(../..../proptaxes/pdf/220_0271.pdf\)](#) **Interspousal Transfers.** Revenue and Taxation Code section 63 applies to transfers between parties in connection with a property settlement agreement and to transfers between former spouses where courts have, through retained jurisdiction, left property disposition matters open or modifiable. Where parties have intended to definitely and permanently settle their property rights and decrees of dissolution have become final, however, section 63 is not applicable, and any subsequent transfers between the parties constitute changes in ownership as transfers of separate property. C 4/14/1987; C 3/11/1996.

Note: Civil Code section 4800.7 is now in Family Code section 3800.

[220.0272 \(../..../proptaxes/pdf/220_0272.pdf\)](#) **Interspousal Transfers.** Revenue and Taxation Code section 63 does not apply to transfers between parties to a "common law marriage" when the parties have not entered into a spousal relationship and have not held themselves out as husband and wife. C 5/28/1985.

Note: Civil Code section 4100 is now Family Code section 300; Civil Code section 4104 is now Family Code section 308.

[Back to top \(#top\)](#)

[220.0273 \(../..../proptaxes/pdf/220_0273.pdf\)](#) **Interspousal Transfers.** Persons claiming a transfer is not a change in ownership because of a common law "marital" relationship entered into in California are not eligible for the "interspousal" exclusion contained in Revenue and Taxation Code section 63. The exclusion does apply if it is factually determined that a common law "marital" relationship was entered into in a jurisdiction that recognizes such "marriages" as valid. C 3/9/1990.

[220.0274 \(../..../proptaxes/pdf/220_0274.pdf\)](#) **Interspousal Transfers.** A transfer of separately owned property by a husband or wife to a legal entity in which each spouse has an ownership interest does not qualify for the Revenue and Taxation Code section 63 exclusion. Section 63(e) is very specific as to the facts to which it has application and should be limited thereto. C 3/27/1987.

[220.0274.005 \(../..../proptaxes/pdf/220_0274_005.pdf\)](#) **Interspousal Transfer.** C and K inherited two pieces of property and took title as tenants in common. Their tenancy in common interests were taken as their separate property. Subsequently, they transferred the properties to an LLC that was owned 50 percent by C and C's spouse, J, trustees of the X Family Trust and 50 percent by K and K's spouse, E, trustees of the Y Living Trust. Because the LLC was created during the marriages, the membership interests in the LLC are presumed to be community property of C and K and their respective spouses. When entity interests are owned as community property, the spouses are treated as having equal interests in the entity as if they were joint tenants. Therefore, for property tax purposes, C, J, K and E are treated as each having 25 percent interests in LLC.

Prior to the transfer of the Properties to LLC, C and K each owned 50 percent of the Properties. After the transfer, the Properties were owned by LLC, which was owned 25 percent each by C, J, K and E. Therefore, the ownership interest did not remain the same. Moreover, the interspousal exclusion is not applicable since the transfer of the properties was made from C and K to LLC and not to their respective spouses. C 2/29/2012.

[220.0275 \(../..../proptaxes/pdf/220_0275.pdf\)](#) **Interspousal Transfers.** The slightly different language contained in section 2(g) of article XIII A of the California Constitution and Revenue and Taxation Code section 63 should not be considered as conflicting. Any interspousal transfer, not merely interspousal transfers of real property interests, should be excluded from a change in ownership that results in reappraisal. C 8/15/1997.

[220.0276 \(../..../proptaxes/pdf/220_0276.pdf\)](#) **Interspousal Transfers.** Any transfers made "in connection with" a property settlement agreement, including post-dissolution transfers (10 years after the divorce) which are based on the terms of the settlement agreement, and post-dissolution transfers resulting from finalizing the former spouses' property rights under the agreement or decree of dissolution, are excluded from reappraisal under section 63(c), because they are directly related to the terms of the agreement or the conditions of the judgment. C 12/18/1997.

[220.0277 \(../..../proptaxes/pdf/220_0277.pdf\)](#) **Interspousal Transfers.** Changes in ownership of real properties do not occur upon the transfers of the properties from Husband (H) and Wife (W), each with one-half community property interests in each parcel, to H's and to W's respective living trusts in which H and W are the respective sole present beneficiary (Revenue and Taxation Code section (d)); upon the transfers of the properties from H's and W's respective trusts to H's and W's separate California corporations wholly owned by each respective trust (Revenue and Taxation Code section 62(a)(2)); and upon the transfers of the properties from H's and W's corporations and from another California corporation that is a wholly-owned subsidiary of a corporation in which H and W are the sole shareholders with community property one-half stock interests therein to a new limited partnership formed by H and W (section 62(a)(2)). While the proportional ownership interests in the real property of each of the corporations (via their partnership interests) would be different after the transfers to the partnership than they would be prior to such transfers, proper application of section 62(a)(2) requires a determination of whether the proportionality of H's and W's ownership interests would remain the same after the transfers. As the sole present beneficiary of a trust is the sole beneficial owner of the real property for change in ownership purposes, where the owner of real property transfers it to a trust in which he or she is the sole present income beneficiary, the proportional ownership interest in the real property remains the same after the transfer for purposes of section 62(a)(2), i. e., the beneficiary is the sole beneficial owner of the property transferred before and after the transfer to the trust. Accordingly, since the proportional interests of H and W in each of the parcels of real property transferred to the newly formed partnership would remain the same after such transfers, section 62(a)(2) would apply to exclude such transfers from change in ownership. C10/30/1990.

220.0278 **Interspousal Transfers.** C 5/14/1993; C 2/22/2007. (Deleted 2020)

[220.0279 \(../..../proptaxes/pdf/220_0279.pdf\)](#) **Interspousal Transfers.** "Distribution of a legal entity's property to a spouse" in Revenue and Taxation Code section 63(e) means that any transfer *between spouses* made in connection with a property settlement agreement or a judicial decree to finalize their property rights is excluded from change in ownership. This includes a transfer undertaken through a partnership redemption allowing one of the spouses to withdraw from the partnership, providing no individual or entity remaining in the partnership gains control. However, this exclusion does not apply to transfers in which the transferee is a spouse's corporation rather than the spouse. C 6/26/1998.

[220.0280 \(../..../proptaxes/pdf/220_0280.pdf\)](#) **Intestate Succession.** For change of ownership purposes, the date of death is the date as of which a reappraisal should be made. Likewise, that date should govern when there is a will contest, whether the matter proceeds to a final judgment or is settled by a compromise between the parties. C 4/13/1981.

[220.0285 \(../..../proptaxes/pdf/220_0285.pdf\)](#) **Involuntary Transfers.** Transfers of corporate real properties pursuant to the order of a Bankruptcy Court to a corporation formed for the purpose in exchange for cash, securities (shares of stock), and assumption of liabilities result in changes in ownership. The facts that the new corporation continues the business formerly engaged in by

the transferor, that some of the stockholders in both corporations are the same, and/or that the transfer was pursuant to a court ordered Chapter 11 reorganization are immaterial. C 8/4/1987.

[Back to top \(#top\)](#)

[220.0290 \(../..../proptaxes/pdf/220_0290.pdf\)](#) **Irrevocable Inter Vivos Trust.** When property is placed in an irrevocable inter vivos trust, it should be reappraised when the trust is terminated to the extent that real property is transferred to a person who did not have a present beneficial interest during the time the trust was in existence. This result should obtain except as regards a beneficiary who has a present beneficial interest that was appraised at the time the trust was created. In such a case, the present beneficiary has equitable title and obtains mere legal title on the termination of the trust. This should be distinguished from a holder of a future interest since this future interest was not subject to reappraisal when the trust was created. C 4/9/1980.

[220.0295 \(../..../proptaxes/pdf/220_0295.pdf\)](#) **Joint Tenancy.** A joint tenancy creates undivided interests in property, with each joint tenant owning a fractional or percentage interest. The creation, termination, or transfer of such an interest is a change in ownership and results in a reappraisal only of that interest, except that (1) the creation or transfer of a joint tenancy interest is not a change in ownership where the transferor remains as a joint tenant after the transfer; (2) the termination of an "original transferor's interest" by operation of law (upon death) is not a change in ownership where the interest is transferred to the remaining original transferor(s); and (3) the termination of an interest of one other than an original transferor is not a change in ownership where the interest is transferred to an original transferor or to all remaining joint tenants. C 4/15/1987.

[220.0296 \(../..../proptaxes/pdf/220_0296.pdf\)](#) **Joint Tenancy.** The definition of "original transferor" as "one or more persons who hold joint tenancy interests in property immediately after a complete turnover of the previous original owners occurs," refers only to the last paragraph of Revenue and Taxation Code section 65(a) and indicates that when all original transferors have terminated their interests, those persons who remain as joint tenants will be considered original transferors for the next series of transactions.

The definition does not affect the law as found in section 65, which provides that in order to be subject to the provisions of section 65, there first must be a section 62(f) exclusion. Without a section 62(f) exclusion as the foundation, the exclusions of section 65 simply cannot come into play, and the interest transferred will always be reappraised. C 3/11/1980.

[220.0297 \(../..../proptaxes/pdf/220_0297.pdf\)](#) **Joint Tenancy.** When a change in ownership in a joint tenancy occurs, only the interest or portion transferred will be reappraised, except that the creation or transfer of a joint tenancy interest where the transferor is among the joint tenants after creation or transfer is not a change in ownership. The transferor(s) in such an excluded transfer shall be an "original transferor" for purposes of determining the property to be reappraised on subsequent transfers, i.e., termination of an original transferor's interest or termination of an interest of other than an original transferor. LTA 12/9/1980 (No. 80/180).

[220.0298 \(../..../proptaxes/pdf/220_0298.pdf\)](#) **Joint Tenancy.** A mother's transfer of property to herself and to her son as joint tenants does not constitute a change in ownership because the transferor creates a joint tenancy in which she is one of the joint tenants (Revenue and Taxation Code section 65(b)). If the joint tenants later take title to the property as tenants in common, there is a change in ownership of the 50 percent undivided interest in the property acquired by the son. Although Property Tax rule 462(c)(2)(D) provides an exclusion to the basic principle that the transfer of a joint tenancy interest is a change in ownership of the interest transferred, the exclusion applies only to joint tenancies other than those described in rule 462(c)(2)(A), and the mother's transfer of the property to herself and to her son was a transfer to a joint tenancy of the kind described in rule 462(c)(2)(A).

If instead the mother as joint tenant later creates a tenancy in common by revocable deed, to become effective upon her death, she will apparently create the equivalent of a life estate in joint tenancy with a vested future interest as a tenant in common. Since Revenue and Taxation Code section 60 requires the transfer of a present interest in real property for a change in ownership to occur, there would be no change in ownership at that time. Upon the transferor's death, however, the future interest would become a present interest and effectively terminate the joint tenancy; the transferor's estate or heirs and the son would own the property as tenants in common (*Riddle v. Harmon*), 102. Cal.App.3d 524); and there would be a change in ownership of both the transferor's 50 percent undivided interest in the property as the result of her death and of the son's 50 percent undivided interest therein as the result of his taking title to the property as a tenant in common. C 9/11/1985.

[220.0299 \(../..../proptaxes/pdf/220_0299.pdf\)](#) **Joint Tenancy.** The acquisition of 100 percent of the stock of a corporation by a husband and wife, as joint tenants, does not constitute a change in control under Revenue and Taxation Code section 64(c). As joint tenants, each party owns 50 percent of the stock and thus, neither has obtained control of the corporation. Additionally,

there is nothing to indicate that the Legislature ever intended to treat joint tenancies as legal entities. C 9/20/1983; C 1/6/2000.

[220.0300 \(../..../proptaxes/pdf/220_0300.pdf\)](#) **Joint Tenancy.** The rebuttable presumption of Revenue and Taxation Code section 65(e), that for joint tenancies created on or before March 1, 1975, each joint tenant holding an interest in property as of March 1, 1975, is an "original transferor", is overcome where controverting evidence is available. Such evidence precludes acceptance of the presumption/inference to be made as established fact. C 4/20/1984.

[220.0301 \(../..../proptaxes/pdf/220_0301.pdf\)](#) **Joint Tenancy.** The creation of a joint tenancy by the surviving original transferor of a former joint tenancy which includes as a joint tenant the spouse of a now-deceased original transferor is not within the Revenue and Taxation Code section 65(b) exclusion, unless the spouse was a tenant in the original joint tenancy. C 4/17/1992.

[220.0302 \(../..../proptaxes/pdf/220_0302.pdf\)](#) **Joint Tenancy.** A mother and son obtained from the mother's parents title to property as equal joint tenants in August 1972. The mother died in 1982, and the son became sole owner by right of survivorship. Fifty percent of the property was subject to reappraisal since the survivor was not a transferor and therefore, could not qualify as an "original transferor."

Since mother and son obtained title as joint tenants in 1972, the presumption in Revenue and Taxation Code section 65(e) that they were "original transferors" was applicable, but it was rebutted by the fact that the deed making them joint tenants did not list them among the transferors. C 7/10/1991.

[Back to top \(#top\)](#)

[220.0303 \(../..../proptaxes/pdf/220_0303.pdf\)](#) **Joint Tenancy.** When a married couple and a third person hold title to property as joint tenants, and one of the spouses records a declaration that all real property owned by him/her is community property regardless of the manner in which title is held, the joint tenancy is terminated as to the recording party. The remaining owners continue to hold their two-thirds interests in joint tenancy. The one-third community property interest is owned by the husband and the wife but does not result in reappraisal since it is merely a change in the manner of holding title. C 4/10/1985.

[220.0305 \(../..../proptaxes/pdf/220_0305.pdf\)](#) **Joint Tenancy.** A husband, a wife, and a third person hold title to real property as joint tenants. The husband and wife are "original transferors," and the third person is "other than an original transferor." The husband and wife then record a document stating that their joint tenancy interests are held as community property. The joint tenancy is, thereby, terminated; and the third person holds his interest as a tenant in common. The third person's interest is subject to reappraisal as a change in ownership, unless an exclusion, such as parent-child exclusion, applies. C 1/19/1994.

[220.0306 \(../..../proptaxes/pdf/220_0306.pdf\)](#) **Joint Tenancy.** The transfer of real property from a husband and wife to themselves and a third person as joint tenants is not a change in ownership under Revenue and Taxation Code section 65(b) because the transfer creates a joint tenancy interest and after such creation, the transferors are among the joint tenants.

The transfer of real property from a husband and wife and a third person as joint tenants to the same three persons as community property cannot be characterized as community property under Civil Code section 687, because the third person cannot take title to property as community property since he or she is not part of the marital community. It is logical to interpret this transfer as from husband and wife and a third person, as joint tenants, to husband and wife, as community property, and to the third person, an unmarried man or woman. The third person's interest must be considered to be a tenancy in common interest if it is not indicated to be a joint tenancy interest or a partnership interest (Civil Code section 686). Revenue and Taxation Code section 65 indicates that the termination of the third person's one-third joint tenancy interest, now the tenancy in common interest, is a change in ownership unless one of the statutory exclusions applies. C 5/15/1987.

Note: Civil Code section 687 is now Family Code section 760.

[220.0307 \(../..../proptaxes/pdf/220_0307.pdf\)](#) **Joint Tenancy.** The exclusions provided by Revenue and Taxation Code sections 65(c) and (d) relate by their own definitions only to situations described in section 65(b), transfers involving original transferors. If there are no original transferors at the time a joint tenancy is created, section 65(a), which provides that the creation, transfer or termination of a joint tenancy is a change in ownership, is applicable. C 11/3/1986.

[220.0309 \(../..../proptaxes/pdf/220_0309.pdf\)](#) **Joint Tenancy.** A transfer from X, Y, and Z, as joint tenants, to X and Y, as joint tenants, is a one-third change in ownership, unless either X or Y or both X and Y are original transferors as a result of a prior transfer. C 1/12/2005.

[220.0310 \(../..../proptaxes/pdf/220_0310.pdf\)](#) **Joint Tenancy.** A trust can be a joint tenant under Civil Code section 683(a), which specifies that a joint tenancy may be created by grant or devise to trustees as joint tenants. For property tax purposes, a joint tenant's interest can be transferred into a revocable trust without severing the joint tenancy if the other joint tenant is the present beneficiary. Under these circumstances, the joint tenants retain the present beneficial interest, the right of survivorship remains intact, and the trustee receives only bare legal title. The trustee never holds the present beneficial interest in the trust property, even though he or she has legal title and the power to sell. C 5/19/2005.

Note: A transfer to a trust may preserve a pre-existing joint tenancy if the transfer occurred between November 13, 2003 and September 30, 2013. However, effective October 1, 2013, the provision that allowed a trust to maintain the joint tenancy was removed from Property Tax Rule 462.040.

[220.0311 \(../..../proptaxes/pdf/220_0311.pdf\)](#) **Joint Tenancy.** Under Civil Code section 683.2(a)(1), a joint tenancy may be severed by execution and delivery of a deed that conveys legal title to the joint tenant's interest to a third person. The transfer of a joint tenancy interest into trust does not sever the pre-existing joint tenancy unless the trust is for the benefit of a third person who is not one of the existing joint tenants, because this would be contrary to the joint tenants' survivorship rights. C 12/26/2007.

Note: A transfer to a trust may preserve a pre-existing joint tenancy if the transfer occurred between November 13, 2003 and September 30, 2013. However, effective October 1, 2013, the provision that allowed a trust to maintain the joint tenancy was removed from Property Tax Rule 462.040.

[220.0312 \(../..../proptaxes/pdf/220_0312.pdf\)](#) **Joint Tenancy.** Husband, Wife, and Son 1 owned a parcel of California real property as joint tenants. On March 31, 1987 Husband, Wife, and Son 1 recorded a deed conveying title to the Property to Husband, Wife, Son 1, and Son 2, all as joint tenants. Husband died in 2007, and Wife died in 2010, leaving Son 1 and Son 2 as the surviving joint tenants. In 2012, Son 1 and Son 2 recorded a deed granting their interest to themselves as tenants in common.

In 1987, as a result of the creation of the joint tenancy, Husband, Wife, and Son 1 became "original transferors" for purposes of determining the property to be reappraised on subsequent transfers, and Son 2 became an "other than original transferor." The 2007 and 2010 transfers were excluded from change in ownership as the decedents' interest vested, in part, in a remaining original transferor. However, the 2012 transfer terminated the joint tenancy and created a tenancy in common with Son 1 and Son 2. Pursuant to Revenue and Taxation Code section 65(c), any interest that vests in an original transferor is not reassessed. Pursuant to section 65(d), any interest that vests in an other than original transferor is reassessed. Thus, since Son 2 was an other than original transferor, the property that transferred to him as a result of the termination must be reassessed. C 12/24/2013.

[220.0315 \(../..../proptaxes/pdf/220_0315.pdf\)](#) **Joint Venture.** The contribution of property to a joint venture gives rise to reappraisal of the entire property since the joint venture is a separate entity and since the contributor did not retain the same proportional interest in the property after the transfer as required by Revenue and Taxation Code section 62(a). C 12/22/1981.

[220.0320 \(../..../proptaxes/pdf/220_0320.pdf\)](#) **Land Sale Contract.** In the case of the typical contract for the sale of land, the vendor retains bare legal title as a security interest in the property, and the vendee acquires equitable title to the property and possession thereof as well. Such results in a transfer of a present equitable interest in the property upon the execution of the contract and a transfer of the present beneficial use of the property at the same time, and where the value of such interest is substantially equal to the value of the fee interest in the property, a change in ownership of the property occurs. C 5/9/1984.

[220.0321 \(../..../proptaxes/pdf/220_0321.pdf\)](#) **Land Sale Contract.** To constitute a binding contract for the sale of land, the material terms must be agreed on between the parties and nothing material to the validity of the contract left to future settlement.

Where ten acres to be transferred are not identified and no deed relating to the exact ten acres will be executed until final payment, and where the buyer has no right to possess the property until final payment, a change in ownership does not occur until the buyer has paid the last installment and the seller has performed his obligation of identifying and dividing the parcel. C 1/24/1980.

[Back to top \(#top\)](#)

[220.0322 \(../..../proptaxes/pdf/220_0322.pdf\)](#) **Lease Improvements.** Pursuant to Civil Code section 1013, the doctrine of accession provides that when a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land. Thus, absent lease provisions under which the lessee retains title to the improvements, title passes to the lessor upon the completion of the construction. C 6/16/2008.

[220.0323 \(../..../proptaxes/pdf/220_0323.pdf\)](#) **Lease Option.** A lease for a term of less than 35 years to mine sand and gravel constitutes a change in ownership of the mineral rights under Revenue and Taxation Code section 61(a). However, if a lease option is executed, no change in ownership will occur until the option is exercised. A true option to lease is not a change in ownership because the option holder acquires no beneficial use of the property until the option is exercised. C 6/19/2006.

[220.0324 \(../..../proptaxes/pdf/220_0324.pdf\)](#) **Lease Option.** A ground lease for a term of 99 years which includes an option for the lessor to terminate the lease is a change in ownership upon the execution of the lease. The lessor's option to terminate the lease does not diminish the change in ownership consequence following the creation of a leasehold interest for a term of 35 years or more at the time of the lease's execution. C 2/7/2007.

[220.0325 \(../..../proptaxes/pdf/220_0325.pdf\)](#) **Leases.** A portion of a shopping center was leased to a major tenant for a term of 25 years plus two options to extend for successive periods of ten years each. During the twenty-first year of the original lease, the parties renegotiated and executed a modified lease which was substantially different than the original lease, so much so that the original lease should be considered terminated, resulting in a change in ownership.

The new lease was for seven years, with 20 years of optional extension periods plus an additional 20 years if the lessee agreed to construct certain improvements. During the fourth year of this lease the property was sold by the owner/lessor. It is arguable that because of the economic considerations the lessee will never construct the improvements required to obtain the 20 year extension.

The fact that a lease option is not likely to be exercised is not a basis for ignoring its existence; the law only requires that there be such an option. Including this 20 year period results in a leasehold of more than 35 years and thus, a change in ownership. When the property was sold, the portion subject to this new lease would be excluded from the remainder of the center that changed ownership on sale. C 5/10/1989.

[220.0326 \(../..../proptaxes/pdf/220_0326.pdf\)](#) **Leases.** When a lease of multiple properties with an original term of more than 35 years but currently with less than 35 years remaining is acquired by the lessor, the merger of the lessor's interest and the lessee's interest terminates the lease, and a change of ownership occurs by virtue of the termination of the lease as provided by Revenue and Taxation Code section 61(c)(1). C 2/15/1990.

[220.0326.005 \(../..../proptaxes/pdf/220_0326_005.pdf\)](#) **Leases.** When a lessee acquires the underlying fee interest from the lessor while the remaining lease term is 35 years or longer, the applicable change in ownership rule is Property Tax Rule 462.100(b)(2)(A), which provides that the transfer of a lessor's interest subject to a lease with a remaining term of 35 years or longer, "*whether to the lessee or another party*," does not constitute a change in ownership of the leased property. When the lessee acquires the underlying fee interest from the lessor while the remaining lease term is shorter than 35 years, the applicable change in ownership rule is Rule 462.100(a)(2)(A), which provides that the transfer of a lessor's interest subject to a lease with a remaining term shorter than 35 years constitutes a change in ownership of the leased property. All other transactions that result in a termination of a lease, whether upon the natural expiration of the lease term, or prior to the expiration of the lease term, and where the leased property reverts to the lessor, are to be governed by the "termination" provisions of Rule 462.100(a)(1)(C) and (b)(1)(C). C 12/21/2009.

[220.0327 \(../..../proptaxes/pdf/220_0327.pdf\)](#) **Leases.** Whether or not an "Amendment to and Restatement of Lease" constitutes a termination of the pre-existing lease of more than 35 years is a question of fact. If the essential terms of the original lease are materially and fundamentally changed, a termination of the lease and therefore, a change in ownership has occurred as provided by Revenue and Taxation Code section 61(c)(1). C 9/26/1990.

[220.0328 \(../..../proptaxes/pdf/220_0328.pdf\)](#) **Leases.** The transfer of a life estate that is subject to lease with a remaining term of less than 35 years is a change of ownership requiring reappraisal, unless the transferee qualifies for the interspousal or parent-child exclusion. C 4/13/1992.

[220.0330 \(../..../proptaxes/pdf/220_0330.pdf\)](#) **Leases.** The apparent legislative purpose of defining who is considered to be the owner of an interest in real property subject to a lease is to eliminate the need to value leasehold interests and reversionary interests separately. By considering the lessor or lessee to be the owner of the entire property at any given time, namely, less than 35 years vis-à-vis 35 years or more, a transfer by the lessor, when the owner, or by the lessee, when the owner, will result in a change in ownership of the entire property. C 6/22/1982.

[220.0331 \(../..../proptaxes/pdf/220_0331.pdf\)](#) **Leases.** A court order terminating a 55-year lease having 50 years remaining at the time and returning possession of the real property to the lessor results in a change in ownership of the property. C 7/9/1987.

[220.0332.005 \(../..../proptaxes/pdf/220_0332_005.pdf\)](#) **Leases.** In applying Revenue and Taxation Code sections 61(c) and 62(g) to leases of 35 or more years that commenced prior to March 1, 1975, the assessor should consider the entire term of each lease, including the portion of the term that was in effect prior to the enactment of Proposition 13. Section 61(c) and Property Tax Rule 462.100 do not expressly exclude periods prior to March 1, 1975, from the calculation of lease terms. C 1/7/2008.

[220.0333 \(../..../proptaxes/pdf/220_0333.pdf\)](#) **Leases.** An instrument that creates a lease that "shall not exceed the lifetime of the oldest presently living descendant of Her Majesty Queen Elizabeth, II of England, plus twenty-one (21) years. . ." and ". . . covers and includes all the Lessor's right, title and interest in and to certain patented mining claims..." results in the granting of a life estate and is a change in ownership. C 4/12/1984.

[220.0334 \(../..../proptaxes/pdf/220_0334.pdf\)](#) **Leases.** A nonprofit corporation owns land and a clubhouse which its members use for social and recreational purposes. A membership can be purchased for approximately \$1,000. Some members own cabins on the property, but more have written or oral leases. All members pay fees sufficient to cover immediate expenses. Individual cabins can and have been sold, at which time the assessor has reappraised the cabin and a one acre homesite. The land is assessed to the corporation and the cabins are assessed on the unsecured roll to the individual owners.

It appears improper to conclude that the cabin owners have land leases or that the presumption concerning lease options contained in Revenue and Taxation Code section 61(c) is applicable. The land interests the cabin owners have appear sufficiently similar to life estates or interests held in cooperative housing corporations to qualify as changes in ownership of real property when transferred with a cabin. The transfer of a membership interest exclusive of the ownership of a cabin would also qualify for reappraisal; however, if the value of the interest as indicated by the membership purchase price is less than five percent of the value of the total property and less than \$10,000, Revenue and Taxation Code section 65.1 would apply. C 6/30/1988.

[220.0335 \(../..../proptaxes/pdf/220_0335.pdf\)](#) **Leases.** If leases for more than 35 years held by sublessees are not terminated when their lessor forfeits his lease back to the property owner/lessor, they should be regarded as the primary owners for change-in-ownership purposes. Since their interests are still as lessees for a term of more than 35 years, no reappraisals should occur. C 9/15/1989.

[220.0336 \(../..../proptaxes/pdf/220_0336.pdf\)](#) **Leases.** Special use permits issued by the U.S. Forest Service pursuant to federal law are defined in 36 Code of Federal Regulations 251.51 as "a special use authorization which provides permission, without conveying an interest in land, to occupy and use National Forest System Land...." Therefore, sales of the land to people who have built homes on the land constitute changes in ownership. The special use permits are not leases. Thus Revenue and Taxation Code section 61(c) does not have any application. C 11/3/1988.

[220.0337 \(../..../proptaxes/pdf/220_0337.pdf\)](#) **Leases.** An extension(s) granted to a lessee(s) holding a long term lease(s) does not result in a change in ownership if, upon the granting of the extension, the lessee(s) has the right to use the property in the future for less than 35 years. For example, the lessee with a 29 year lease may receive several 5 year extensions and not subject the property to reappraisal if the extensions are granted at intervals that always keep the remaining term at less than 35 years. C 9/16/1987.

[220.0338 \(../..../proptaxes/pdf/220_0338.pdf\)](#) **Leases.** Property subject to a lease (with options to extend) for a period in excess of 35 years does not undergo a change in ownership when the right to extend is exercised. Further, a lease agreement contained in several documents when restated in a single document does not result in a change in ownership if the lease is not terminated. Upon receipt of a copy of the restated lease agreement, the assessor may request a change in ownership statement, and if one is not received, he or she may impose the Revenue and Taxation Code section 482 penalty, notwithstanding a change in ownership has not occurred. C 11/18/1985.

[220.0339 \(../..../proptaxes/pdf/220_0339.pdf\)](#) **Leases.** Vacation or secondary homes located on land leased from a state-assessee should be assessed to their owners rather than to the state-assessee. When the land leases are transferred for a period of less than 35 years, no change in ownership occurs. Whether or not improvements change ownership when any one of the subleases is transferred depends on the terms of the leases and subleases. C 9/4/1985.

[220.0340 \(../..../proptaxes/pdf/220_0340.pdf\)](#) **Leases.** Property used, even if not owned, by a state-assessee in its utility activity is subject to state assessment and is not subject to the provisions of article XIII A of the California Constitution. Therefore, the lease of land to a state-assessed public utility for use in its utility activity should not result in a change in ownership assessment by a local assessor. C 3/19/1986.

[Back to top \(#top\)](#)

[220.0341 \(../..../proptaxes/pdf/220_0341.pdf\)](#) **Leases.** Privately owned land leased to a governmental agency for 35 years or more results in a change in ownership for reappraisal purposes but does not result in tax exemption. C 12/18/1981; 11/9/1992; C 1/10/1994.

[220.0342 \(../..../proptaxes/pdf/220_0342.pdf\)](#) **Leases.** A right of first refusal to extend a lease is not a renewal option since it merely gives the lessee a right to a new term conditioned upon the lessor's willingness to again lease the property at the end of the original term, not an absolute right to a new term. Thus, if a lease term for less than 35 years exists at the time the property is sold or transferred, there is a change in ownership of the property even though the lease provides for a right of first refusal. C 1/5/1987.

[220.0343 \(../..../proptaxes/pdf/220_0343.pdf\)](#) **Leases.** Only that portion of a property subject to a Revenue and Taxation Code section 61(c) lease or transfer shall be considered to have undergone a change in ownership, e.g., a qualifying lease of one shop in a shopping center requires reappraisal of only the shop.

When real property subject to a lease changes ownership, the total reappraised value should include both the leasehold and the leased fee, i.e., the property should be valued as if unencumbered by a lease. LTA 2/19/1980 (No. 80/25).

[220.0344 \(../..../proptaxes/pdf/220_0344.pdf\)](#) **Leases.** A lease of department store premises in a shopping center constituting a change in ownership does not bring about a change in ownership assessment in the parking lot also. The lease does not afford the lessee a sufficient property interest in the parking lot to constitute a change in ownership thereof. C 1/14/1983.

[220.0345 \(../..../proptaxes/pdf/220_0345.pdf\)](#) **Leases.** The purchase by a lessee of the lessor's interest in a lease that originally was and is at the time of purchase for a term of more than 35 years is not a change in ownership. C 3/30/1990.

[220.0346 \(../..../proptaxes/pdf/220_0346.pdf\)](#) **Leases.** The transfer by a lessor of its interest in a lease with a remaining term of 35 years or more to the lessee or another party is not a change in ownership. Likewise the transfer by the lessee of its interest in the lease only on the condition that the lessor immediately convey free and clear title back to the lessee would not be a change of ownership. The lessee would retain the present beneficial use of the property and the lessor's conveyance would be of bare legal title only. C 12/16/1993.

[220.0347 \(../..../proptaxes/pdf/220_0347.pdf\)](#) **Leases.** When a property subject to a lease of 35 years or more reverts to the lessor before the term of the lease has expired, the assessor must determine if the lease has been terminated or if the parties have rescinded the lease. If a termination has occurred, a new base year value must be established; whereas if there has been a rescission, the base year value at the time the lease was executed, properly factored, would be enrolled. In neither instance would taxes due for the time the lease was in effect be subject to refund. C 8/21/1996.

[220.0348 \(../..../proptaxes/pdf/220_0348.pdf\)](#) **Leases.** A lessee's assignment of a land lease on property eligible for the homeowner's exemption constitutes a change in ownership since Revenue and Taxation Code sections 61(c)(2) and 62(g) contain conclusive presumptions that the lessee has the right to renew its lease for an additional term of at least 35 years, whether or not that renewal option exists in any contract or agreement. Due to these same conclusive presumptions, however, the sale of the lessor's interest in taxable real property subject to such a land lease is not a change in ownership. C 1/24/1997.

[220.0348.005 \(../..../proptaxes/pdf/220_0348_005.pdf\)](#) **Leases.** Revenue and Taxation Code section 61(c) presumes that homes eligible for the homeowners' exemption that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not a renewal option exists in any contract or agreement. If the homeowner/lessee purchases the land from the lessor, there will be no change in ownership of the land under the provisions of Revenue and Taxation Code section 62(g) and Property Tax Rule 462.100(b)(2)(A) because the remaining term of the lease is presumed to be 35 years or more. C 11/30/2004.

[220.0349 \(../..../proptaxes/pdf/220_0349.pdf\)](#) **Leases.** Upon the sale or transfer of a home on leased land, if that home is eligible for the homeowners' exemption, the conclusive presumption of Revenue and Taxation Code sections 61(c) and 62(g) applies, with the result that the land lease is presumed to be for a term of 35 years; and a change in ownership of the land as well as the home occurs. Where there is no sale or transfer under Revenue and Taxation Code section 60, however, but the home merely becomes eligible for the homeowners' exemption and the conclusive presumption would apply, there is no change in ownership of the home or the land.

Hence, two separate events must occur in order to trigger reappraisal of such leased land: first, the home must be eligible for the homeowners' exemption (so that the conclusive presumption applies); and secondly, there must be a transfer of the home which meets the change in ownership definition under section 60. C/1/15/1999.

[220.0349.005 \(../..../proptaxes/pdf/220_0349_005.pdf\)](#) **Leases.** The installation of a manufactured home, eligible for the homeowners' exemption, on a permanent foundation on leased land results in a change in ownership of the land, because the lease is conclusively presumed to have written renewal options of at least 35 years under Revenue and Taxation Code section 61, subdivision (c)(1), even if the lessor and lessee entered into a month-to-month tenancy or the executed lease agreement specifically provides a lease term of less than 35 years. Similarly, the transfer of a manufactured home eligible for the homeowner's exemption, and the assignment of the leasehold interest in the land on which the manufactured home is affixed on a permanent foundation results in a change in ownership.

However, if a manufactured home affixed on a permanent foundation is not eligible for the homeowners' exemption, the creation or assignment of a leasehold interest in the land for a term of less than 35 years does not result in a change of ownership because the presumption under section 61, subdivision (c)(1), does not apply. C 12/22/2004.

[Back to top \(#top\)](#)

[220.0350 \(../..../proptaxes/pdf/220_0350.pdf\)](#) **Leases.** A lease agreement for a term plus extension options of less than 35 years, but with a "conditional lease term extension" provision which, if the conditions were to occur and the option were to be exercised, would result in a total lease term exceeding 35 years, does not, upon execution of the lease, result in a change in ownership of the real property subject to the lease. At the inception of a lease agreement that includes a conditional option, the term of the conditional option should not be included when computing the lease term for purposes of change in ownership. However, upon the occurrence of any of the stated conditions, the conditional option in the lease becomes effective and, at that time, the term of the conditional option should be added to the lease term remaining. If that total period exceeds 35 years, then a change in ownership results at that time; and the entire property subject to the lease should be reappraised. C 2/18/1999.

[220.0352 \(../..../proptaxes/pdf/220_0352.pdf\)](#) **Leases.** A lease with a term longer than 35 years, which includes an option for the lessee to terminate the lease within 3 years if lessee (1) has not obtained final, nonappealable governmental approvals regarding site and building plans and environmental reports or (2) is unable to obtain satisfactory financing for construction of the project, results in a change in ownership at the time the lease is executed. The lessee's option to terminate the lease does not diminish the creation of a leasehold interest for a term of 35 years or more at the time of the lease's execution as (1) the duration of the lease term expressed in the agreement was for a term of 35 years or more, (2) the beneficial interest in the property passed to the lessee, and (3) the obligations created by the option to terminate do not diminish the value of the lessee's equity in the property. C 3/17/2000.

[220.0353 \(../..../proptaxes/pdf/220_0353.pdf\)](#) **Leases.** The tenant executed a lease of a building pad site in a shopping center for a term of 35 years or more with a nonexclusive easement over the common area, including the parking lot and parking structures. The tenant does not have a legal right to possess and use the common area to the exclusion of all others, as would a fee owner. Under the lease terms, the nonexclusive easement over the common area does not result in portions of the common area being "reserved as an appurtenance" to the building pad site, as required by Revenue and Taxation Code section 65.1(b). Tenant cannot be reassessed for a change in ownership for a portion of the shopping center's common area, including the parking lot and parking structures. However, section 65.1(b) does not preclude the tenant's pad site, upon the change in ownership, from being valued to reflect the amenities and the enhancement afforded by the common areas, nor prevent the common areas from being reassessed to the landlord for the value of new improvements. C 1/8/2001.

[220.0354 \(../..../proptaxes/pdf/220_0354.pdf\)](#) **Leases.** A financing lease is a type of purchase agreement whereby the seller (vendor) accepts periodic payments for the purchase price while retaining title to the property for security purposes. Possession of the property transfers to the lessee without full legal title until payment of the purchase price or on a predetermined date. The true owner of the property subject to a financing lease is considered to be the lessee, even though legal title to the property remains in the lessor for purposes of security, if at the time of entering into the agreement: (1) the parties have a fixed intention to buy and sell; and (2) the entire obligation to pay arises, payments being on a deferred basis; or (3) the lessee is under an economic compulsion to exercise the purchase option.

A "synthetic lease" is a financing agreement used to convey a security interest in real property in exchange for capital. A synthetic lease may be considered a finance lease if it satisfies the above elements. C 5/24/2005.

[220.0355 \(../..../proptaxes/pdf/220_0355.pdf\)](#) **Leases/subleases.** If property is subject of a lease for a term of 35 years or more and a sublease of the same property is for a term of 35 years or more, the transfer of the primary lease is not a change in ownership because of the continued existence of the sublease. C 11/9/1990.

[220.0356 \(../..../proptaxes/pdf/220_0356.pdf\)](#) **Leases/Subleases.** A "pass-through" sublease is, in effect, an assignment of all the rights and obligations of the lessee/sublessor in the property to the sublessee. Though written as a sublease, all the rights and interests of the former lessee "pass through" to the new sublessee. The former lessee has nothing left except for one minimal right or interest, the right to hold the property one day longer than the sublessee, which distinguishes a sublease from outright assignment. Since the former lessee has, in effect, transferred the full value of its leasehold estate, the transfer is, *in substance*, an assignment, though, *in form*, it reads like a sublease.

The termination of a lease and sublease that have original and remaining terms, respectively, of 35 years or more results in a change in ownership pursuant to Revenue and Taxation Code section 61(c)(1), absent an applicable exclusion. However, the termination of such a lease and sublease in which the sublessee is a 100 percent-owned subsidiary of the owner of the property, resulting in the "return" of the lease/sublease to the owner, is excluded from change in ownership by Revenue and Taxation Code section 64(b). C 10/11/2000.

[220.0357 \(../..../proptaxes/pdf/220_0357.pdf\)](#) **Leases/Term Extension.** If a leasehold was originally, or at one time, for a term of 35 years or longer, and if a reassessment had already occurred upon the lease's creation or extension to a term of 35 years or longer, the extension of the term back to 35 years or longer, when the remaining term is less than 35 years, does not result in a change in ownership if there were no other material changes in the terms of the lease made by the lease extension. However, if a leasehold term has at all times been under 35 years, the first extension of the leasehold term to 35 years or longer results in a change in ownership. C 5/27/2009.

[220.0360 \(../..../proptaxes/pdf/220_0360.pdf\)](#) **Leasehold Improvements.** When a 35 year lease provides that lessee-installed improvements shall at the expiration or earlier termination of the lease become the property of the lessor, a question arises as to whether or not the improvements have changed ownership if the lessor sells the property and the new owner negotiates a new lease. Since the sale would be of property subject to a lease with less than 35 years remaining, the structure and the tenant improvements would both be subject to reappraisal per Property Tax rule 462(f)(1)(B)(i), whether or not the "improvement ownership" clause became operative. The ownership of the improvements would turn on the actual intent of the parties, but would be meaningful for assessment purposes only as regards the billing of the correct assessee for the property that assessee owns. C 4/2/1987.

[220.0361 \(../..../proptaxes/pdf/220_0361.pdf\)](#) **Leasehold Improvements.** To determine whether there has been a change in ownership of tenant-constructed improvements when the land owner (lessor) undergoes a change in ownership, it is necessary to determine who owns the improvements. According to *Auerbach v. Assessment Appeals Board* (2006) 39 Cal.4th 153 and *Phelps v. Orange County Assessment Appeals Board No. 1* (2010) 187 Cal.App.4th 653, the key factor in determining whether tenant-constructed improvements belong to a lessor for property tax purposes is whether the improvements must be surrendered to the lessor upon lease termination. In a situation where the lease requires any buildings or structures owned by the lessee be removed prior to termination of the lease, then the improvements would be considered owned by the lessee and not by the lessor. Thus, a change in control in the lessor would not result in a change in ownership of the improvements owned by the lessee. C 1/11/2011.

[220.0364 \(../..../proptaxes/pdf/220_0364.pdf\)](#) **Life Estate—Personal Lifetime Right of Occupancy.** The termination of a retained life estate (that was previously excluded from change in ownership) by execution of a grant deed and a personal lifetime right of occupancy agreement is a change in ownership. Property Tax Rule 462.060 clearly provides that a subsequent transfer of a retained life estate by the transferor to a third party is a change in ownership. While a lifetime right to occupy property may not be a transfer of present beneficial interest, the transfer or termination of the life estate results in a change in ownership. C 1/3/2003.

[Back to top \(#top\)](#)

[220.0364.005 \(../..../proptaxes/pdf/220_0364_005.pdf\)](#) **Life Estate—Personal Lifetime Right of Occupancy.** One joint tenant conveys her joint tenancy interest in real property to the other joint tenant and pursuant to a separate written agreement, the transferor retains a personal lifetime right of occupancy in the residence until her death. Under this agreement, the transferee may not sell or transfer the residence during the transferor's lifetime; the transferor is responsible for the mortgage payments, taxes, utilities, maintenance and other costs associated with the residence during her lifetime; the transferee may occupy the residence or rent the residence to a third party only if the transferor is absent from the residence due to the need to move to a hospital or nursing home; if the residence is rented, the transferor is to receive the net proceeds from the rental of the residence.

The transferor retains the present beneficial use of her interest in the property, which includes the right to occupy real property or the right to receive the income produced by real property. Therefore, the transfer did not result in a change in ownership because the transferor's retained interest is equivalent to a life estate in the property. C 8/18/2004.

[220.0365 \(../..../proptaxes/pdf/220_0365.pdf\)](#) **Life Estate.** No change in ownership of real property occurs when an owner transfers the property to an exempt park district but retains a life estate. As the owner is deemed to be the owner of the fee until termination of the life estate, article XIII A, section 2(b) of the California Constitution relating to declines in value is not applicable because the value of the fee itself has not declined. Under Revenue and Taxation Code section 61(f), a change in ownership occurs when the life estate terminates and the right to possession or enjoyment vests in the remainderman. C 4/13/1981.

[220.0366 \(../..../proptaxes/pdf/220_0366.pdf\)](#) **Life Estate.** A "lease" manifesting an intention by the lessor/transferor to pass the right to possess, use, or enjoy property for the period of the transferee's life or the life of another creates a life estate which results in a change in ownership at the time of transfer. C 4/12/1984.

[220.0367 \(../..../proptaxes/pdf/220_0367.pdf\)](#) **Life Estate.** The reservation of a life estate to the grantor of a revocable grant deed is within the Revenue and Taxation Code section 62(e) exclusion. C 6/9/1993.

[220.0368 \(../..../proptaxes/pdf/220_0368.pdf\)](#) **Life Estate.** Pursuant to Property Tax rule 21(a) and rule 462(e), a transfer of real property to a tax-exempt governmental entity with a reservation of a life estate does not result in the creation of a taxable possessory interest or a change in ownership. Thus, the taxable value of the property must be determined by comparing the adjusted base year value of the parcel (not the life estate itself) to the market value of the parcel. The value must be established without regard to the conveyance to the governmental agency, any use limitations imposed on the owner of the life estate, or the fact that the life estate because of its limited duration declines in value each year. C 11/2/1989.

[220.0369 \(../..../proptaxes/pdf/220_0369.pdf\)](#) **Life Estate.** The granting of a life estate constitutes a change in ownership, even though the estate is to terminate upon the happening of specified conditions, such as the failure of the life tenant to reside on the property. The execution of a grant deed by the life tenant which is to take effect on his or her death is of no significance since it is not presently operative and would, in any event, be an attempt to transfer legal title which is held by the grantor of the life estate. C 6/30/1983.

[220.0370 \(../..../proptaxes/pdf/220_0370.pdf\)](#) **Life Estate.** A person may disclaim a gift of a life estate created in a will if he or she files the appropriate document as required by Probate Code section 282 et seq. The failure to timely file a disclaimer results in a change in ownership as of the date of the decedent's death.

If the decedent were the parent of the owner of the remainder interest, the parent/child exclusion would apply to the transfer of that interest since it is received from the decedent, not the holder of the life estate. C 5/23/1989.

[220.0372 \(../..../proptaxes/pdf/220_0372.pdf\)](#) **Life Estate.** The transfer of a life estate by a life tenant during his or her life other than to a spouse or eligible child constitutes a change in ownership. The termination of a life estate because of the death of the life tenant is also a change in ownership, unless the remainderman is a spouse or eligible child of the creator of the life estate and remainder interest. C 4/13/1992.

[220.0372.005 \(../..../proptaxes/pdf/220_0372_005.pdf\)](#) **Life Estate.** Mother owned real property. At her death, the provisions of her will created a life estate in the property for her daughter. Upon termination of the life estate, the remainder interest would pass 50 percent to the daughter and 16.66 percent to each of the mother's three sons. After the mother's death, a parent-child claim for exclusion was properly filed thereby excluding the creation of the life estate in the daughter from change in ownership. Subsequently, the four siblings formed a corporation in which the four owned all the outstanding shares of the corporation. The daughter quitclaimed her life estate and her 50 percent remainder interest in the property to the corporation, and the three sons quitclaimed their remainder interests in the property to the corporation.

As the life tenant, the daughter was the primary owner of the entire property because a creation of a life estate meets the definition of change in ownership under Revenue and Taxation Code section 60. The three sons did not hold primary ownership interests in the property because they held future interests, not present interests, that vested upon termination of the life estate. Because the daughter owned a 100 percent interest prior to the transfer and a 50 percent interest after the transfer, the transfer to the corporation was not proportional and, thus, resulted in a 100 percent change in ownership. C 2/2/2005.

[Back to top \(#top\)](#)

[220.0372.010 \(../..../proptaxes/pdf/220_0372_010.pdf\)](#) **Life Estate.** Where a life estate created for the benefit of a child terminates as a result of the death of the child life tenant, the transfer to the surviving children is from the parent/transferor of the remainder interest, not from the life tenant. Since the parent is the transferor, the parent/child exclusion and/or the grandparent/grandchild exclusion may apply to exclude the re-transfer from change in ownership provided that all of the filing requirements are met. C 3/6/2006.

[220.0372.015 \(../..../proptaxes/pdf/220_0372_015.pdf\)](#) **Life Estate.** A life estate interest may be terminated by the life tenant during his lifetime. However, when a life estate is transferred to the owner of the remainder interest in a property, the life estate ceases to exist and is merged into the remainder interest. The doctrine of merger stands for the proposition that whenever a greater estate (remainder fee interests) and a lesser estate (life estate) in the same parcel of real property are held by the same person, without an intermediate interest or estate, the lesser estate generally merges into the greater estate and is terminated.

Upon the grandmother's death, an irrevocable generation-skipping transfer trust was created for the lifetime benefit of grandfather. Upon grandfather's death, their son became the lifetime beneficiary of the trust, with a remainder interest in the son's child. The trust owns White Acre. Child owns Black Acre. Trust wants to transfer White Acre to Child in exchange for Black Acre.

If Son, the present beneficiary of the trust, transfers his life estate interest in White Acre to child, the owner of the remainder interest, this transfer would terminate the son's life estate interest and cause it to merge into Child's remainder interest. Child's remainder interest in White Acre would become a vested present beneficial ownership interest that Child will have received from his parent, not the trustor (grandmother). This transfer may be excluded from change in ownership as a parent-child transfer, provided the other requirements set forth in Revenue and Taxation Code section 63.1 are met. Similarly, the transfer of Black Acre from child to a trust in which parent is the beneficial owner may be excluded from change in ownership as a parent-child transfer. C 11/7/2006.

[220.0372.020 \(../..../proptaxes/pdf/220_0372_020.pdf\)](#) **Life Estate.** Pursuant to an agreement, W retained a life estate in Parcels A and B. The Agreement provided that the life estate in Parcel B was to terminate as soon as subdivision of the property was permitted by the relevant authorities. A life estate may provide for termination upon the occurrence of a certain event. This is known as a determinable life estate. Upon the happening of the event, the life estate terminates automatically without any further action by the holder of the remainder interest. Therefore, upon the approval of subdivision by the City, W's life estate in Parcel B terminated and the property passed to the holder of the remainder interest. This resulted in a change in ownership pursuant to Revenue and Taxation Code section 61(g). C 1/25/2012.

[220.0374 \(../..../proptaxes/pdf/220_0374.pdf\)](#) **Life Estate.** When a "lease" specifies two seemingly contradictory terms—(1) the life of lessee plus 90 days, and (2) an ending date of March 31, 2031 (a term of 34 years and 11 months), the intent of the parties must be analyzed. If the language imposing conditions places burdens on the life tenant which do not invalidate the grant of a life estate and the term of the estate is otherwise indefinite, then the term of the estate survives until the life tenant's death and hence, indicates the creation of a life estate. However, where the language of the creating instrument manifests an intention by the parties to create a landlord/tenant relationship rather than a life estate, and the term of the estate is definite, specifying a date as well as breach provisions for the termination or forfeiture of the estate even though the life tenant is still alive, then these and other provisions indicate that the parties established a leasehold estate, rather than a life estate. C 7/17/1998.

[220.0375 \(../..../proptaxes/pdf/220_0375.pdf\)](#) **Limited Liability Company.** For change in ownership purposes, members' ownership interests in a limited liability company, measured by the members' capital and profits interests, are the members' interests in capital and profits, the same as is the case for partners' ownership interests in partnerships. Therefore, a transfer of interests in real property to a limited liability company is excluded from change in ownership pursuant to Revenue and Taxation Code section 62, subdivision (a)(2), if the transferors receive interests in capital and profits as members of the limited liability company proportional to their real property interests prior to the transfer. C 4/15/1998.

[220.0375.005 \(../..../proptaxes/pdf/220_0375_005.pdf\)](#) **Limited Liability Company.** A transfer of real property from a limited partnership, comprised of one general partner and one limited partner where each holds a 50 percent partnership interest, to a limited liability company (LLC) where the general partner and the limited partner, the only members of the transferee LLC, each hold a 50 percent LLC interest, would be excluded from a change in ownership under Revenue and Taxation Code section 62(a)(2), assuming this is not a statutory conversion or merger pursuant to Corporations Code section 15611. If it is, there is no transfer, and therefore, no change in ownership. C 9/9/1999.

[220.0375.010 \(../..../proptaxes/pdf/220_0375_010.pdf\)](#) **Limited Liability Company.** Real property is owned by LLC-1. LLC-1 has two individual members, A (0.95%) and B (0.05%) and an entity member, LLC-2 (99%), which in turn is wholly owned by A (95%) and B (5%). In the first scenario, LLC-2 is transferring its 99% interest in LLC-1 to A and B in the same percentages as the percentages

of A and B's pre-transfer interests in both entities – 95% to 5%. After the transfer, A will directly own 95% of LLC-1 and B will directly own 5% of LLC-1. In the second scenario, LLC-2's 99% interest in LLC-1 is transferred to a new entity, LLC-3, in which A and B are the only members, retaining their same proportional interests. Transfers of interests in legal entities are excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) as long as the interests transferred are in exactly the same proportion. (See Property Tax Rule 462.180(d)(4).)

Where the exclusion in section 62(a)(2) applies to a transfer that would otherwise trigger a Revenue and Taxation Code section 64(c) change in control, the section 62(a)(2) exclusion takes precedence because the transfers are proportional with the underlying ownership interests of the members or partners in the entity which owns the real property remaining the same. C 11/19/1999.

[220.0375.015 \(../..../proptaxes/pdf/220_0375_015.pdf\)](#) **Limited Liability Company.** A single member limited liability company (LLC) must be treated as a separate legal entity for property tax purposes, with transfers of membership interests in the LLC subject to the provisions of Revenue and Taxation Code section 64(a) et seq. Similarly, transfers of real property to or from a single-member LLC are changes in ownership of the interests transferred, unless the transfers are excluded under a specific statutory provision. Even though the single member LLC may be *disregarded* for federal tax reporting purposes and its profits and losses reported on the individual member's tax return, its affairs are governed by all of the formalities imposed on all other legal entities (e.g., corporations, partnerships, etc.). Its articles of organization and its operating agreement determine who the members are, the extent of the interests they own, the activities it conducts, and the terms of its future dissolution. An LLC acquires its separate existence as a legal entity once its articles of organization are filed and its operating agreement executed. How its federal or state income taxes are reported on various returns has no bearing on the legal recognition of a properly formed LLC (single member or otherwise). C 2/15/2000.

[Back to top \(#top\)](#)

[220.0375.020 \(../..../proptaxes/pdf/220_0375_020.pdf\)](#) **Limited Liability Company.** Husband and wife are the sole present beneficiaries of their living trust, which is the record owner of real property. Title to the property will be transferred to a limited liability company owned by the trust, in exchange for which the trust will receive 100 percent of the capital and profits interests of the limited liability company. To determine the present beneficial ownership of that property and whether or not a transfer of property held in trust is proportional, it is necessary to "look through the trust." The transfer of real property by the present beneficiaries of a trust to a legal entity, such as a limited liability company owned by the trust beneficiaries in the same proportionate shares, is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). C 1/17/2001.

[220.0375.025 \(../..../proptaxes/pdf/220_0375_025.pdf\)](#) **Limited Liability Company – Series or Classes of Interests.** The transfer of real property by its owners to a limited company, which statutorily is authorized to issue series or classes or ownership interests specific to the property being transferred, is excluded from change in ownership and reassessment where all of the subject series of ownership interests (represented by capital and profits) are owned exclusively by the former owners of the real property in the exact proportions in which they held the real property. C 8/17/1999; C 3/29/2002.

[220.0375.030 \(../..../proptaxes/pdf/220_0375_030.pdf\)](#) **Limited Liability Company—Capital Interests and Profits.** Property Tax Rule 462.180(d)(1)(A) provides that partnership and limited liability company (LLC) capital and profits are treated the same for majority ownership interest determinations. Under federal income tax law, partnership capital and profits interests are counted for purposes of determining a sale or exchange of those interests above a stated amount. A selling partner's capital interest is defined as equal to the portion of the partnership's equity that would be distributable to the partner upon a hypothetical sale of all partnership assets for their fair market value, satisfaction of all partnership liabilities, and liquidation of the partnership. The definition of partnership capital as a portion of the partnership's equity is applicable for change in ownership purposes. Equity is defined as an ownership right in property. Thus, the partner's share of the ownership rights in the partnership's property constitutes the partner's capital interest for federal income tax purposes. Likewise, Revenue and Taxation Code section 64 provides that a change in ownership is determined by the transfer of a majority of the partners' ownership interests to a single person or entity. Because partnership capital for federal income tax purposes is predicated on an ownership interest in the partnership, it is an appropriate definition for determining whether a partner or a member of an LLC has obtained a majority ownership interest in a partnership or LLC for change in ownership purposes. C 4/11/2005.

[220.0375.035 \(../..../proptaxes/pdf/220_0375_035.pdf\)](#) **Limited Liability Company.** A California limited liability company (LLC) owns a multi-residential property. The sole member of the LLC is a family trust. The LLC desires to change from being member-managed to manager-managed and intends to appoint a California corporation as manager. The manager will have no ownership interest in the LLC. Revenue and Taxation Code section 64 specifies that there is a change in ownership of the real property owned by a legal entity when another legal entity or another person obtains direct or indirect control of the legal entity

through ownership of more than 50 percent of the voting stock or a majority ownership interest. Since the California corporation assuming the role of manager will have no ownership interest in the LLC it is charged with managing, there will be no change in ownership as a result of the proposed change in management. C 2/23/2010.

[220.0376 \(../././././././proptaxes/pdf/220_0376.pdf\)](#) **Limited Liability Company.** An irrevocable trust that has three equal, individual present beneficiaries holds title to real property. The trust forms a limited liability company (LLC) and contributes cash to the LLC in exchange for a 100 percent membership interest in the LLC. The trust then forms a limited partnership and contributes the real property owned by the trust to the partnership in exchange for a 99 percent limited partnership interest. The LLC contributes cash to the partnership in exchange for a 1 percent general partnership interest.

For change in ownership purposes, the present beneficiary of an irrevocable trust is considered to be the owner of the present beneficial interest in property held by the trust. Before the transfer, three beneficiaries each owned a one-third interest in the Trust property. After the transfer, each beneficiary will own a one-third interest in the property as a result of their respective one-third interest in the partnership and their one-third membership interest in the LLC. Therefore, the transfer of the trust property to the partnership is proportional and excluded from reassessment pursuant to Revenue and Taxation Code section 62(a)(2). C 11/7/2006.

[220.0376.005 \(../././././././proptaxes/pdf/220_0376_005.pdf\)](#) **Limited Liability Company.** A limited liability company (Original LLC) is owned by five trusts. D is the trustor of two trusts and M is the trustor of three trusts. D's two trusts owned a 45 percent and a 5 percent interest respectively. Under Step 1, D's two trusts withdrew from Original LLC, and Original LLC transferred the 45 percent and 5 percent interest in the real property to the two trusts in the same proportional interest. As a result of the withdrawal, M's three trusts became 80 percent, 10 percent, and 10 percent owners respectively of Original LLC. In Step 2, D's two trusts formed a new limited liability company (New LLC) and transferred their 45 percent and 5 percent interest in the real property respectively in exchange for a 90 percent and a 10 percent membership interest in the New LLC respectively.

Under Step 1, the transfer of D's 50 percent interest in Original LLC to D's trusts is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result of the transfers and withdrawal of D's trusts as members of Original LLC, M's trusts became the owner of 100 percent of Original LLC, resulting in M obtaining a controlling interest in Original LLC under section 64(c)(1). However, because the proportional ownership interests in the real property remain the same before and after the transfers, section 62(a)(2) excludes such transfers from change in ownership. As a result of the exclusion, M becomes an original co-owner under section 64(d). Subsequent transfers of cumulatively more than 50 percent of the ownership interests in Original LLC by M will cause a change in ownership of all the real property owned by Original LLC that was previously excluded from change in ownership under section 62(a)(2).

Under Step 2, the subsequent transfer of a 45 percent interest and a 5 percent interest in the real property by D's two trusts respectively to New LLC is excluded from change in ownership under section 62(a)(2) as D's ownership interest in the real property remains the same before and after the transfers. Thus, D becomes an original co-owner in New LLC under section 64(d). C 7/23/2008.

[220.0376.015 \(../././././././proptaxes/pdf/220_0376_015.pdf\)](#) **Limited Liability Company.** Trust B, an irrevocable trust, owns real property. The transfer of the real property by the beneficiaries of Trust B to a limited liability company (LLC) whose sole member will be the same trust, Trust B, is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result, the trust beneficiaries become the "original co-owners" of the LLC pursuant to section 64(d). Thereafter, all transfers of LLC interests must be counted and cumulated. When more than 50 percent original co-owner shares are transferred, the property will undergo a change in ownership. Because transfers between parents and children are not excepted from cumulating to determine a change in ownership under section 64(d) and the parent-child exclusion does not apply to transfers of legal entity interests, a transfer of more than 50 percent of original co-owner shares in the LLC from the beneficiaries to their children will result in a change in ownership. C 11/7/2013.

[220.0377 \(../././././././proptaxes/pdf/220_0377.pdf\)](#) **Limited Liability Company—Dissolution.** Husband and Wife formed a Trust and conveyed real property to the Trust. Upon Husband's death, Wife became the sole present beneficiary of the Trust. Later, Wife, as co-trustee of the Trust, transferred property to a California limited liability company (LLC) that was owned by the Trust. The Operating Agreement of the LLC required that upon the occurrence of the death of any Member or other specified events, the LLC was to dissolve unless all of the remaining Members consent to the continuation of the business of the Company. Subsequently, Wife died. Thereafter, the LLC was formally dissolved and title to the property was conveyed back to the Trust.

Even though an event may have triggered dissolution of an LLC, the Corporations Code sets up a scheme where the dissolution is but the first step in a process that may or may not lead to the end of the company's separate legal existence. Corporations Code section 17354 states that the company continues in existence after dissolution for purposes of winding up and disposing of and conveying its property. Even if the LLC dissolved at Wife's death, the LLC continued to exist after the date of Wife's death and

throughout its winding up period until the filing of a certificate of cancellation of the articles of organization with the Secretary of State upon the completion of the winding up of the affairs of the LLC. As such, the transfer on the date of Wife's death to the remainder beneficiaries that occurred for property tax purposes was of the LLC membership interests held by the Trust, and not the Property. The parent-child exclusion is unavailable as Revenue and Taxation Code section 63.1(c)(8) provides that the exclusion does not apply to transfers of legal entity interests. Therefore, at Wife's death, 100 percent of the original co-owner interests in the LLC transferred to the beneficiaries, resulting in a change in ownership of the property under section 64(d), because legal entity ownership interests representing cumulatively more than 50 percent of the total interests in the legal entity were transferred by the original co-owners. C 6/19/2012.

Note: Subsequent to the publication of this annotation and its back-up letter, certain sections of the Corporations Code were renumbered. The renumbering is reflected in a note preceding the back-up letter.

[220.0380 \(../..../proptaxes/pdf/220_0380.pdf\)](#) **Limited Partnership.** Upon the transfer of a limited partner's interest there will be no change in ownership, whether that transfer is inter vivos or by death, and whether or not consideration is paid. C 4/7/1980.

[220.0381 \(../..../proptaxes/pdf/220_0381.pdf\)](#) **Limited Partnership.** A transfer of real property owned by a husband and wife to a limited partnership having the husband as the general partner and the wife and their children as limited partners is not excluded by Revenue and Taxation Code section 62(a), which requires the proportional interests of the transferors and transferees remain the same after a transfer. C 10/28/1981.

[Back to top \(#top\)](#)

[220.0382 \(../..../proptaxes/pdf/220_0382.pdf\)](#) **Limited Partnership.** A transfer of real property by an individual to a limited partnership, a partnership formed by two or more persons, is not excluded by Revenue and Taxation Code section 62(a), which requires that proportional interests of the transferor(s) and transferee(s) remain the same after a transfer. Any shift in the partners' interests in the partnership capital and profits during or immediately after the transfer destroys the required proportionality. C 9/1/1981; C 1/6/2000.

[220.0383 \(../..../proptaxes/pdf/220_0383.pdf\)](#) **Limited Partnership.** For purposes of Revenue and Taxation Code section 64(c), upon the transfer of partnership interests among partners, one partner must have acquired a majority interest in the partnership in order for a change in control to have occurred. Thus, no change in ownership results where after such transfers one partner becomes the sole general partner but still possesses less than a majority interest in the partnership. C 9/24/1982.

[220.0384 \(../..../proptaxes/pdf/220_0384.pdf\)](#) **Limited Partnership.** The transfer of a limited partnership interest(s) to a revocable trust(s) by the owner of the limited partnership interest(s) is not a change of ownership because it does not result in a transfer of a present beneficial interest in the partnership. Since there has been no change of ownership, the transferor of the partnership interest cannot be considered an "original co-owner" referred to in Revenue and Taxation Code section 64(d). C 5/14/1991.

[220.0385 \(../..../proptaxes/pdf/220_0385.pdf\)](#) **Limited Partnership.** The transfer of property from a limited partnership to the limited partners is a change of ownership unless each partner has the same interest in the property before and after the transfer. The sameness of the interest is determined by comparing the partners' total interests in both the partnership capital/equity account and the profit/loss account with the partners' percentage interests in the property following the transfer. The same test would apply to any subsequent transfer by the partners to a new limited partnership. C 3/12/1992.

[220.0387 \(../..../proptaxes/pdf/220_0387.pdf\)](#) **Limited Partnership.** When a partnership transfers interests denominated limited partnership interests but such interests do not include a right to share in partnership profits and losses but only a right to return of amounts invested plus interest thereon, a creditors/debtor relationship, not a partnership relationship, is established.

If the only actual general and limited partners are a husband and wife with equal ownership interests, a transfer of property by the partnership to the husband and wife as community property would be a change in the manner of holding title and not a change in ownership. C 10/21/1988; C 6/19/1998.

[220.0388 \(../..../proptaxes/pdf/220_0388.pdf\)](#) **Limited Partnership.** If an individual transfers real property to a limited partnership in which the individual is the general partner and in which an irrevocable trust is the limited partner, the transfer will be excluded from change in ownership if the individual is also the income beneficiary of the trust. In the case of a similar transfer to a limited partnership by spouses who hold title as joint tenants or tenants in common, such a transfer will be excluded if the spouses become general partners and receive capital and profits interests in the same proportions as they held in the real property and if the spouses are also the sole income beneficiaries of the limited partner trust in the same proportion as the interests each held in the real property. If, however, the trustee in either case has the discretion or obligation to pay income to

persons other than or in addition to the individual or spouses or to pay income to the spouses in proportions different than the interests each held in the real property, Revenue and Taxation Code section 62(a)(2) is inapplicable, notwithstanding the fact that the trust terminates in less than 12 years and the property reverts to the trustor/individual or trustors/spouses. Section 62(a)(2) requires exactitude, and coming close to identical proportionality is not sufficient.

If the spouses hold title to the real property as community property, then the transfer is excluded if either spouse becomes a general partner, as long as the partnership interest is held as community property. In such case, they would still be required to be the sole income beneficiaries of the trust. Conversely, if one spouse holds title to the real property as his or her separate property, then the transfer would be excluded only if that spouse and the trust are the only partners and if that spouse is the sole income beneficiary of the trust. C 3/31/1992.

[220.0389 \(../././././././proptaxes/pdf/220_0389.pdf\)](#) **Limited Partnership.** A and B are equal beneficiaries, co-trustors, and co-trustees of a revocable trust which operates and is taxed as a partnership. Trust owns two parcels of real property and 100 percent of Corporation, which owns two additional parcels. To consolidate title under one entity, Corporation creates a wholly-owned subsidiary; and Trust and Subsidiary form Limited Partnership to which Corporation then transfers its two parcels and Trust transfers its two parcels in exchange for proportional interests in the Limited Partnership capital and profits. Each transfer is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2), because the proportional interests of the underlying owners in each parcel are exactly the same following the transfer. The step transaction doctrine does not apply even though there are two separate transfers using the section 62(a)(2) exclusion, since the proportional ownership interests in the real property remain the same. C 12/20/1990; C 7/31/1995; C 12/19/1996.

[220.0391 \(../././././././proptaxes/pdf/220_0391.pdf\)](#) **Limited Partnership.** A change in ownership occurs in partnership real property when a person obtains a majority ownership interest in the partnership pursuant to Revenue and Taxation Code section 64(c). With respect to corporate legal entities, section 64(c) speaks of obtaining "control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation" and "any purchase or transfer of 50 percent or less of the ownership interest through which control ... is obtained." In this context, "control" is used in reference to control of the units of *ownership*, not with reference to control over the *management* of the entity's property. Thus, in a limited partnership, when a general partner who owns 1 percent of the partnership interests obtains an additional 96 percent interest from a limited partner, the property owned by the partnership undergoes a change in ownership because, as a result of the transfer, that partner obtained a majority ownership interest. Whether an ownership interest is a general partnership interest or a limited partnership interest is irrelevant in analyzing property tax limited partnership change in ownership situations. What is relevant is the percentage of ownership acquired or transferred. The degree of ownership is determined by the direct or indirect ownership of the interests in the partnership capital and profits. C 8/10/2000.

[220.0393 \(../././././././proptaxes/pdf/220_0393.pdf\)](#) **Limited Partnership.** A merger of two limited partnerships will result in a change in ownership of the real property owned by both partnerships if the ownership interests in the capital and profits of both partnerships are not identical before and after the transfer. C 9/30/2005.

[220.0394 \(../././././././proptaxes/pdf/220_0394.pdf\)](#) **Limited Partnership.** A transfer of real property to a limited partnership in exchange for a separate class of partnership interests may be excluded from change in ownership under Revenue and Taxation Code section 62(a)(2) if the partner owns the same percentage of capital and profits in each piece of real property through the class of partnership interest in the limited partnership as the partner owned in its respective property prior to the transfer. C 3/1/2006.

[220.0394.005 \(../././././././proptaxes/pdf/220-0394-005.pdf\)](#) **Limited Partnership.** Partnership is a Delaware limited partnership consisting of eight series. Partnership's eight series each have a 100 percent interest in one separate parcel of real property. Pursuant to Delaware law, the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series are enforceable only against the assets of such series and not against the assets of the partnership generally, and the converse is true with respect to the partnership's liabilities and obligations. The law also provides that each separate series has the power and capacity to, in its own name, contract, hold title to assets (including real, personal and intangible property), grant liens and security interests, and sue and be sued. Additionally, the partnership agreement itself provides that each series has its own dba, maintains separate and distinct records of its assets and liabilities and profits and losses, and further title to the property shall be held in the names of the series to which it belongs. Thus, each series is treated as a separate legal entity for California property tax purposes and subject to the provisions of Revenue and Taxation Code section 64(c)(1) and Property Tax Rule 462.180(d)(1). As such, when anyone obtains more than 50 percent interest in any series, this would result in a change in control of that series and reassessment of the real property owned by that particular series. C 12/8/2015.

[220.0395 \(../..../proptaxes/pdf/220_0395.pdf\)](#) **Lot Line Adjustments.** Mutual deeds executed by neighbors to alter a common boundary and, therefore, place an accidentally, but improperly, located structure on land owned by the structure's owner and to compensate the other owner with an equivalent area of land results in a change in ownership of each property conveyed.

While Revenue and Taxation Code section 62(e), formerly 62(f), excludes from change in ownership transfers intended to correct or reform a deed to express the original intentions of the parties, that exclusion is inapplicable when there is no deed ambiguity but rather, an intentional execution of deeds to accomplish a lot line adjustment. C 3/12/1987.

[220.0396 \(../..../proptaxes/pdf/220_0396.pdf\)](#) **Lot Merger.** A couple purchased a lot adjacent to their residence. The residential property has a low base year value, and the new lot has a high base year value. The couple wants to adjust the lot line so that the residential property and the new lot are one property. Revenue and Taxation Code section 65.1(a) provides that when an interest in a portion of real property changes ownership, only the interest or portion transferred is to be reappraised. Thus, if a partial change in ownership occurs, only that portion that changes ownership is given a new base year value based upon its full cash value on the change in ownership date, and the remaining portion of the property that did not change ownership retains its existing adjusted base year value. In this situation, the same persons own both the residential property and the new lot. A lot line adjustment affecting only these two parcels would not result in a transfer of a present interest or beneficial use of either lot. As such, the lot line adjustment would not result in a change in ownership. C 7/24/2014.

[220.0398 \(../..../proptaxes/pdf/220_0398.pdf\)](#) **Massachusetts or Business Trust.** A Massachusetts or business trust rather than a partnership is created where the contract vests management control in the trustees rather than the certificate unit holders. Nevertheless, such a trust should be treated as a separate legal entity for property tax purposes where the contract provides that (1) the organization is a separate legal entity having its own common law identity; (2) the trustees shall hold both equitable and legal title to the property of the organization; and (3) the ownership of certificate units, which are in the nature of shares of stock, shall not entitle the holder to any legal or equitable title or any undivided interest in the property of the organization. C 4/26/1994.

[220.0399 \(../..../proptaxes/pdf/220_0399.pdf\)](#) **Massachusetts Trust/Business Trust.** If a trust is a business trust, instead of an ordinary trust for the conservation of assets, it is to be treated as a legal entity for property tax purposes. Determining whether a trust is a business or traditional trust requires a factual analysis of the evident trust purposes and trust documents. The parties are not at liberty to say that their purpose was other or narrower than that which they formally set forth in the instrument under which their activities were conducted. Given the broad powers provided to the trustee, if the property is capable of being rented, subdivided, developed, converted to business purposes, or otherwise being used as or in a business, the trust must be considered a business trust and, therefore, a legal entity for property tax purposes and subject to the provisions of Revenue and Taxation Code sections 61, subdivision (j), and 64. C 1/13/1998; 8/24/2010.

[220.0402 \(../..../proptaxes/pdf/220_0402.pdf\)](#) **Mineral Rights.** A lease for a term of less than 35 years to mine sand and gravel constitutes a change in ownership of the mineral rights under Revenue and Taxation Code section 61(a). However, if a lease option is executed, no change in ownership will occur until the option is exercised. A true option to lease is not a change in ownership because the option holder acquires no beneficial use of the property until the option is exercised. C 6/19/2006.

[220.0410 \(../..../proptaxes/pdf/220_0410.pdf\)](#) **Mining Claims.** Performance of annual work on unpatented mining claims and filing of proof thereof are conditions to the continuation of a right granted for an indefinite term, and there is no renewal of a possessory interest and hence, no change in ownership as a result of such annual filings. C 5/26/1982.

[220.0411 \(../..../proptaxes/pdf/220_0411.pdf\)](#) **Mining Claims.** Unpatented mining claims create taxable possessory interests, while patented mining claims constitute fee ownership interests. In determining when the transfer of either type of interest is a change in ownership, Revenue and Taxation Code section 61(a) is controlling. C 12/13/1989.

[220.0420 \(../..../proptaxes/pdf/220_0420.pdf\)](#) **Missing Person.** Where a person disappears on August 19, 1975, a change in ownership of real property occurs on that date, August 19, 1982, or some date in between depending upon whether there is evidence to rebut the presumption that the person lived for seven years after his disappearance.

Evidence Code section 667 provided that "a person not heard from in seven years is presumed to be dead." As a general rule, it is presumed that life continues throughout the entire period of seven years (*People v. Niccoli*, 102 Cal.App.2d 814). Such presumption of life may be overcome, however, by evidence that the missing person was subjected to some specific peril, illness or other circumstances sufficient to justify the inference of death prior to seven years following the person's disappearance. Such evidence need be only of such character as to make it more probable than not that the person died at a particular time (*Estate of Christin*, 128 Cal.App. 625).

Each case of disappearance has its own individual facts and thus affords no precedent for a case of disappearance under different facts. C 3/29/1985.

[220.0425 \(../..../proptaxes/pdf/220_0425.pdf\)](#) **Mobilehome Park.** On and after January 1, 1985, any bona fide transfer of a rental mobilehome park to tenant ownership in the form of a nonprofit corporation, etc., is excluded from change in ownership by Revenue and Taxation Code section 62.1. This is a change from LTA 7/11/1986 No. 86/52 in that conversion to condominium or stock cooperative ownership is no longer a requirement for exclusion. LTA 6/13/1988 (No. 88/44).

[220.0426 \(../..../proptaxes/pdf/220_0426.pdf\)](#) **Mobilehome Park.** The sale of all the ownership stock in a corporation that owns a mobilehome park to a nonprofit corporation, the stock of which is owned by park tenants, would result in a change in ownership of park property. The exclusion contained in Revenue and Taxation Code section 62.1 would be inapplicable since it only applies to transfers of mobilehome park property and not to transfers of corporate ownership interests, i.e., corporate stock. C 6/11/1992.

[Back to top \(#top\)](#)

[220.0427 \(../..../proptaxes/pdf/220_0427.pdf\)](#) **Mobilehome Park.** A transfer of a mobilehome park to a tenant-owned, non-profit corporation between January 1, 1985 and January 1, 1989, is excluded from change in ownership. A similar transfer on or after January 1, 1989, is also excluded if tenants who were renting at least 51 percent of the spaces prior to the transfer own at least 51 percent in the entity acquiring the park.

If a transfer of a mobilehome park is excluded from change in ownership, above, but has not been converted to condominium, stock cooperative, or limited equity cooperative ownership, transfers after January 1, 1989, of voting stock or membership-ownership interests in the corporation requires a reappraisal of a pro-rata (as defined in Revenue and Taxation Code section 62.1(c)(2)) portion of the park's real property unless the transfers of the individual ownership interests are for the purpose of converting the park to one of the entities mentioned herein or is excluded from change in ownership by Revenue and Taxation Code sections 62, 63, or 63.1.

The cancellation of a stock certificate and the issuance of a new one to reflect the movement of a tenant from one space to another in a mobilehome park is not a transfer of a property interest but merely a substitution of one ownership indicia for another.

Transfers of spaces in a mobilehome park, as contrasted with transfers of ownership interests in the entity owning the mobilehome park, are excluded from change in ownership if made during the period January 1, 1985, to January 1, 1994, provided the conditions contained in Revenue and Taxation Code section 62.1(b) are met. C 8/7/1991.

[220.0428 \(../..../proptaxes/pdf/220_0428.pdf\)](#) **Mobilehome Park.** On the transfer of a mobilehome park to the city in which it is located, the property becomes exempt from property taxation pursuant to Revenue and Taxation Code section 202(a)(4). Since the transfer does not come within any change in ownership exclusion, the assessor should appraise the property to obtain a base year value for future use. This value and the exemption should be enrolled.

If the city sells spaces to individual tenants during the period January 1, 1985, and January 1, 1994, if at least 51 percent of the spaces are purchased by persons renting their spaces prior to purchase, and if the tenants form, within one year after the first purchase of a space by a tenant, a resident organization referred to in Health and Safety Code section 50781, the city transfers would be excluded from change in ownership (Revenue and Taxation Code section 62.1(b)). The base year value established at the time of the transfer to the city would be used.

The requirement that 51 percent of the spaces be purchased by tenants renting their spaces prior to purchase does not mean that a person had to be a tenant prior to the date on which title to the property transferred to the city, only that he or she was a tenant prior to purchasing the rented space. C 8/13/1992.

[220.0429 \(../..../proptaxes/pdf/220_0429.pdf\)](#) **Mobilehome Park.** The transfer of a mobilehome park to a trust that is to operate the property and eventually convey it to a tenant-ownership entity qualifies for exclusion from change in ownership under Revenue and Taxation Code section 62.2, provided that within one year of the transfer to the trust the property is transferred in a transaction that is excluded from change in ownership by Revenue and Taxation Code section 62.1(a) or (b). C 11/5/1991.

[220.0430 \(../..../proptaxes/pdf/220_0430.pdf\)](#) **Mobilehome Park.** Revenue and Taxation Code section 62.1 excludes from change in ownership "any transfer" after January 1, 1984, and before January 1, 1994, of a space in a mobilehome park to the occupant thereof if certain requirements are met. The fact that a space prior to the transfer is owned by a corporation in which the occupant is a stockholder does not disqualify the transfer. C 11/17/1992.

[220.0431 \(././././././proptaxes/pdf/220_0431.pdf\)](#) **Mobilehome Park.** The requirement of Revenue and Taxation Code section 62.1(b) that 51 percent of the spaces be purchased by tenants renting their spaces prior to purchase means that 51 percent of all of the spaces in the park, occupied or unoccupied, must be purchased by tenants, not that only 51 percent of the occupied spaces must be purchased. C 2/26/1999.

[220.0432 \(././././././proptaxes/pdf/220_0432.pdf\)](#) **Mobilehome Park.** Revenue and Taxation Code sections 62.1 and 62.2 create three sets of change in ownership exclusions with respect to the transfers of mobilehome parks to tenant ownership.

Section 62.1(a) excludes a transfer of a mobilehome park to an entity formed by the tenants of the park provided that the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. Section 62.1(b) provides a separate exclusion for the transfer of rental spaces in a mobilehome park to the individual tenants of the rental spaces provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in Health and Safety Code section 50781(k) to operate and maintain the park. And section 62.2 excludes any transfer of a mobilehome park to an entity which is not formed by the tenants, for a temporary period following the transfer, to facilitate the transfer of the park to resident ownership pursuant to one of the exclusions of section 62.1 described above. Within that temporary period, either section 62.1(a) or section 62.1(b) must be complied with, or the exclusion is lost. For mobilehome parks initially transferred after 1993, this temporary period within which section 62.1 must be completed within 36 months. For mobilehome parks initially transferred between January 1, 1989 and January 1, 1993, that period was 18 months.

Once a transfer of a mobilehome park to an entity formed by tenants has been excluded from change in ownership pursuant to section 62.1(a), the subsequent transfers of ownership interests in that entity are treated as pro rata changes in ownership and are subject to reassessment. Similarly, after the initial transfers of units from the mobilehome park to individual tenants, which initial transfers are excluded from change in ownership pursuant to section 62.1(b), subsequent transfers of units by former tenants would be changes in ownership of those units transferred. C 5/14/1999.

[220.0433 \(././././././proptaxes/pdf/220_0433.pdf\)](#) **Mobilehome Park.** A mobilehome park was built with 171 lots, and some lots were purchased by tenants. Thereafter, a company that is neither a tenant of the park nor an entity formed and owned by the tenants of the park proposed to acquire the remaining lots with the intention of selling the lots to the remaining individual tenants. In order for both the transfer to this company and the subsequent transfers to the individual tenants of the park to be excluded from change in ownership, within 36 months after the transfer to this company at least 51 percent of the mobilehome park rental spaces must be transferred within a one year period to the individual tenants of those spaces in a transaction excluded from change in ownership by Revenue and Taxation Code section 62.1(b).

The tenants who previously purchased their lots are no longer considered "tenants renting their spaces," nor are the lots they purchased "rental spaces." For purposes of satisfying the "51 percent" requirement, such residents would not be included in the calculation.

The legislative repeal of the January 1, 2000, sunset date in section 62.1(b) means that the exemption continues for years after 1999 and eliminates the cut-off date for tenants to purchase their units after a qualifying transfer to 51 percent of the tenants under that section. C 6/3/1999.

[220.0434 \(././././././proptaxes/pdf/220_0434.pdf\)](#) **Mobilehome Parks.** Revenue and Taxation Code section 62.1(b)(1) provides for the pro rata reassessment of the property of resident-owned mobilehome parks upon the transfer, on or after January 1, 1989, of ownership or membership interests in the entity owning the park. Subdivisions (b)(4)(A) and (b)(4)(C) provide that, where pro rata changes in ownership occurred between January 1, 1989, and January 1, 2002, for which the assessor did not, prior to January 1, 2000, levy any assessments, the assessor is prohibited from levying any escape or supplemental assessments and must cancel any unpaid taxes on assessments levied between January 1, 2000 and January 1, 2002. However, the assessor is to include in the value on the regular roll for the January 1, 2001, lien date, the reassessed value attributable to all prior pro rata changes in ownership, even those that occurred prior to 2000 which were not discovered or assessed in prior years. These provisions do not apply to a timely assessment made for the 2001 lien date of a pro rata change in ownership that occurred in 2000. C 10/2/2002.

[Back to top \(#top\)](#)

[220.0435 \(../..../proptaxes/pdf/220_0435.pdf\)](#) **Mutual Water Company.** If a tax exempt agency obtains, for example, a 60 percent ownership interest in a mutual water company, whose shares of stock are not appurtenant to the land served but are instead traded as is the stock of any corporation, a reappraisable change of ownership has occurred. Without a specific statutory exemption, the water company's property remains 100 percent taxable. C 9/4/1990.

[220.0437 \(../..../proptaxes/pdf/220_0437.pdf\)](#) **Nonprofit Corporation – Transfer of Home Site Permits.** Membership in a nonprofit corporation includes a "home site permit" which entitles the member to possess and occupy a specific prescribed lot or home site on the property owned by the non-profit corporation. Pursuant to the home site permit, the member may sell the membership in the club, including the home site permit and any structures, improvements and personal property the member may have erected on the site, subject to the corporation's board of director's approval of the new member. A transfer of such a home site permit constitutes a change in ownership under section 60 of the portion of the real property constituting the home site covered by the home site permit, because it transfers a present interest in real property, including the beneficial use thereof, which is substantially equivalent to the fee. C 4/3/2001.

[220.0439 \(../..../proptaxes/pdf/220_0439.pdf\)](#) **Nonprofit Mutual Benefit Corporation.** If membership in a nonprofit mutual benefit corporation does not convey an interest in real property akin to beneficial ownership, as in a mere license to use the property, the transfer of a membership interest in the corporation is not a change in ownership of any of the property owned by the corporation pursuant to Revenue and Taxation Code section 64(a). However, if members are granted sufficient rights to real property, such as exclusive use and development rights, as well as the right to buy and sell specific property, so that beneficial ownership is conveyed, a transfer of such membership constitutes a change in ownership of the property to which that membership gives rights.

Since mutual benefit corporations are "legal entities" within the meaning of section 64, the provisions of section 62(a)(2) and section 64(d) also apply. The proportional ownership interest should be measured by members, or by the board of directors if there are no members. The members or directors become "original co-owners" in the mutual benefit corporation such that if a voting interest change of more than 50 percent in the members or directors occurs, there would be a change in ownership of the property previously excluded under section 62(a)(2). If a single member obtains more than 50 percent of the voting interest in a mutual benefit corporation, the corporation would undergo a change in control pursuant to section 64(c)(1). C 6/2/2010.

[220.0440 \(../..../proptaxes/pdf/220_0440.pdf\)](#) **Option to Lease or Purchase.** A true option to lease or purchase is not a change in ownership until it is exercised. The date of valuation is generally the date the option is exercised. C 4/21/1982; C 2/6/1985.

[220.0445 \(../..../proptaxes/pdf/220_0445.pdf\)](#) **Options.** Purchase options are not specifically covered by current statutes. The general rule is that a change in ownership occurs when the option is exercised. Exceptions to this rule do occur, however, when the agreement is not truly an option but is actually a form of sales agreement or contract.

A purchase option obligates only the selling party. Even though the potential purchaser (the optionee) has no legal obligation to purchase the property, there are circumstances where he is economically compelled to complete the transaction. This would occur whenever the optionee would realize a significant and immediate equity in the property merely by exercising the option. For example, if the option specifies a selling price that is significantly less than the current market value, or in the case of a lease/purchase option, when the lessee is paying more than economic rent and the excess is being applied toward the purchase price, a sales contract would exist. When significant equity is present at the time the option is originated or it can be determined at the time of origination that equity will be established with certainty within a short period, the option is a form of sales agreement and revaluation should occur as of the date the option was created.

Lease options are addressed in Property Tax rule 462(e)(1). Pursuant thereto, the 35-year lease term pertaining to the revaluation of properties subject to long-term leases is determined by combining the terms of the base lease and renewal options. LTA 10/7/1980 (No. 80/147).

[220.0446 \(../..../proptaxes/pdf/220_0446.pdf\)](#) **Options.** Determining whether or not a lease with an option to purchase is, in fact, a purchase at the time the lease is entered requires a consideration of the total amount the lessee will pay for the use of the property; the current and foreseeable future value of the property; the equity the lessee is developing under the terms of the lease; and the amount of capital improvements the lessee is required to or does make to the property. If this information leads to the conclusion that the lessee is under an economic compulsion to purchase, then a change in ownership occurred on execution of the "lease". C 10/21/1988.

[220.0447 \(../..../proptaxes/pdf/220_0447.pdf\)](#) **Options.** Civil Code section 885.010(b) states that a power of termination is an interest in real property; however, until exercised, the power of termination is a future, contingent interest in the property. Therefore, the creation or transfer of such an interest is not a change in ownership. However, if and when the Grantor does

exercise the power of termination and the beneficial interest in the property is transferred to the Grantor, a change in ownership will result. C 1/25/2011.

[220.0450 \(../..../proptaxes/pdf/220_0450.pdf\)](#) **Original Co-owners.** Revenue and Taxation Code section 64(d) defines original co-owners as owners of interests in a legal entity which obtains ownership of property in a transaction excluded from change of ownership by section 62(a)(2). By referring to section 62(a)(2) only, it is implied that transfers excluded from "change of ownership" in other subdivisions of section 62 do not result in the owners being identified as "original co-owners". There is, however, no specific statutory or judicial authority for or against such a conclusion. C 5/14/1991.

[220.0450.005 \(www.cdtfa.ca.gov/proptaxes/pdf/220_0450_005.pdf\)](#) **Original Co-owners.** Trust B, an irrevocable trust, owns real property. The transfer of the real property by the beneficiaries of Trust B to a limited liability company (LLC) whose sole member will be the same trust, Trust B, is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result, the trust beneficiaries become the "original co-owners" of the LLC pursuant to section 64(d). Thereafter, all transfers of LLC interests must be counted and cumulated. When more than 50 percent original co-owner shares are transferred, the property will undergo a change in ownership. Because transfers between parents and children are not excepted from cumulating to determine a change in ownership under section 64(d) and the parent-child exclusion does not apply to transfers of legal entity interests, a transfer of more than 50 percent of original co-owner shares in the LLC from the beneficiaries to their children will result in a change in ownership. C 11/7/2013.

[220.0451 \(../..../proptaxes/pdf/220_0451.pdf\)](#) **Original Co-owners—Transfers From Limited Partnership to Trusts (GRATS and CLATS).** Transfers of interests in legal entities, e.g., limited partnerships, by "original co-owners" into revocable trusts, irrevocable trustor-transferor beneficiary trusts, or trustor reversion trusts should not be "counted" for Revenue and Taxation Code section 64(d) purposes. The trust exclusion in Revenue and Taxation Code section 62(d) takes precedence over transfers by "original co-owners" under section 64(d). If the "original co-owners" take the extra steps described in the note of legislative intent following Revenue and Taxation Code section 63.1 in order to use the parent/child exclusion, the step transaction doctrine may not be applied to collapse the steps and trigger a change in ownership under section 64(d). C 10/30/1996; C 9/29/1997.

[Back to top \(#top\)](#)

[220.0451.005 \(../..../proptaxes/pdf/220_0451_005.pdf\)](#) **Original Co-owner Transfers.** When a transfer of real property to a legal entity is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2), the person acquiring the legal entity interest immediately after the excluded transfer becomes an "original co-owner" for purposes of determining the change in ownership consequences of any subsequent transfer(s) of that legal entity interest. Subsequently, when more than 50 percent of the interests in the entity are transferred by any of the original co-owners in one or more transactions, a change in ownership occurs and the real property owned by the legal entity that was previously excluded from change in ownership will be reappraised. However, subsequent proportional transfers that are excluded under section 62(a)(2) are not cumulated or counted to determine a change in ownership. C 7/21/2008.

[220.0451.010 \(../..../proptaxes/pdf/220_0451_010.pdf\)](#) **Original Co-owner Transfers.** Four persons equally owned real property as individuals. In 1990, they transferred the real property to a partnership in a transaction that was excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result of the excluded transaction, those four persons became original co-owners. In 2004, partner A transferred his 25 percent partnership interest to the partnership, resulting in the remaining partners each owning a 33.33 percent interest. In 2006, partner B transferred his 33.33 partnership interest to the two remaining partners.

The transfer of A's 25 percent interest in the partnership was not excluded from change in ownership and therefore should be counted and cumulated for purposes of Revenue and Taxation Code section 64(d). Once an original co-owner interest has been transferred, it ceases to be an original co-owner interest. Thus, only 25 percent of B's 33.33 percent interest were original co-owner interests. As a result, no change in ownership occurred in 2006 because only 50 percent of original co-owner interests had cumulatively been transferred. C 7/21/2009.

[220.0451.015 \(../..../proptaxes/pdf/220_0451_015.pdf\)](#) **Original Co-Owner Transfers.** When a transfer by an original co-owner to a third party is counted and cumulated for purposes of Revenue and Taxation Code section 64(d), the third party does not become an original co-owner with respect to those interests. Once an original co-owner interest is transferred and counted and cumulated, it is no longer an original co-owner interest because the third party did not receive those interests in a transfer excluded from change in ownership under section 62(a)(2). C 3/15/2012.

[220.0452 \(../..../proptaxes/pdf/220_0452.pdf\)](#) **Original Co-owners.** When original co-owners transfer cumulatively more than 50 percent of the partnership interests, Revenue and Taxation Code section 64(d) requires 100 percent reappraisal of the property previously excluded under Revenue and Taxation Code section 62(a)(2). When property is reappraised because of the cumulative transfer by original co-owners, the former partners lose their "original co-owner" status after reappraisal. C 8/26/1998.

[220.0453 \(../..../proptaxes/pdf/220_0453.pdf\)](#) **Original Co-owners.** Four persons transferred real property into a limited liability company in a transaction that was excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). Thus, these four persons became original co-owners under section 64(d). Subsequently, the limited liability company acquired other property. When the four original co-owners cumulatively transfer more than 50 percent of their interest in the limited liability company, this will result in a reassessment of the real property that had been previously excluded from reassessment under section 62(a)(2). C 7/26/2006.

[220.0453.005 \(../..../proptaxes/pdf/220-0453-005.pdf\)](#) **Original Co-owners.** A historical property is owned by a limited liability company (LLC), which is owned by a corporation, which in turn is wholly owned by a charitable trust. The trustees of the trust organized a new California nonprofit public benefit corporation having as its sole purpose and function the preservation and maintenance of the historical property. Since its formation, the same three trustees of the trust have served and continue to serve as the three directors of the public benefit corporation. The trustees of the Trust then caused corporation to transfer all of its LLC interests to the public benefit corporation for no consideration.

A charitable trust is a gift in trust for the benefit of the public or for the establishment or support of an institution dedicated to the welfare of the public or to a class or part thereof. Therefore, charitable trusts do not have ascertainable beneficiaries. Since the subject trust is a charitable trust, the beneficial owners of the property in the trust are, by definition, not ascertainable. Similarly, nonprofit public benefit corporations are organized in such a way that beneficial "owners" of property held by such corporations technically do not exist. In the case of nonprofit public benefit corporations, members, or if there are no members, then directors, of such organizations will be considered owners of the entity's property for property tax purposes, such that property transferred between public benefit corporations is excluded under Revenue and Taxation Code section 62(a)(2) if the members/directors of the transferor corporation were identical to the members/directors of the transferee corporation before and after the transfer. It follows, then, that if proportional ownership interest is measured by members or by the board of directors for purposes of the section 62(a)(2) exclusion, the members or board of directors must then become "original co owners" in the nonprofit public benefit corporation pursuant to section 64(d), such that if a voting interest change in the members or board of directors of more than 50 percent occurs, there would be a change in ownership of the property previously excluded under section 62(a)(2). Until an original co-owner interest is transferred and counted and cumulated for purposes of section 64(d), the interest as held by the transferee is an original co-owner interest. Therefore, if an original co-owner interest is transferred and excluded from counting and cumulating under Rule 462.180(d)(2), the transferee takes the interest as an original co owner. C 9/4/2015.

[220.0455 \(../..../proptaxes/pdf/220_0455.pdf\)](#) **Original Transferor.** If A and B take title to property as joint tenants on a conveyance by a third party, neither A nor B qualify as original transferors. If A transfers property to A and B as joint tenants, only A qualifies as an original transferor. At A's death, a reappraisal of the entire property is required by Revenue and Taxation Code section 65(c). C 7/11/1984.

[220.0456 \(../..../proptaxes/pdf/220_0456.pdf\)](#) **Original Transferor.** Revenue and Taxation Code section 65(b) defines an "original transferor" as a transferor who creates or transfers a joint tenancy interest and who remains as one of the joint tenants after the creation or transfer of the interest. Persons who purchase property as joint tenants are and remain transferees, not transferors. Thus, a father, mother, and child who purchase and continue to hold real property as joint tenants are not "original transferors", with the result that upon the death of one of the joint tenants, the "original transferor" concept is not available to preclude the termination of such joint tenancy interest from reappraisal as a change in ownership thereof. C 6/29/1992.

[220.0457 \(../..../proptaxes/pdf/220_0457.pdf\)](#) **Original Transferor.** Two persons hold title to property as joint tenants. Each propose to create a revocable trust that provides that upon the death of the trustor, the property will be held in trust for the benefit of the other joint tenant who will have the use of income and principal for his/her lifetime. Upon the transfer to their respective trusts, the two persons will become original transferors pursuant to Property Tax Rule 462.040(b)(1). A trust providing the surviving joint tenant a life estate is consistent with the right of survivorship. There will be no change in ownership upon the death of the first joint tenant because the interest will vest in an original transferor. However, when the last remaining original transferor dies, there will be a 100 percent change in ownership, unless an exclusion applies. C 10/28/2008.

[220.0458 \(../..../proptaxes/pdf/220_0458.pdf\)](#) **Original Transferor.** In 1996 two persons as tenants in common transferred property to themselves as joint tenants. Because this was prior to the November 13, 2003 change to Property Tax Rule 462.040(b)(1), neither person became an "original transferor." Upon the death of one joint tenant in 2008, the surviving joint

tenant acquired the decedent's 50 percent interest and became the sole owner of the property, resulting in a change in ownership of that 50 percent interest in the property. However, if the property had been transferred on or *after* November 13, 2003, both persons would be considered "original transferors" and there would not be a change in ownership of a 50 percent interest in the property upon the death of one joint tenant. C 10/20/2010.

[220.0460 \(../..../proptaxes/pdf/220_0460.pdf\)](#) **Partition.** The exclusion of divisions of properties giving separate title to persons who previously held undivided interests therein from the meaning of "change in ownership" in Revenue and Taxation Code section 62(a) is applicable only to transfers of interests held in tenancy in common or in joint tenancy.

In order to determine whether or not the same proportional interest exists after the transfer, it is necessary to establish and compare the market value of each property that has been created by the transfer. For example, if a two-acre parcel being held jointly is split into two separately held one-acre parcels, the value of each one-acre parcel, as a separate unit, must be determined and the two values compared.

While the specific language of the statute would indicate that any change in the proportional interests would trigger a reappraisal, the assessor can exercise his judgment in making the value comparison. In our opinion, a change in proportional interest of less than 5 percent could be construed as no change in ownership following the same principle applicable to transfers of undivided interests of less than 5 percent (Revenue and Taxation Code section 65(b)).

If it is determined that a change in proportional interests has occurred, the interest transferred is subject to revaluation. LTA 5/16/1980 (No. 80/84).

[Back to top \(#top\)](#)

[220.0461 \(../..../proptaxes/pdf/220_0461.pdf\)](#) **Partition.** The exclusion of divisions of properties giving separate title to persons who previously held undivided interests therein from the meaning of "change in ownership" in Revenue and Taxation Code section 62(a) is applicable where the same proportional interests exist after the partition of property, even though the partition takes more than one assessment year to fully execute. C 10/2/1980.

[220.0462 \(../..../proptaxes/pdf/220_0462.pdf\)](#) **Partition.** While LTA 5/16/1980 (No. 80/84) advocates use of the "appraisal unit" when considering transfers of interests excluded from the meaning of "change in ownership" by Revenue and Taxation Code section 62(a), the fact that a transfer which otherwise meets the requirements of the section necessitates alteration of an existing parcel's physical configuration should not thwart the legislative intent of the section, and there should be no revaluation because of such fact. C 3/16/1984.

[220.0463 \(../..../proptaxes/pdf/220_0463.pdf\)](#) **Partition.** When tenants in common own an apartment complex that they decide to partition and convert to condominiums, the timing of the partition will determine whether there has been a change in ownership requiring a reappraisal. If the partition occurs before the conversion and the interest of each owner is in proportion to the interest held prior to partition, no appraisal should occur. If, however, conversion and the sale of one unit precedes partition, then each condominium would be regarded as a separate appraisal unit and a comparison of the proportional interests held before and after the transfer of each condominium would be required. C 4/6/1988; C 5/2/2006.

[220.0464 \(../..../proptaxes/pdf/220_0464.pdf\)](#) **Partition.** Owners of undivided interests in real property may partition the property without causing a reappraisal provided each owner obtains ownership of property that is equal in value to the undivided interest previously held. In determining the value of the property owned after partition, the assumption of a mortgage or other debt should be ignored. C 7/31/1986.

[220.0465 \(../..../proptaxes/pdf/220_0465.pdf\)](#) **Partition.** An appraisal unit of 80 acres partitioned by the three owners into 11 parcels and then distributed 4 parcels to two former co-owners and 3 parcels to the third does not result in a change of ownership if the proportionality test of Revenue and Taxation Code section 62 subdivision (a)(1) is satisfied. The fact that there are more parcels (appraisal units) after partition than there are owners is immaterial. C 3/20/1992.

[220.0466 \(../..../proptaxes/pdf/220_0466.pdf\)](#) **Partition.** When co-owners of acreage are required by subdivision law to subdivide their acreage before they can partition it, the act of subdividing the property should be ignored when determining whether each owner has received an interest proportional to the interest previously held in the acreage. The transfers of interests in the subdivided lots should not result in reappraisals based on a conclusion that transfers in separate lots have occurred rather than a partition of the acreage. Additionally, the value of improvements put in place by the recipient of a particular lot should be excluded from the valuation of the land when determining the proportionality of the land values before and after the partition. C 5/9/1986.

[220.0467 \(../..../proptaxes/pdf/220_0467.pdf\)](#) **Partition.** Should A and B own a single property which they are required by law to subdivide prior to partition, it would be proper to view the subdivision as a necessary step in partition and treat the partition as involving a single property, not multiple properties. C 7/27/1987.

[220.0468 \(../..../proptaxes/pdf/220_0468.pdf\)](#) **Partition.** If the parties to the transfers of two parcels were co-owners of both parcels prior to the transfers, and if it is found that both parcels are part of a single appraisal unit and that the proportionate interests of the parties in the appraisal unit remained the same from a value standpoint after the transfers, Revenue and Taxation Code section 62(a)(1) is applicable to exclude the transfers from change in ownership.

If the parties to the transfers were not co-owners of both parcels prior to the transfers, or if the two parcels are separate appraisal units, Revenue and Taxation Code section 62(a)(1) is not applicable, and the interests transferred must be reappraised. C 7/21/1987.

[220.0468.005 \(../..../proptaxes/pdf/220_0468_005.pdf\)](#) **Partition.** A partition by two tenants in common of two jointly owned adjacent residential parcels, considered to be two separate appraisal units, which results in one former tenant in common receiving one parcel and the other former tenant in common receiving the other parcel, requires reassessment of a one-half interest in each parcel pursuant to Revenue and Taxation Code section 61(f). The partition exclusion must be applied to each and every separate single appraisal unit and does not apply to exchanges of separately owned appraisal units. C 4/17/2009.

[Back to top \(#top\)](#)

[220.0470 \(../..../proptaxes/pdf/220_0470.pdf\)](#) **Partition.** Two adjoining parcels consisted of two commercial retail stores separated by a demising wall. Parcel 1 was co-owned by legal entity A and individual B. Parcel 2 was co-owned by legal entity A and individual C. Parcel 1 was split into two lots with entity A and B each taking ownership of a separate lot. Parcel 2 was split into two lots with entity A and C each taking ownership of a separate lot. Subsequently entity A combined its two lots into one, so that in the end there were three new lots owned by A, B, and C respectively.

Because Parcels 1 and 2 were separate appraisal units prior to the partition and the owners of the two parcels were not all the same, the partition of each parcel must be separately examined for change in ownership purposes. Thus, the assessor must establish and compare the fair market value of each new parcel that was created by the two partitions (before the merger of the two lots owned by entity A) to the fair market value of the corresponding lots prior to the partition. C 4/15/2009.

[220.0475 \(../..../proptaxes/pdf/220_0475.pdf\)](#) **Partners.** Corporations Code section 15010.5 provides, in part, that as to a bona fide purchaser, it is conclusively presumed that the named partners listed in a Statement of Partnership filed with the County Recorder are the only partners. However, as between or among partners, the partnership agreement controls as to ownership. C 9/27/1982.

[220.0480 \(../..../proptaxes/pdf/220_0480.pdf\)](#) **Partnership.** Transfers of ownership interests in legal entities are subject to the provisions of Revenue and Taxation Code section 64(a), regardless of the purpose for which the legal entity was formed or is operated. C 2/25/1994.

[220.0481 \(../..../proptaxes/pdf/220_0481.pdf\)](#) **Partnership.** An amendment to a partnership agreement, providing that the proceeds from the sale of particular partnership real properties would be allocated to particular partners, does not in and of itself constitute a change in ownership of the partnership's properties since assignment of proceeds from future sales does not constitute a transfer of present, beneficial interests in the properties which are substantially equal to the values of the fee interests. If, however, upon the sale of a property or properties, a partner's capital and profit accounts increase to more than 50 percent of the total partnership capital and profit accounts, there will be a change in control of the kind contemplated by Revenue and Taxation Code section 64(c) and a change in ownership of the partnership's properties. C 3/2/1984; C 3/15/1984.

[220.0482 \(../..../proptaxes/pdf/220_0482.pdf\)](#) **Partnership.** A change in ownership of X Partnership property, land and buildings, occurs on the transfer of the majority partner's 70 percent interest of both capital and profits in X Partnership, held in Y Partnership 67.5 percent by an individual, 9 percent by his wholly-owned corporation, and 23.5 percent by others, to a new limited partnership in which the individual holds 7.8 percent, his wholly-owned corporation holds .592 percent, his revocable trust hold 60 percent, and others hold 31.608 percent, even though before and after the transfer, the individual owned a majority capital and income interest in the Y Partnership/limited partnership and had the actual authority to control the management and operation of the X Partnership property. Upon the transfer to the limited partnership, there is a change in control of the X Partnership property within the meaning of Revenue and Taxation Code section 64(c) since the limited partnership, an unrelated

entity, obtains more than a 50 percent interest in X Partnership. And the transfer is not excluded by Revenue and Taxation Code section 62(a) since the proportional interests of the transferor partners and transferee partners are not the same after the transfer. C 6/3/1986.

[220.0483 \(../..../proptaxes/pdf/220_0483.pdf\)](#) **Partnership.** A wife's purchase from a third party of a 5 percent interest in the capital and profits of a partnership in which her husband owns a 49 percent interest does not result in a change in ownership unless the husband's 49 percent interest is his separate property and the wife acquires the 5 percent interest with community property funds. In that event, the husband would have obtained indirect control of more than 50 percent of the partnership interest (Property Tax rule 462(j)(3) and (4)(A)(ii)). Generally, however, an interest owned in a legal entity by one spouse is not considered to be indirectly owned by the other spouse for purposes of rule 462(j)(4)(A). C 4/12/1988.

[220.0484 \(../..../proptaxes/pdf/220_0484.pdf\)](#) **Partnership.** The sale of less than a 50 percent interest in a partnership does not cause the dissolution of the partnership and result in a change in ownership of the partnership's real property where the partnership agreement provides that the partnership is to continue in existence unless terminated for a specific reason or reasons, as set forth therein, and that the partners may sell their partnership interests to others, when such a sale or sales is not one of the reasons for termination. C 12/9/1981.

[220.0485 \(../..../proptaxes/pdf/220_0485.pdf\)](#) **Partnership.** The merging of several existing partnerships into another existing partnership which holds title to real property and which will remain in existence as a continuing partnership does not constitute a change in ownership of the partnership's property where, subsequent to the mergers, no partnership or other person will have obtained direct or indirect ownership of more than 50 percent of the total interests in the continuing partnership's capital and profits. If, subsequent to the mergers, the existing partnership did not remain in existence but rather, a new partnership came into being, however, there would be a change in ownership of the property as the result of the transfer of the property from one partnership to another. C 2/15/1983; C 4/20/1984.

[220.0486 \(../..../proptaxes/pdf/220_0486.pdf\)](#) **Partnership.** Neither a change in the name of a partnership nor an increase in the size of its management committee constitutes a change in ownership of the partnership's property. C 5/7/1982.

[Back to top \(#top\)](#)

[220.0487 \(../..../proptaxes/pdf/220_0487.pdf\)](#) **Partnership.** Transfers of properties by partnerships to partners are changes in ownership pursuant to Revenue and Taxation Code section 61(i), except that where the proportional ownership interests of the partners in the properties are identical both before and after such transfers, the transfers come within the exclusion of section 62(a). C 2/4/1982.

[220.0488 \(../..../proptaxes/pdf/220_0488.pdf\)](#) **Partnership.** The contribution of property by seven tenants in common to a partnership in which the transferors receive partnership interests equal to their respective interests in the contributed property is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). However, subsequent transfers of partnership interests to the heirs of the original co-owners/partners, which aggregate cumulatively more than 50 percent of the total partnership interests, will, under Revenue and Taxation Code section 64(d), result in a change in ownership and reappraisal of the property previously excluded. The parent-child exclusion in section 63.1 does not apply to transfers of partnership or legal entity interests or where the transferor is a partnership or entity and not a parent. C 5/28/1992.

[220.0489 \(../..../proptaxes/pdf/220_0489.pdf\)](#) **Partnership.** Some 500 separate California limited partnerships were consolidated into a single master limited partnership by court order, which order included the replacement of the general partner. The real property holdings of the partnerships included 100 postal properties.

The transfers of real properties from the separate partnerships to the new partnership with a new general partner were changes in ownership, even though court-ordered. Further, the transfers had to result in changes in the ownership interests of the individual partnerships which before the transfers each owned a single postal property and after the transfers had a proportional interest in 100 postal properties. LTA 5/30/1991 (No. 91/43).

[220.0490 \(../..../proptaxes/pdf/220_0490.pdf\)](#) **Partnership.** If two or more partners purchase realty and record their title as tenants-in-common along with an agreement stating in effect that the property is owned separately from partnership assets, then the law presumes that the individuals own the property as tenants-in-common, not as partners.

The presumption that recorded title indicates not only the legal title but also the beneficial title is not overcome by the fact the property is used for partnership purposes. The transfer of one owner's interest to a co-owner or a third party requires an appraisal of the interest transferred. C 2/7/1989.

[220.0491 \(../..../proptaxes/pdf/220_0491.pdf\)](#) **Partnership.** A transfer of partnership property by the partnership to one or more of the partners usually constitutes a change of ownership that requires a reappraisal. However, if the purpose of the transfer is to facilitate a subsequent transfer qualified for the parent/child exclusion contained in Revenue and Taxation Code section 63.1, no reappraisal occurs. C 3/10/1992.

[220.0493 \(../..../proptaxes/pdf/220_0493.pdf\)](#) **Partnership.** Partnerships are considered separate legal entities so that transfers by individuals to partnerships in which they hold partnership interests constitute changes in ownership for reappraisal purposes unless Revenue and Taxation Code section 62(a)(2) applies and the transfers result only in changes in the manner of holding title. To fit within this exception, the ownership interests in each and every piece of real property after the transfers must be proportional to the individuals' ownership interests before the transfers. C 12/7/1988.

[220.0494 \(../..../proptaxes/pdf/220_0494.pdf\)](#) **Partnership.** Transfers of interests in real properties to or from a partnership are changes in ownership of the interests transferred unless the transfers result solely in changes in the manner of holding title and the proportionality of ownership is the same before and after the transfers.

Transfers of ownership interests in partnerships do not constitute transfers of the partnerships' real properties unless the transfers result in changes in control of the partnership properties or the transfers are of interests previously transferred but excluded by Revenue and Taxation Code section 62(a)(2) from the definition of change in ownership. In the latter instance, only the property which was previously excluded from change in ownership pursuant to section 62(a)(2) is to be reappraised. C 8/19/1986.

[220.0495 \(../..../proptaxes/pdf/220_0495.pdf\)](#) **Partnership.** The transfer by a husband and wife of community property to a partnership in which they have a 98 percent ownership interest through a revocable living trust and their daughter and son each have individual 1 percent ownership interests results in a change in ownership. While neither a transfer of real property to a revocable trust nor a qualified transfer between parents and their children is considered a change in ownership, this transfer was to a partnership. And while a transfer of real property to a partnership is excluded from change in ownership if it qualifies under Revenue and Taxation Code section 62(a)(2), the proportional ownership interests of the transferors and transferees, as represented by partnership interests, did not remain the same after the transfer. C 9/19/1990.

[220.0496 \(../..../proptaxes/pdf/220_0496.pdf\)](#) **Partnership.** The transfer by a corporation of its 60 percent ownership interest in a partnership to its wholly-owned subsidiary is not a change in ownership, even though following the transfer, the subsidiary will own an 85 percent interest in the partnership. The ultimate ownership of the partnership remains unchanged by virtue of the parent corporation's 100 percent ownership of the subsidiary. C 10/15/1990.

[Back to top \(#top\)](#)

[220.0497 \(../..../proptaxes/pdf/220_0497.pdf\)](#) **Partnership.** The contribution of property by several tenants in common to a partnership in which the transferors receive ownership interests equal to their interests in the contributed property does not result in a change in ownership of the property. Subsequent transfers of interests in the partnership to heirs of the original partners will result in a reappraisal of the transferred interests when said interests cumulatively amount to more than 50 percent of all partnership interests. Even if the transfers were to the partners' children, they would not be eligible for the exclusion afforded parent-child transfers since that exclusion does not apply to transfers by partnership or corporate entities. C 5/28/1992.

[220.0498 \(../..../proptaxes/pdf/220_0498.pdf\)](#) **Partnership.** If a general partnership holding a 60.7 percent interest in a limited partnership is liquidated and its property, including the 60.7 percent interest, is distributed to the general partners in the same proportions as their ownership interests in the general partnership, there would be a change in the manner of holding title but no change in ownership of the limited partnership's assets. However, a distribution of the limited partnership's assets would be a change in ownership unless title was taken by the general partners as co-owners and in the same proportion as their respective interests in the general partnership. C 3/17/1989.

[220.0499 \(../..../proptaxes/pdf/220_0499.pdf\)](#) **Partnership.** The purchase by two partners of a third partner's partnership interest does not result in a change in ownership in partnership property if neither partner obtains more than a 50 percent interest in both partnership capital and profits whether or not the partnership is a continuing one. LTA 8/21/1996 (No. 96/52).

[220.0500 \(../..../proptaxes/pdf/220_0500.pdf\)](#) **Partnership.** If one general partner buys out the other general partners, no change in ownership will occur if there are limited partners remaining who own the majority interest in the capital and profits of the partnership. C 9/24/1982.

[220.0502 \(../..../proptaxes/pdf/220_0502.pdf\)](#) **Partnership.** Transfers of properties from a corporation to a partnership with no change in the percentages of interest owned by the shareholders and the partners do not result in changes in ownership. However, a subsequent transfer of all partnership interests to a newly formed limited partnership composed of two corporate general partners (2 percent ownership interests) and the shareholders of the original corporation (98 percent limited ownership interests) is a change in ownership of the partnership properties unless the limited partnership is a continuation of the original partnership.

Corporation Code section 15031 provides that the dissolution of a partnership is caused by the admission of a new partner unless otherwise provided in the partnership agreement prior to admission of the new partner. If there is no "continuation clause", a new partnership with different ownership interests comes into existence, and transfers to it result in changes in ownership. C 6/16/1989.

[220.0504 \(../..../proptaxes/pdf/220_0504.pdf\)](#) **Partnership.** The execution and recording of a Statement of Partnership constitute acts sufficient to create a partnership. A subsequent transfer of property owned by some of the partners to the partnership creates ownership interests in all the partners and is, therefore, a change in ownership.

If the partners agree to amend the partnership agreement so that only the contributors of property to the partnership remain partners and the others drop out, then the old factored base year value could be reinstated. This would not result in a refund of taxes, however since tax liability is determined by the facts as they exist on the March 1 lien date for the regular roll, or on the date of the change in ownership for the supplemental roll. C 4/29/1986.

[220.0505 \(../..../proptaxes/pdf/220_0505.pdf\)](#) **Partnership.** A mother and her three sons are "original co-owners" (Property Tax rule 462(j)(2)(b)) of a partnership's interests. The mother transfers 49 1/2 percent of the interests to several people, none of whom thereby obtain control of the partnership. Two of the sons then wish to have their spouses, who are community property co-owners of the sons' original interests in the partnership, recognized as individual owners of halves of the community interests.

Since the mother did not transfer more than 50 percent of the total partnership interest, no change of ownership occurred. The subsequent recognition of the sons' spouses' interests did not raise the mother's 49 1/2 percent transfer to more than 50 percent. The spouses already owned their interests, which were simply converted from community property to separate property status. C 9/24/1990.

[220.0506 \(../..../proptaxes/pdf/220_0506.pdf\)](#) **Partnership.** When one of two equal partners sells his/her partnership interest to the partnership or buys the other partner's 50 percent interest in the partnership, the remaining partner obtains a majority ownership interest. Therefore, pursuant to Revenue and Taxation Code section 64(c)(1), a change in control of the partnership occurs, resulting in a change in ownership of the real property owned by the partnership and a reassessment of that property for property tax purposes. C 1/11/1989; C 4/30/1999.

[Back to top \(#top\)](#)

[220.0507 \(../..../proptaxes/pdf/220_0507.pdf\)](#) **Partnership.** A transfer of real property by partnership A to partnership B which is owned 50 percent by A and 50 percent by Corporation X constitutes a 100 percent change in the ownership of the property transferred. Because of the legal entity theory adopted by the Legislature, the 50 percent ownership held by partnership A in partnership B does not limit reappraisal to 50 percent of the property. The transfer does not result merely in a change in the manner of holding title and proportional ownership does not remain the same after the transfer.

Partnership B now owns and controls the property. Had partnership A retained a 50 percent interest in the property, it could control that interest. As the property is now owned by partnership B, it must be used only for B's purposes. The fact that A could have transferred a 50 percent interest and thereby limited reappraisal to the interest transferred is immaterial. A chose to transfer total ownership of the property and must accept the tax consequences of that decision. C 2/18/1986.

[220.0508 \(../..../proptaxes/pdf/220_0508.pdf\)](#) **Partnership.** If a husband and wife hold a partnership interest in joint tenancy or as equal tenants in common and then obtain all partnership interests so that each spouse owns a 50 percent joint tenancy or tenancy in common interest, no change in ownership or control occurs since neither spouse owns more than 50 percent of the total partnership interests. The interest owned by each spouse is not attributed to the other.

The above conclusion is dependent upon there being no dissolution of the partnership on the withdrawal of the non-spousal partners. The partnership agreement executed prior to withdrawal must contain an explicit non-dissolution clause. C 7/10/1989.

[220.0511 \(../..../proptaxes/pdf/220_0511.pdf\)](#) **Partnership.** The exclusion under Revenue and Taxation Code section 62(a)(2) applies to a proportional transfer of real property from a partnership to its partners even though the partners as individuals do not hold title to the partnership property pursuant to Corporations Code sections 16501, 16502, 16201, and 16203. C 3/1/2006.

[220.0512 \(../..../proptaxes/pdf/220_0512.pdf\)](#) **Partnership.** Revenue and Taxation Code section 62(a)(2) provides an exclusion from change in ownership if the ownership interest transferred between a legal entity and an individual remains the same before and after the transaction. If an individual transfers a 25.85 percent interest in real property to a partnership in exchange for a 40 percent interest in capital and profits, this will result in a change in ownership of the interest transferred because the ownership interests are not proportional. Even though the value of the real property may be equal to the value of the partnership interest, the comparison standard is ownership interests. C 3/13/2006.

[Back to top \(#top\)](#)

[220.0526 \(../..../proptaxes/pdf/220_0526.pdf\)](#) **Partnership.** Upon the death of the majority partner, Trust A directed the successor trustee to distribute W's 62.5 percent interest in the partnership in equal shares to son and daughter (31.25 percent each). The transfer of W's majority interest in the partnership did not result in a change in ownership of the real property owned by the partnership because the transfer did not result in any individual or entity holding more than 50 percent of the partnership interests. C 1/17/2006.

[220.0528 \(../..../proptaxes/pdf/220_0528.pdf\)](#) **Partnership – Death of Partner.** AB Partnership in California general partnership owned 75 percent by A through his revocable living trust and 25 percent by B through his revocable living trust. Similarly, BA Partnership is so also owned 49 percent by A and 51 percent by B. Upon A's death, A's trust became irrevocable and his partnership interests transferred to the beneficiaries of A's trust. Unless there is an applicable exclusion, there was a change in ownership of the property (including any partnership interests) in A's Trust on the date of A's death when his trust became irrevocable and A's beneficiary(ies) became the owners.

As to AB Partnership, there is a change in control under Revenue and Taxation Code section 64(c)(1) because of the transfer of A's majority (75 percent) interest, unless 1) the beneficiary is A's spouse, or 2) the beneficiaries are two or more persons and the partnership agreement required continuation with A's beneficiaries as partners.

As to BA Partnership, the transfer of A's minority (49 percent) interest to his beneficiary(ies) is excluded from change in ownership under Revenue and Taxation Code section 64(a), since the total interest transferred did not exceed 50 percent. C 7/13/1999.

[220.0529 \(../..../proptaxes/pdf/220_0529.pdf\)](#) **Partnership—Deed Presumption.** In order to prove that the property was owned by a partnership, rather than as tenants in common, evidence may be presented to the assessor to rebut the deed presumption under Rule 462.200(b). Evidence such as of the use of a joint checking account for property-related expenses, affidavits from an accountant and former alleged partners, and partnership tax returns may be provided. The evidence should show the percentage of ownership interest of each partner in the partnership's capital and profits. Further, in determining whether a partnership is formed, the intention of the parties is the ultimate test. The parties need not designate their relationship as a partnership. The intent of the parties can be deduced from the partnership agreement as well as the surrounding circumstances. If a formal partnership agreement did not exist, the intent to form a partnership must be demonstrated by evidence such as the alleged partners' conduct, transactions, and declarations such as use of a joint checking account and affidavits. Thus, if the assessor is satisfied that the evidence presented provides clear and convincing evidence that the tenants in common were partners, the assessor may find that the property was beneficially owned by the partnership. C 5/4/2007.

[220.0530 \(../..../proptaxes/pdf/220_0530.pdf\)](#) **Partnership Dissolution – Transfer to Heirs.**

1. The dissolution of a partnership due to the death of the partners and the winding up of the partnership by the sole surviving partner does not constitute a change in control/ownership of the partnership under section 64(c).
2. The parent-child exclusion in section 63.1 is not applicable to the transfer of partnership interests to deceased partners' heirs.
3. Partnership's distribution of interests in real property to deceased partners' heirs may be excluded from change in ownership under section 62(a)(2), providing that the percentages of the property interests transferred are exactly proportionate to the partnership interests held by each heir. C 3/10/1994.

[220.0536 \(../..../proptaxes/pdf/220_0536.pdf\)](#) **Partnership Merger.** Two California general partnerships each own real property in California and are both owned in identical proportions by the same family members. The family proposes to merge the two entities by (1) transferring the partnership interests from Partnership D to Partnership P in exchange for additional partnership

interests in P, and (2) dissolving Partnership D and distributing all of its assets to Partnership P. Since this appears to constitute a statutory partnership conversion or merger as defined by Corporations Code section 16909 or 16914, there is no change in ownership because there is no transfer of the property from one partnership to another. If no transfer occurred, there is no need to apply the exclusion of Revenue and Taxation Code section 62(a)(2), the triggering event for the application of Revenue and Taxation Code section 64(d), and there is, therefore, no "original co-owner" designation. If, however, the transfer does *not* constitute a statutory conversion or merger, the transfer would be excluded under section 62(a)(2), resulting in an "original co-owner" designation for purposes of subsequent transfers. C 1/22/2002.

[220.0540 \(../..../proptaxes/pdf/220_0540.pdf\)](#) **Penalty for Failure to File Statement.**

1. The penalty under Revenue and Taxation Code section 482 for failure to file a change in ownership statement is mandatory upon the expiration of the 45-day period. However, a penalty may be cancelled by the board of supervisors for excusable delay.
2. The penalty under section 482 is the only penalty authorized for failure to file a statement and may only be applied once. However, if a property transfers more than once during an assessment year, a penalty applies to each instance of noncompliance in reporting the transfers. In addition, an assessor may require an owner of real property to file a property statement, and under Revenue and Taxation Code section 484 failure to comply is subject to penalty as provided in Revenue and Taxation Code section 462.
3. The penalty will be based upon the taxes applicable to the interest transferred during the tax year (July 1 to June 30) in which the 45-day period under section 482 expires. When only a portion of a property changes ownership, the taxes on the roll must be prorated to determine the amount of the penalty.
4. Penalty enrollment procedures are as follows:
 - (a) If, on the expiration of the 45-day period under section 482, the then owner of the property is the person who failed to file the statement, the penalty should be added to the roll prepared for the fiscal year during which the 45-day period expires; except that if the 45-day period expires during the period March 1 through June 30 of any assessment year, the assessor has the option of adding the penalty to the roll then being prepared.
 - (b) If, on the expiration of the 45-day period under section 482, the then owner of the property is not the person who failed to file the statement, the penalty should be added to the unsecured roll in the name of the person who was required by law to file the statement. The option in (a), above, as to which secured roll may be used, is likewise applicable to selection of the unsecured roll. LTA 2/8/1980 (No. 80/19); LTA 6/27/1980 (No. 80/102).

[Back to top \(#top\)](#)

[220.0541 \(../..../proptaxes/pdf/220_0541.pdf\)](#) **Penalty for Failure to File Statement.**

1. When property transferred consists of more than one assessor's parcel and the assessor has requested a change in ownership statement for the property, noncompliance generates one penalty calculated for the entire property.
2. When two or more separate properties are transferred by a single deed and the assessor has requested separate change in ownership statements for each property, noncompliance with any of the requests would still generate one penalty calculated for all the properties transferred by the deed. LTA 10/24/1980 (No. 80/157).

[220.0542 \(../..../proptaxes/pdf/220_0542.pdf\)](#) **Penalty for Failure to File Statement.** Revenue and Taxation Code section 482(d) provides that the penalty is to be added to the roll in the same manner as special assessments are. Since special assessments are usually entered on the secured roll, such penalties should be also. C 11/26/1982.

[220.0545 \(../..../proptaxes/pdf/220_0545.pdf\)](#) **Possessory Interests.** A change in ownership requiring reappraisal occurs upon the creation, renewal, sublease, or assignment of a taxable possessory interest in tax-exempt real property. Where an improvement is privately owned, only the possessory interest in the land is to be reappraised. LTA 3/21/1980 (No. 80/48).

[220.0546 \(../..../proptaxes/pdf/220_0546.pdf\)](#) **Possessory Interests.** A renewal or extension of a possessory interest occurs when the term of possession created by a lease is lengthened regardless of the term of possession used by the assessor for valuation purposes. C 9/25/1995.

[Back to top \(#top\)](#)

[220.0547 \(../..../proptaxes/pdf/220_0547.pdf\)](#) **Possessory Interests.** A taxable possessory interest consisting of a month-to-month tenancy in tax exempt real property is renewed each month that no notice to terminate is given. See Civil Code section 1946. C 7/24/1995.

[220.0548 \(../..../proptaxes/pdf/220_0548.pdf\)](#) **Possessory Interests.** The filing of proof of labor with the government in conjunction with mining claims does not transfer a present interest including the beneficial use thereof that is equivalent to the fee interest or create, renew, or extend a possessory interest. By expending labor, money, and filing proof of such, the claim holder unilaterally perpetuates his possessory interest in the claim. The scope of the right does not change, no new rights are created, and merely a condition for continuation of the right acquired when the claim was filed has been satisfied. LTA 6/8/1982 (No. 82/77).

[220.0549 \(../..../proptaxes/pdf/220_0549.pdf\)](#) **Possessory Interests.** The existence of options to renew a lease that creates a possessory interest in tax exempt publicly owned real property does not constitute a basis for reappraising the possessory interest until the option is in fact exercised. The case of *Wrather Port Properties, Ltd. v. Los Angeles County*, 209 Cal.App.3d 517, is not to the contrary but merely holds that the restated term of possession in that particular case was the originally agreed term and not an extension of the term originally expressed in the lease document. C 2/28/1991.

[220.0550 \(../..../proptaxes/pdf/220_0550.pdf\)](#) **Possessory Interests.** When taxable property is purchased by a tax exempt governmental agency pre-existing leases become taxable as possessory interests, assuming that they satisfy the requirements of Property Tax rule 21. Any renewal, extension, sublease or assignment of such a possessory interest is a change in ownership, regardless of the term of possession remaining under the lease; whereas transfers of leasehold interests in taxable property constitute changes in ownership depending on the terms of possession remaining as provided in Revenue and Taxation Code section 61(c)(1) and (2). C 8/9/1991.

[Back to top \(#top\)](#)

[220.0551 \(../..../proptaxes/pdf/220_0551.pdf\)](#) **Possessory Interests.** The lease of tax-exempt land by a school district or other municipal non-assessable district to a public facilities corporation solely owned by the district creates a taxable possessory interest assessable to the corporation but which is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). The corporation's subsequent sublease of the land to the district would not cancel the possessory interest. The corporation would still have "constructive possession," with the district's possession of the land being pursuant to and subordinate to the corporation's right under the lease. Again, however, section 62(a)(2) would apply to exclude the sublease from change in ownership. C 4/20/1993.

[220.0552 \(../..../proptaxes/pdf/220_0552.pdf\)](#) **Possessory Interests.** The purported transfer of a possessory interest in United States Forest Service land by grant deed is ineffective when the possessory interest was created by a nontransferable government special use permit. Nevertheless, the grant deed is effective to transfer a recreational residence located on the land, to which any available exclusions may apply. When the transferee obtains a new special use permit from the United States Forest Service, however, a new taxable possessory interest in the land will be created for the benefit of the transferee, and that possessory interest will result in a change in ownership under Revenue and Taxation Code section 61(b). C 11/1/1996.

[220.0553 \(../..../proptaxes/pdf/220_0553.pdf\)](#) **Possessory Interests.** The exclusion from change in ownership under Revenue and Taxation Code section 62(a)(2) is applicable to assignments of possessory interests. The plain language of this section excludes all qualifying proportional interest transfers and does not make a distinction between transfers of fee title interests and leasehold interests. As defined in Revenue and Taxation Code section 61(b)(3), an assignment of a taxable possessory interest is a transfer of all rights in the possessory interest and results in a change in ownership. Consequently, the exclusion set forth in section 62(a)(2) can be and is applicable to an assignment of a taxable possessory interest provided that all the conditions of that subdivision are met. C 6/15/2000.

[220.0554 \(../..../proptaxes/pdf/220_0554.pdf\)](#) **Possessory Interests.** The valuation method prescribed in Government Code section 33673 for former redevelopment agency property is not valid when that property has been transferred to a successor agency. Because a taxable possessory interest was created when property was leased by the redevelopment agency, the transfer of the fee interest in that property to a successor agency does not result in a change in ownership of the taxable possessory interest under Revenue and Taxation Code section 61(b) and Property Tax Rule 21(a)(9). Therefore, the assessed value of the taxable possessory interest is the lesser of the base year value established when the property was first leased factored pursuant to Revenue and Taxation Code section 51 or the fair market value. C 6/11/2015.

[Back to top \(#top\)](#)

[220.0561 \(../..../proptaxes/pdf/220_0561.pdf\)](#) **Preliminary Change of Ownership Report.** The Preliminary Change of Ownership Report (PCOR) must be filed in situations that involve transfers of real property that are excluded from the definition of change in ownership. Revenue and Taxation Code section 480.4, which enumerates the data to be included in the report, indicates that the information to be provided relates to transfers between spouses and other transfers excluded from reappraisal. C 4/29/1988.

[220.0565 \(../..../proptaxes/pdf/220_0565.pdf\)](#) **Probate.** Title to a decedent's property usually passes to the heirs as of the date of death. If portions of a property are devised to each of several heirs, each interest would be separately appraised as of the date of death and not at a later time when the heirs cause a subdivision map to be filed. If the property were transferred to creditors rather than to heirs, the change in ownership and reappraisal should be as of the date the creditors took title. Increases in value between the decedent's death and the transfer to the creditors would be included in the reappraised value. C 12/6/1984.

[220.0568 \(../..../proptaxes/pdf/220_0568.pdf\)](#) **Probate Homestead.** Devisees taking real property subject to a court-ordered probate homestead granted to the decedent's spouse for her lifetime or until her remarriage do not receive the present beneficial use of the property until such homestead is terminated and hence, there is no change in ownership until that time. C 11/5/1981.

[220.0570 \(../..../proptaxes/pdf/220_0570.pdf\)](#) **Quit Claim Deed as Security.** A quit claim deed made to a court for the purpose of guaranteeing bail is a transfer of a security interest, not a change in ownership. If, however, the property is not redeeded to the previous owner, i.e., it is sold to a third party, the property is subject to reappraisal. C 4/2/1979.

[220.0573 \(../..../proptaxes/pdf/220_0573.pdf\)](#) **Real Estate Investment Trust Election.** A limited liability company (LLC), which owns real property and has as its members a pension fund (95 percent) and a corporation (5 percent), proposes to make an election with the Internal Revenue Service (IRS) to be treated as a "real estate investment trust" (REIT) for federal income tax purposes. A REIT is defined in Internal Revenue Code section 856 as an entity that would be taxable as a domestic corporation (but for its treatment as a REIT) for federal income tax purposes and that meets a number of organizational, operational, and distribution requirements. Since a REIT election with IRS is only a federal income tax treatment election, the LLC will continue to hold the real property after the REIT election, and the REIT election involves no formation of any new entity or any transfer of an entity interest or real property, thus, the REIT election will not result in a change in ownership of any real property owned by LLC. C 2/5/2015.

[220.0575 \(../..../proptaxes/pdf/220_0575.pdf\)](#) **Recombining Parcels.** The recombining of parcels which were not divided in compliance with the Subdivision Map Act is not a change in ownership. C 9/8/1982.

[Back to top \(#top\)](#)

[220.0580 \(../..../proptaxes/pdf/220_0580.pdf\)](#) **Record Title.** In 1985 a man and his wife as joint tenants acquired an undivided 50 percent interest in real property. His mother was shown on the deed as the owner of the remaining undivided 50 percent interest. When the mother died, she left her 50 percent interest to be distributed in equal shares to the man and his three sisters. All four of the survivors contend that the mother's name was on the deed solely to secure the repayment of a loan and that, in fact, the man owned that 50 percent interest in the property.

The presumption that those shown on a grant deed as owners are just that can be overcome only by clear and convincing proof. In this instance, the lack of evidence of the existence of a debt, the mother's action in leaving the interest in the property to all four children, and the failure to contest the mother's will all weigh against the sufficiency of the proof offered to overcome the presumption.

The transfer of the mother's 50 percent interest in the property to the children was probably eligible for the parent/child exclusion; however, the subsequent transfers by the sisters to their brother resulted in a change in ownership as to their collective 37 percent interest, for which there is no applicable exclusion. C 6/5/1989.

[220.0581 \(../..../proptaxes/pdf/220_0581.pdf\)](#) **Record Title.** In reviewing claims that no change in ownership has occurred because the recorded title to property does not reflect the true ownership of property, the assessor should be guided by the formal legal procedures applicable to the conveyances of real properties and the recordation requirements for listing properties in public records. A conservative viewpoint should be taken when considering assertions that an unrecorded, secretly-held document constitutes a conveyance of property. C 8/3/1981.

[220.0582 \(../..../proptaxes/pdf/220_0582.pdf\)](#) **Record Title.** Anyone claiming that title to real property is other than as shown on a recorded deed or other instrument of title has the burden of proof of proving that claim. The proof required by Evidence Code section 662 is proof that is clear and convincing, which has been defined as "clear, explicit and unequivocal," "so clear as to leave no doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind." The submission of an unexecuted partnership income tax return showing an ownership interest in real property, by itself, is insufficient evidence to overcome the presumption that the persons named on the deed are the property owners. C 3/16/1988.

[220.0583 \(../..../proptaxes/pdf/220_0583.pdf\)](#) **Record Title.** The title presumptions of Evidence Code section 662 and Property Tax Rule 462.200(b) may only be overcome by clear and convincing evidence. Although a conveyance of land is absolute in its terms, and on its face purports to convey an estate in fee, it may nevertheless be shown that the land is held by the grantee in trust; and the terms of such trust may be shown by oral testimony. Similarly, establishment of a holding agreement, which requires the existence of a written agreement, is sufficient to overcome the presumptions. C 3/8/2000.

[220.0584 \(../..../proptaxes/pdf/220_0584.pdf\)](#) **Record Title.** Corporations Code section 16203 provides that property acquired by a partnership is property of the partnership and not of the partners individually. Evidence Code section 662 provides that "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title" and that, "this presumption may be rebutted only by clear and convincing proof." Because the Partnership took fee title to Property A in its own name upon purchase, the Partnership, and not any partner, is presumed to be the full beneficial owner of Property A. In order to show that the Partnership held legal title only as nominee for Taxpayer, the Evidence Code section 662 presumption must be rebutted by clear and convincing proof. However, here, a number of facts support the presumption that the partnership is the beneficial owner of Property A, including the fact that Taxpayer's "monetary contribution" was to the Partnership itself, not to the seller of Property A, and thus was a capital contribution to the Partnership and not a purchase of Property A by Taxpayer, and the existence of a written Option Agreement granting Taxpayer an option to purchase property A, entered into contemporaneously with the purchase of Property A by the Partnership. C 5/9/2012.

[Back to top \(#top\)](#)

[220.0584.005 \(../..../proptaxes/pdf/220_0584_005.pdf\)](#) **Record Title.** The Military Warriors Support Foundation (Foundation) is a non profit organization that provides services for military veterans. One of those services is to award mortgage-free homes to qualifying veterans (or their unmarried surviving spouses) who have injuries and severe or unique circumstances as a result of engaging in combat in Iraq or Afghanistan. An application for one of these homes must be submitted and when it is awarded, a purchase agreement is entered into through a Contract for Deed document, between the Foundation as "seller/landlord" and the veteran as "buyer/tenant." According to the Contract for Deed, close of escrow is scheduled to occur three years from the date of the agreement, and title to the property remains in the name of the Foundation until the three years has elapsed. Even though legal title remains in the name of the Foundation for three years, the Contract for Deed transfers the beneficial ownership of the property to the disabled veteran as of the date of execution. During the three-year period, the veteran appears to have indicia of ownership due to the veteran's rights and responsibilities regarding the property, making him/her the beneficial owner of the property during those three years. Thus, a veteran would qualify for the Disabled Veterans' Exemption upon execution of the Contract for Deed, because the veteran would be considered the owner of the property for tax purposes at that time. C 12/12/2012.

[220.0585 \(../..../proptaxes/pdf/220_0585.pdf\)](#) **Reporting.** Revenue and Taxation Code sections 480-480.2 mandate that only a person or legal entity acquiring ownership or control of real property or mobile homes subject to local property taxation is required to file a change in ownership statement; therefore, state assesses are exempt from filing change in ownership statements. However, under section 480.3, county recorders may require all transferees, including state assesses, to file a preliminary change in ownership report or pay a \$20 recording fee in lieu thereof. C 4/19/1994.

[220.0590 \(../..../proptaxes/pdf/220_0590.pdf\)](#) **Request for Statement.** The request for a change in ownership statement may come from the assessor or a designated county officer. Distribution by a private firm, e.g., a title company, does not constitute an official request. The 45-day period under Revenue and Taxation Code section 482 commences upon the issuance of the request. LTA 2/8/1980 (No. 80/19); LTA 6/27/1980 (No. 80/102).

[220.0595 \(../..../proptaxes/pdf/220_0595.pdf\)](#) **Rescission.** A rescission relates back to the formation of a contract and dissolves it as though it had never been made. Thus, once a contract for the sale of real property is rescinded by mutual consent, the parties are placed in the same position they were in before the contract was executed, and the value of the real property reverts to its

previous base year value with appropriate adjustment(s) for inflation. However, taxes incurred after the contract had been executed and before it was rescinded remain owing since they have become owing because of the facts which existed on the applicable lien date(s), and no refund(s) thereof should be made. C 1/16/1985; C 2/20/2015.

[Back to top \(#top\)](#)

[220.0596 \(../..../proptaxes/pdf/220_0596.pdf\)](#) **Rescission.** A transfer of real property by a deed which is voidable because it was obtained by means of undue influence results in a change in ownership, but upon the cancellation of the deed by judicial decree, which does not constitute a change in ownership, the value of the property reverts to its previous base year value with appropriate adjustment(s) for inflation. C 12/9/1983.

[220.0597 \(../..../proptaxes/pdf/220_0597.pdf\)](#) **Rescission.** A court judgment rescinding a transfer of real property accomplishes conveyance of the property back to the original owner. No additional instrument or conveyance is needed, and the property should be assessed to the original owner, whether or not the judgment is recorded with the county recorder. Although the base year value for the year in which the property was originally transferred is re-established and enrolled at such value plus appropriate inflation adjustments, no refunds should be made for the interim years. C 8/14/1987; C 1/23/1987; C 6/5/1986.

[220.0598 \(../..../proptaxes/pdf/220_0598.pdf\)](#) **Rescission.** When an assessor recognizes a rescission of an installment sale contract, the former base year value is enrolled as of the following lien date. Although the notice to rescind may be recorded in February, prior to the delivery of the assessment roll to the auditor on July 1, property taxes become fixed as of the prior January 1 lien date. The July 1 date is simply a deadline for completion of the roll and has no bearing on the tax liability that becomes final on the lien date prior to the rescission.

Additionally, an assessor has no authority to make a supplemental assessment to reinstate the original base year value because supplemental assessments may be made only upon the occurrence of a reappraisable event (i.e., change in ownership or new construction). A rescission is not a reappraisable event; it merely restores the parties to their positions prior to the contract. C 2/8/2001. (2002-1).

[220.0599 \(../..../proptaxes/pdf/220_0599.pdf\)](#) **Rescission.** Parties to a contract of sale may, on their own accord, mutually consent to the rescission. The provisions of the Civil Code do not require a court order or approval for a contract rescission to be valid when the parties to the contract mutually agree to rescind.

There is no minimum passage of time necessary in order to recognize a change in ownership of property, even if the transfer is later rescinded. Revenue and Taxation Code section 75.11(c) provides for the enrollment of net supplemental assessments when there are multiple changes in ownership of property during the same assessment year. Although Revenue and Taxation Code section 75.41(b) requires an auditor to compute the supplemental tax liability according to a proration factor which presumes that a change in ownership event occurred on the first day of the month following the actual event date, this section does not conflict with nor impact an assessor's duty to issue supplemental assessments, including net supplemental assessments, in accordance with section 75.11(c). The computation of supplemental tax liabilities is distinct from an assessor's obligation to enroll the supplemental assessments related to the change in ownership of a property. C 6/29/2001.

[220.0600 \(../..../proptaxes/pdf/220_0600.pdf\)](#) **Rescission.** A lease with a term of 35 years or more is treated as a transfer of the beneficial interest in the real property for change in ownership purposes. The rescission of a 35-year lease relates back to its formation and dissolves the lease and the resulting transfer as though it had never been made. For assessment purposes, a rescission has the result of returning the parties to a transaction to their original positions prior to the reappraisal of the property taking effect, so that the property reverts to its previous base year value with appropriate inflation factor adjustments. However, a rescission can only be applied prospectively; no refund of taxes is available to the parties for the period of time during which the transfer is treated as a change in ownership. C 12/11/2003.

[Back to top \(#top\)](#)

[220.0601 \(../..../proptaxes/pdf/220_0601.pdf\)](#) **Rescission—Legal Entity Interests.** Corporation X indirectly owned several parcels of California real property through wholly owned subsidiaries. Corporation X assigned its interests in each subsidiary to another indirectly held limited liability company, Limited Liability Company B (LLC B) such that LLC B obtained 100 percent ownership of all the subsidiaries. Because the proportional ownership interests in each and every piece of real property remained the same before and after the transfers, the transfers were excluded under Property Tax Rule 462.180(d)(4). As a result of this exclusion, LLC A, as the holder of the interests in LLC B, became an original co-owner in LLC B, for purposes of counting future transfers of

LLC B interests under section 64(d). Corporation X and LLC B now desire to unwind the assignment of interests and have mutually agreed to rescind the assignments. The assignments were "transfers" within the meaning of Civil Code section 1040 because they were intended to pass title to interests in the subsidiaries. Moreover, since the assignments were voluntary transfers, they were considered executed contracts under Civil Code section 1040, regardless of consideration. Thus, Civil Code section 1689 allows for their rescission. As with rescissions of real property transfers, the rescission of a contract for the transfer of legal entity interests voids the transactions ab initio as though the transfers had never been made, and restores the parties to the positions they held before the transfers being rescinded. The property tax consequence is that the former base year value of the property prior to the transfer is restored and the original co-owner status created under Rule 462.180(d)(4) is extinguished. C 11/21/2012.

[220.0602 \(../..../proptaxes/pdf/220-0602.pdf\)](#) **Rescission—Motive.** Civil Code section 1688 provides that a contract is extinguished by its rescission. A contract may be rescinded mutually if all the parties consent, or unilaterally based on a variety of grounds, for example, fraud, mistake or duress (Civil Code section 1689). Civil Code section 1691 explicitly requires the restoration of the parties to the status quo 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 status quo for mutual rescission. The Civil Code does not require a court order to validate a rescission. Because the elements of a valid rescission are clearly specified in the Civil Code, if the parties to a contract to transfer real property satisfy the statutory requirements, the assessor must accept such rescission for property tax purposes. If, for example, all parties to a transfer of property wish to undo the transfer and have restored to each other all consideration received, the assessor must accept the rescission of the property transfer. The motive for rescinding a contract is inconsequential to its validity. However, if the parties to a contract to transfer real property fail to meet a requirement for rescission provided in the Civil Code, the assessor has the discretion to deny the rescission for property tax purposes. C 12/10/2015.

[220.0605 \(../..../proptaxes/pdf/220_0605.pdf\)](#) **Resulting Trust.** A transfers real property to B and B subsequently transfers it to C by executing a quit claim deed. C claims to be the actual purchaser from A and that B was merely the holder of the legal title which was relinquished on request. There are two bases for concluding B's transfer was not a change in ownership.

When title to property is transferred to a person other than the one who paid the purchase price, the law presumes a trust results even through no trust terminology is used in the transfer document.

Additionally, while Evidence Code section 662 provides that the owner of the legal title to real property is rebuttably presumed to be the owner of the beneficial title, this presumption may be rebutted by clear and convincing proof, such as the source of the purchase funds, the source of funds used to pay property taxes, maintenance and repair, and evidence of the treatment of the property for state and/or federal income tax purposes. C 8/25/1992.

[220.0610 \(../..../proptaxes/pdf/220_0610.pdf\)](#) **Revocable Grant Deed.** The transfer of real property by a revocable grant deed, reserving a life estate in the transferor or in the transferor's spouse, is within the Revenue and Taxation Code section 62(e) exclusion. C 6/9/1993.

[220.0615 \(../..../proptaxes/pdf/220_0615.pdf\)](#) **Revocable Trust.** Under Civil Code section 852, which provides that no trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;
2. By the instrument under which the trustee claims the estate affected; or
3. By operation of law; and

Code of Civil Procedure section 1971, which provides, in part, that no estate or interest in real property nor any trust over or concerning it can be created, granted, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, or declaring the same, an express trust with respect to real property is required to be in writing, subscribed by the trustor or trustee. This is the only manner in which a trust in real property can be created, except by operation of law. C 10/10/1980.

[220.0620 \(../..../proptaxes/pdf/220_0620.pdf\)](#) **Sale and Leaseback Transactions.** The facts of a situation will determine whether a sale and leaseback agreement is a financing arrangement or a true sale. As a general rule, if the property was sold and immediately leased back to the former owner, and under the terms of the agreement the property did not revert to the lessee upon the final lease payment or the lessee did not have the option to purchase the property for a nominal amount at the end of the lease term, the sale would constitute a change in ownership. C 7/11/1980.

[Back to top \(#top\)](#)

[220.0621 \(../..../proptaxes/pdf/220_0621.pdf\)](#) **Sale and Leaseback Transactions.** It has been the Board's long-standing position that sales and leasebacks constitute changes in ownership requiring reappraisal of the entire properties sold. If a leaseback is for a term of 35 years or more, a second change in ownership occurs.

Revenue and Taxation Code section 62(e) excludes from change in ownership only transfers that involve a true retention by the transferor of a present interest in the property and a conveyance to the transferee of only a future interest. In the case of a sale and leaseback, the purchaser receives title to the property, and the right to a possession. The fact that the parties agree that the purchaser will lease the property to the former owner in no way diminishes the purchaser's ownership interest any more than would a lease not preceded by a sale. Rather, the leasing of the property to the former owner is merely the exercising of the right to possession, a present beneficial use, in exchange for the payment of rent. LTA 12/5/1985 (No. 85/128); LTA 8/8/1986 (No. 86/57); LTA 1/31/1992 (No. 92/11).

[220.0622 \(../..../proptaxes/pdf/220_0622.pdf\)](#) **Sale and Leaseback Transactions.** The lease of property by a corporation to a wholly owned subsidiary for a term of 50 years followed by a sale of the same property to an unrelated purchaser is a sale and leaseback when the transfers are dependent upon one another and essentially simultaneous. Rather than a reservation of a life estate or a short-term estate for years, this transaction was intended to transfer the title and ownership benefits (collection of rents) to the purchaser. The three tests of "end result," "interdependence" and "binding commitment" applicable under the "step transaction" doctrine were satisfied, and reappraisal was required. C 12/9/1992.

[220.0623 \(../..../proptaxes/pdf/220_0623.pdf\)](#) **Sale and Leaseback Transactions.** Evidence Code section 662 provides that the owner of legal title is presumed to be the owner of the full beneficial title and that the presumption may be rebutted only by clear and convincing proof.

When the lease specifically provides that the transaction constitutes "...a bona fide purchase and lease of the property ... and shall not be construed to be a financing transaction for any purpose whatsoever...", the presumption is not rebutted, regardless of statements outside the lease to the contrary. C 3/7/1989.

[220.0624 \(../..../proptaxes/pdf/220_0624.pdf\)](#) **Sale and Leaseback Transactions.** In a situation where a purchaser of property leases it back to the seller for his/her lifetime, there is a change in ownership. The transaction is different than one in which the seller transfers title while reserving a life estate. In the latter instance, the seller retains all present interest in the property.

Even though a sale is conditioned upon a lease back, contains a prescription against a resale without the lessee's approval, and contains prohibitions preventing the purchaser from using the property or raising the rent, the transfer should result in a reappraisal. These contractual limitations do not qualify as enforceable restrictions that are governmentally imposed and required to be taken into account by Revenue and Taxation Code section 402.1. C 12/22/1987.

[Back to top \(#top\)](#)

[220.0625 \(../..../proptaxes/pdf/220_0625.pdf\)](#) **Sale and Leaseback Transactions.** If an owner of real property sells it and leases it back for a period of more than 35 years, he is treated as the property owner for change in ownership purposes. Should the original owner, now lessee, repurchase the property while there is still 35 or more years remaining on the lease, no change in ownership occurs. He merely retrieves legal title to property he is considered to already own for change in ownership purposes. C 3/23/1987; C 5/12/1987.

[220.0635 \(../..../proptaxes/pdf/220_0635.pdf\)](#) **Sales Contract or Lease With Option.** A "Lease With Option to Purchase" may, in fact, be a contract of sale. Consideration must be given to the terms and conditions of the document. Where it is determined that a contract of sale exists, the date of the change in ownership is the date of execution or, where conditional, the date the condition has been fulfilled. C 10/17/1980.

[220.0640 \(../..../proptaxes/pdf/220_0640.pdf\)](#) **Section 1031 Exchange/Holding Agreement.** Revenue and Taxation Code section 60, as interpreted by Property Tax Rule 462.200(c), requires that the transfer of real property to a "straw man" in a transaction paralleling the IRC 1031 exchange provision does not include the transfer of any equitable or beneficial interest in the property. The "straw man" merely holds "legal title" to the property, with the result that there is no change in ownership at this point. However, when the "straw man" subsequently transfers title to a buyer who receives the "present beneficial ownership" of the property per section 60, there is a change in ownership and reappraisal. C 6/5/1997.

[220.0645 \(../..../proptaxes/pdf/220_0645.pdf\)](#) **Security Interest Termination.** The termination of a security interest, e.g., bare legal title held by parents jointly with a son solely for loan qualification purposes, is not a change in ownership, and where such can be shown to have existed, reappraisal is not required upon parents' quit claim of the property back to the son. The facts in each particular case are determinative. The best evidence is a written agreement between the parties executed prior to or at the time of the initial conveyance of the property indicating that the parents had no equitable interest in the property. C 9/26/1980.

[220.0646 \(../..../proptaxes/pdf/220_0646.pdf\)](#) **Security Interest Transfers.** The use of a trust arrangement to protect the interest of a "beneficiary" who obtains refinancing for property owned and occupied by the nominal trustor does not result in a change of ownership if the tests contained in Property Tax rule 462(k) are satisfied, thereby overcoming the Civil Code section 1105 rebuttable presumption that a conveyance (including one made to a trust) is what it is purported to be; i.e., a transfer of property. C 4/30/1991.

[Back to top \(#top\)](#)

[220.0647 \(../..../proptaxes/pdf/220_0647.pdf\)](#) **Security Interest Transfers.** The Civil Code provides that there is a rebuttable presumption that a conveyance is what it is purported to be, a transfer of property. The person contending that a conveyance is only for financing purposes has the burden of proving that contention.

Proof that a transfer was of a security interest only would include facts such as:

The transferor received a "purchase price" reflecting his book value rather than current market value; the amount of rent charged the transferor for the use of the "transferred" property was less than market rent; and the transferor retained all tax benefits, rights to proceeds from insurance, and all of the burdens of ownership, including the cost of maintenance and operating costs.

The transferee had to retransfer the property to the transferor upon payment of the "purchase price" and could not gain or lose money from its "ownership" of the property, and it was without other assets or sources of income.

As provided in Property Tax rule 462(k)(4), a written ruling by the Franchise Tax Board or Internal Revenue Service that a transfer was considered a financing transaction for income tax purposes would create a presumption that a transaction was a nonreappraisable sale and lease back. C 7/29/1987.

[220.0648 \(../..../proptaxes/pdf/220_0648.pdf\)](#) **Security Interest Transfers.** Property Tax Rule 462.200(a) specifically addresses the situation in which a transaction may be interpreted to be either a conveyance of real property or a mere security interest therein. A written agreement that makes no mention of a "debt or promise to pay" and that consistently refers to the parties' interests in the property as ownership interests indicates a co-ownership relationship rather than a lender/borrower relationship. C 6/20/2000.

[220.0649 \(../..../proptaxes/pdf/220_0649.pdf\)](#) **Security Interest Transfers.** A conveyance of real property by grant deed from individuals to a housing cooperative and a subsequent reconveyance by land contract secured by a deed of trust from the cooperative to the individuals are both rebuttably presumed to transfer the present beneficial interest in the property, resulting in changes in ownership. However, pursuant to Property Tax Rule 462.200(a), the presumption may be rebutted if, in the assessor's judgment, it is shown by clear and convincing evidence that the individuals intended to retain the present beneficial interest in the property, and that the grant deed transferred mere legal title to the cooperative as a part of a security transaction. C 12/5/2000.

[220.0650 \(../..../proptaxes/pdf/220_0650.pdf\)](#) **State Chartered Stock Association.** The conversion of a state chartered stock association to a federal chartered stock association does not result in the discontinuance of the former and the transfer of its assets to a new association and hence, is not a change in ownership. The state chartered stock association merely continues in existence with a new charter and name. C 9/23/1981.

[220.0655 \(../..../proptaxes/pdf/220_0655.pdf\)](#) **Statement Confidentiality.** Revenue and Taxation Code section 481 provides, in part, that these statements are not public documents and are not open to inspection, except as provided in Revenue and Taxation Code section 408. The latter section allows for release of confidential information, including that contained in change in ownership statements, to only law enforcement agencies, the county grand jury and the board of supervisors or its agents in certain circumstances. C 4/18/1989.

[Back to top \(#top\)](#)

[220.0661 \(../..../proptaxes/pdf/220_0661.pdf\)](#) **Statement Filing Requirements.** Intermediate transferees, i.e., those who are transferors and transferees, are excused from filing a "Preliminary Change of Ownership Report." They must, however, file the change in ownership statement required by Revenue and Taxation Code sections 480 and 482 whether or not the assessor may determine that, in fact, no change in ownership occurred. C 7/16/1992.

[220.0662 \(../..../proptaxes/pdf/220_0662.pdf\)](#) **Statement Filing Requirements.** A Preliminary Change in Ownership Report (PCOR) and a Change of Ownership Statement (COS) are two separate statements governed by two separate statutory provisions. Revenue and Taxation Code section 480.3 allows the filing of a PCOR at the time of recording a document that evidences a change in ownership. This section does not provide for the filing of a PCOR at any other time. If a PCOR is not filed at the time of recording, the only penalty that may be applied is an additional \$20 recording fee. If a PCOR is not filed, an assessor should send a COS to obtain change in ownership information. If a COS is not filed by the transferee within 45 days of the assessor's request, the section 482 penalty will apply.

Compliance with one form does not waive the requirement to comply with the other. If an assessee completes the information on the PCOR and the county subsequently mails out a COS, the penalty for failure to file can be applied if the assessee fails to return or files an incomplete COS. C 3/23/2010.

[220.0663 \(../..../proptaxes/pdf/220_0663.pdf\)](#) **Statement Filing Requirements.** A state assessee that owns or leases only property that is state assessed is not required to file form BOE-100-B, Statement of Change in Control and Ownership of Legal Entities with the State Board of Equalization when an unrelated entity obtains a controlling interest in the assessee. However, where a state assessee either owns locally assessed property or has direct or indirect ownership control of any legal entity that owns locally assessed property, the person or entity obtaining ownership control of the state assessee would be required to file the Statement of Change in Control and Ownership of Legal Entities with the Board of Equalization. C 2/22/2011.

[220.0664 \(../..../proptaxes/pdf/220_0664.pdf\)](#) **Statutory Conversion.** Statutory conversion of a general partnership into a limited partnership is not considered a transfer for purposes of change in ownership and the partners do not become "original co-owners" after the conversion. C 8/27/1999.

[220.0664.005 \(../..../proptaxes/pdf/220_0664_005.pdf\)](#) **Statutory Conversion.** Statutory conversions of corporations into limited liability companies do not result in reassessment of the properties directly or indirectly owned by the converting corporations if the respective statutes under which the conversion is accomplished provide that a statutory conversion does not result in a transfer of real property, and the converted entity is the same entity as the converting entity for all purposes. Therefore, a statutory conversion alone in such situations cannot trigger either a change in control as defined in Revenue and Taxation Code section 64(c)(1), or the application of the original co-owner rule under section 64(d). As a result, there is no need to file form BOE 100-B upon completion of the conversions. C 2/18/2016.

[220.0664.500 \(../..../proptaxes/pdf/220_0664_500.pdf\)](#) **Statutory Merger.** A statutory merger is a transaction pursuant to relevant sections of the Corporations Code whereby two or more entities combine into a single entity that was one of the pre-existing entities. When two entities merge in a statutory merger, the entity that ceases to exist is called the disappearing entity and the other is called the surviving entity. In a statutory merger, all of the assets of the disappearing entity transfer to the surviving entity by "operation of law." This means that the transfer happens automatically and without the disappearing entity having to deed the assets to the surviving entity. Since a statutory merger results in a transfer of the real property of the disappearing entity under state law, a statutory merger causes a change in ownership of the real property of the disappearing entity pursuant to Revenue and Taxation Code section 61(j). Additionally, any ownership interests in legal entities that the disappearing entity owns directly would also transfer to the surviving entity as a result of the merger, which could result in a change in control of such subsidiaries under section 64(c)(1), or a change in ownership under section 64(d). C 1/30/2012.

[Back to top \(#top\)](#)

[220.0665 \(../..../proptaxes/pdf/220_0665.pdf\)](#) **Step Transaction.** A sale by a parent corporation and a lease-back to the parent by the wholly owned subsidiary corporation for a period in excess of 35 years followed by a sale by the subsidiary of its interest in the property to a third party results in a reappraisal of the entire property. While the sale and lease-back would be ignored as involving transfers between affiliated corporations, the subsequent transfer to a third party was apparently contemplated from the outset and by application of the "step transaction" doctrine would be considered in substance, a transfer by the parent corporation to the third party. C 5/10/1991.

[220.0666 \(../..../proptaxes/pdf/220_0666.pdf\)](#) **Step Transaction.** Whether a series of transfers constitute for tax purposes one or several transactions is a question of fact. The proper classification is made by application of three alternative court sanctioned tests, to wit: the

- (a) binding commitment test,
- (b) interdependence test, and
- (c) end result test.

If at the time the first step is taken there was a binding commitment to take a later step(s), or if the first step would have been fruitless without the completion of the series, or if the ultimate or end result was intended from the outset, a conclusion that a series of transfers constituted a single transaction for "change of ownership" purposes is warranted. C 3/8/1990.

[220.0667 \(../..../proptaxes/pdf/220_0667.pdf\)](#) **Step Transaction.** Judicial decisions have indicated that it is proper to apply the substance over form or step transaction doctrine to property transfers that accomplish a change in ownership in multiple steps in an attempt to avoid reappraisal. The doctrine is applicable even if the various steps accomplish a business purpose other than avoidance of increased taxes.

The exception to the general rule is found in the legislative intent language of section 2 of Chapter 48 of the Statutes of 1987 (Revenue and Taxation Code section 63.1), which provides, in substance, that the parent/child exclusion applies to transfers by eligible transferors to eligible transferees even if such transfers are immediately followed by a transfer to a corporation, partnership, trust or other legal entity if the transferee(s) is/are the sole owner(s) of the entity. The Board's legal staff is of the opinion the same result should follow when an eligible transferor's parents or children also own interests in the entity. Subsequent transfers of ownership interests among the children or to non-eligible transferees would constitute a change in ownership if one person or entity obtained a majority interest in the entity or if more than 50 percent of the total ownership interests were transferred. C 4/5/1988.

[220.0668 \(../..../proptaxes/pdf/220_0668.pdf\)](#) **Step Transaction.** A transfer of property from A, B, and C, tenants-in-common, to A, B, and C as joint tenants, followed immediately by a transfer from A and B to C results in a change in ownership of A's and B's tenancy-in-common interests to C. Although the transfers appear to fall within the exclusionary provisions of Revenue and Taxation Code sections 62(f) and 65, the initial transfer should be ignored because it was contemplated from the outset that C would receive A's and B's interests and because the transfer was made to circumvent the intent of the change in ownership statutes. C 12/24/1981.

[Back to top \(#top\)](#)

[220.0670 \(../..../proptaxes/pdf/220_0670.pdf\)](#) **Step Transaction.** In *Shuwa Investments Corp. v. County of Los Angeles* (1991) 1 Cal.App.4th 1635, the District Court of Appeal rejected the theory that a series of transfers that result in a change in ownership may be ignored if each of the transfers in the series is not a change in ownership and each transfer can be demonstrated to have taken place for a business purpose independent from the avoidance of increased property taxes.

The court applied the long accepted principle that for tax purposes, the substance rather than the form of a transaction controls when the substance brings the transaction within those intended to be taxed by the law. However, form will control over substance when it results in a change in ownership consistent with the legislative intent of a given statute.

1. In determining whether the form of the particular transfer should be subject to the step transaction doctrine, the court applied the following tests:
2. The "end result test" (whether the reported separate transactions were really component parts of a single transaction intended from the outset to be taken for the purpose of reaching the ultimate result).
3. The "interdependence test" (whether upon a reasonable interpretation of objective facts the steps are so interdependent that the legal relations created by one transaction would have been fruitless without a completion of the series).

The "binding commitment test" (whether there is a binding commitment to take all steps if the first step is taken). LTA 10/14/1992 (No. 92/69).

[220.0671 \(../..../proptaxes/pdf/220_0671.pdf\)](#) **Step Transaction.** When, through a series of transfers, a person owning an 80 percent interest in a partnership becomes the sole owner of property formerly owned by the partnership, reappraisal of 100 percent of the property occurs pursuant to Revenue and Taxation Code section 61(i). C 6/16/1994.

[220.0672 \(../..../proptaxes/pdf/220_0672.pdf\)](#) **Step Transaction.** A transfer of real property by a dissolving partnership to the partners as tenants in common in the same proportion as their respective partnership interests is excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). Subsequent transfers of interests in the real property among the tenants in common is a change in ownership only to the extent of the interests transferred, unless the step transaction doctrine applies.

If the evidence before the assessor demonstrates that the partners intended to dissolve their business relationship and transfer disproportionate fee simple interests in the property to themselves, the transfers would be stepped together, resulting in a change in ownership and reappraisal of the entire property. (See *Munkdale v. Giannini* (1995) 35 Cal.App.4th 1104.)

However, the step transaction doctrine does not permit the assessor to change the order of the steps in a series of transfer. It would be improper for the assessor to presume that partnership interests, rather than real property interests, were transferred and that the result was a change in control of the partnership under Revenue and Taxation Code section 64(c). C 1/3/1990; C 5/6/1997.

[Back to top \(#top\)](#)

[220.0673 \(../..../proptaxes/pdf/220_0673.pdf\)](#) **Step Transaction.** A partnership conveyed multiple parcels of land to its two former partners as individuals so that one person took sole title to some parcels while the other took sole title to the remaining parcels. Because these transfers were not proportional, the assessor reassessed all the parcels. Upon discovering the reassessments, the former partners rescinded those transfers by reconveying the parcels of land back to the partnership. Acknowledging the rescission, the county assessor returned those parcels of land to their original base year values. C 3/1/2006.

[220.0674 \(../..../proptaxes/pdf/220_0674.pdf\)](#) **Step Transaction.** Two separate family trusts, S Trust and J Trust, are each 50 percent partners in a partnership which owns real property. Upon the death of one of the trustees, S Trust's interest in the partnership was transferred to two trusts: Trust A and Trust B. The surviving spouse is the trustee and beneficiary of both trusts. Subsequently, the partnership was required to convey the property out of the partnership to obtain financing. The real property was transferred to the J Trust and Trusts A and B as tenants in common in the same proportional interests. Now Trusts A and B are considering purchasing the interest owned by the J Trust.

The step transaction doctrine allows an assessor to disregard for tax purposes a series of steps utilized to effect the transfer of real property when the facts suggest that the transfer might have been accomplished in fewer steps and that the purpose for using a series of steps was to avoid a change in ownership. If the facts indicate that the transfer out of the partnership was motivated solely by the lender's requirement for the purpose of obtaining a loan against the property and not some other reason, then the step transaction should not be applied. C 3/9/2006.

[220.0690 \(../..../proptaxes/pdf/220_0690.pdf\)](#) **Subdivision Map.** The filing of a subdivision map for division of property into separate parcels is not, by itself, a change in ownership. C 2/7/1980.

[220.0695 \(../..../proptaxes/pdf/220_0695.pdf\)](#) **Tax Delinquency.** No change in ownership occurs where an assessee regains his property through the redemption procedure of filing an application to redeem, paying the taxes, penalties and costs, and obtaining a redemption certificate, but a change in ownership does occur where the assessee regains his property by purchase at a public auction under Revenue and Taxation Code section 3693. C 10/8/1982.

[220.0700 \(../..../proptaxes/pdf/220_0700.pdf\)](#) **Tax Exempt Property.** The transfer by a tax exempt government entity of its owner/lessor interest in property subject to a lease of more than 35 years does not result in a change in ownership for reappraisal purposes. C 10/16/1989.

[Back to top \(#top\)](#)

[220.0703 \(../..../proptaxes/pdf/220_0703.pdf\)](#) **Tenancy in Common.** Cotenancy is the term used to designate ownership by several persons of undivided interests in real property. Cotenants own property by one joint title and in one right, and thus have one common freehold. The assessor is required to assess all real property to the persons owning it on the lien date. The assessor is not required to separately assess each undivided interest of a tenant in common in real property, and a tenant in common does not have the right to compel separate assessment of the undivided interest. While fractional ownership interests must be tracked by county assessors for base year value purposes, the separate assessment of fractional interests is not required. If the property escaped assessment as the result of an unrecorded change in ownership between the cotenants, the escape assessments are secured by the property unless the property is purchased by a bona fide purchaser for value prior to the date of

the assessment of the property under Revenue and Taxation Code section 531.2(b). A cotenant who has an ownership interest in a property both before and after the purchase of a fractional interest in that property does not qualify as a bona fide purchaser for value. C 7/15/2013.

[220.0704 \(../..../proptaxes/pdf/220_0704.pdf\)](#) **Tenancy in Common.** Husband, Wife, and Son 1 owned a parcel of California real property as joint tenants. On March 31, 1987 Husband, Wife, and Son 1 recorded a deed conveying title to the Property to Husband, Wife, Son 1, and Son 2, all as joint tenants. Husband died in 2007, and Wife died in 2010, leaving Son 1 and Son 2 as the surviving joint tenants. In 2012, Son 1 and Son 2 recorded a deed granting their interest to themselves as tenants in common.

In 1987, as a result of the creation of the joint tenancy, Husband, Wife, and Son 1 became "original transferors" for purposes of determining the property to be reappraised on subsequent transfers, and Son 2 became an "other than original transferor." The 2007 and 2010 transfers were excluded from change in ownership as the decedents' interest vested, in part, in a remaining original transferor. However, the 2012 transfer terminated the joint tenancy and created a tenancy in common with Son 1 and Son 2. Pursuant to Revenue and Taxation Code section 65(c), any interest that vests in an original transferor is not reassessed. Pursuant to section 65(d), any interest that vests in an other than original transferor is reassessed. Thus, since Son 2 was an other than original transferor, the property that transferred to him as a result of the termination must be reassessed. C 12/24/2013.

[220.0710 \(../..../proptaxes/pdf/220_0710.pdf\)](#) **Time-Sharing.** Persons having a time-share "lot" are joint owners of the property and therefore have an undivided interest in that property. Revenue and Taxation Code section 65(b) governs the reappraisal of this form of ownership, and the less than five percent rule for undivided interests is to be applied. C 5/19/1980.

[220.0711 \(../..../proptaxes/pdf/220_0711.pdf\)](#) **Timeshare Interests.** Where under an agreement/contract, individual owners of timeshare interests transfer legal title to their timeshare interests to an association (a not-for-profit corporation) in exchange for "points" to become "founding members" in the association, and then use their "points" to vacation at their original timeshare locations or at other vacation properties in the association, there is no change in ownership. The transfers constitute transfers of bare legal title only and, under section 60 would not result in changes in ownership of the beneficial interests in the timeshare intervals. C 1/31/2002.

[Back to top \(#top\)](#)

[220.0715 \(../..../proptaxes/pdf/220_0715.pdf\)](#) **Title Perfection.** Revenue and Taxation Code section 62(b) excludes from change in ownership a transfer for the purpose of perfecting title to the property. While the owner of the legal title to property is presumed to be the owner of the full beneficial interest, this presumption may be rebutted by clear and convincing evidence. Property Tax Rule 462.200(b)(2) sets forth the types of documentary proof that may constitute such evidence. The recording of a deed to reflect a change in title from an unrecorded 1969 decree of distribution should not result in a change in ownership. C 5/2/2006.

[220.0720 \(../..../proptaxes/pdf/220_0720.pdf\)](#) **Tracking Undivided Ownership Interests.** Revenue and Taxation Code section 50 requires that valuation on the first lien date following a change in ownership of real property must be accomplished by treating each fractional interest separately to determine whether the base year value or current market value is the lower amount. Section 51 controls the taxable value for all lien dates following the lien date on which the base year value is first enrolled. Thus, if A and B owned real property as equal co-owners, A's base year value for the 1985-86 tax roll was \$50,000 and B's base year value therefor was \$75,000 (\$125,000 enrolled value), and B sold his one-half interest to C in November of 1985 for \$90,000, an amount representative of market value:

1. The value of the entire property would then be \$180,000.
2. The new base value of the property as of the date of transfer of B's interest would be \$140,000 (A's \$50,000 plus C's \$90,000).
3. The supplemental assessment to the 1985-86 roll would be \$15,000 (\$140,000 minus \$125,000).

If as of March 1, 1986, the fair market value of the entire property had declined from \$180,000 to \$160,000, the value placed on the 1986-87 tax roll would be \$131,000 (the factored base year value of A's interest—\$50,000 x 1.02, plus the fair market value of C's interest on the lien date—\$80,000). Assuming that the decline in value was being measured as of March 1, 1987, the value placed on the 1987-88 tax roll would be \$142,800 (\$140,000 x 1.02). Since the current market value of the entire property (assume \$160,000, the same as on March 1, 1986) is greater than the factored base year value, the factored base year value would be enrolled. LTA 8/19/1985 (No. 85/85); LTA 1/8/1986 (No. 86/04).

[220.0725 \(../..../proptaxes/pdf/220_0725.pdf\)](#) **Transfer "in Lieu of Foreclosure."** An execution of a grant deed back in lieu of foreclosure is a change in ownership because the beneficial ownership is being transferred from one party to another. C 2/27/1980.

[220.0730 \(../..../proptaxes/pdf/220_0730.pdf\)](#) **Transfer of Future Appreciation.** The transfer of a right to receive future appreciation in real property does not create a future interest in a fee or the substantial equivalent of a fee and hence, does not constitute a change in ownership. C 6/30/1982.

[220.0740 \(../..../proptaxes/pdf/220_0740.pdf\)](#) **Transferable Development Rights.** In *Mitsui Fudosan v. Los Angeles County* (1990) 219 Cal.App.3d 525, the court held transferable development rights to be taxable real property interests which, when conveyed, result in a change in ownership requiring reappraisal. The property to which the rights were previously appurtenant should have its base year value reduced in the same proportion that the value of the transferred rights bore to the fair market value of the land and improvements from which they were transferred as of the date of the transfer. LTA 2/11/1991 (No. 91/12).

[220.0745 \(../..../proptaxes/pdf/220_0745.pdf\)](#) **Transfers Between Co-owners.** The "transfer between co-owners" exclusion is available even though a transfer may not be completed in one assessment year. C 10/2/1980.

[220.0760 \(../..../proptaxes/pdf/220_0760.pdf\)](#) **Trusts.**

1. Revenue and Taxation Code section 62(d) excludes trusts because of the type of trust. There is no limitation as to who may be the trustee.
2. Section 62(d) excludes from change in ownership property transferred into:
 - (a) A revocable trust, or
 - (b) An irrevocable trust if the transferor is a present beneficiary of the trust.

If a trust does not meet either of these qualifications, there will be a change in ownership whenever property is transferred into a trust.

3. Section 62(d) makes no mention of community or separate property. The interspousal exclusion (Revenue and Taxation Code section 63) applies to all transfers between spouses whether the property is separate property or community property.
4. Section 62(d) excludes from reappraisal creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration. It makes no difference who the trustee is.
5. Revenue and Taxation Code section 61(g) provides that any interest in real property which vests in persons other than the trustor (or pursuant to section 63, his spouse) when a revocable trust becomes irrevocable is a change in ownership. Where the Settlor is husband and wife, on the death of one of them, for any portion of a trust that vests in the spouse there will be no change in ownership until he or she dies, but for the other portion, there will be a change in ownership upon the death of the first Settlor. C 1/15/1980.

[220.0761 \(../..../proptaxes/pdf/220_0761.pdf\)](#) **Trusts.** The general rule is that there is only one change in ownership for property transferred in trust. This occurs either upon transfer into trust or upon distribution to the beneficiaries. Following this rule, the owners of the property are construed to be the trustor, when there is no change in ownership, or the equitable beneficiaries, when there is a change in ownership. The trustee is never viewed as the owner of the trust property. This is so even if the trustee has legal title and the power to sell. C 7/14/1980.

Note: Civil Code section 869a is now Probate Code 18104.

[Back to top \(#top\)](#)

[220.0762 \(../..../proptaxes/pdf/220_0762.pdf\)](#) **Trusts.** As to a surviving spouse's beneficial interest in the property of a "B" trust in an "A-B" trust, where the "A" trust is used to hold the assets which qualify for the marital deduction and the "B" trust is used to hold the balance of the assets:

1. For the property which passes to the "B" trust to qualify for the interspousal exclusion, the surviving spouse must be the sole present beneficiary of the trust. Upon the death of the second spouse, the property will be subject to reappraisal.
2. The trustee may have the discretion to distribute or accumulate income.
3. If the trustee has the discretion to distribute income among the surviving spouse and others, the surviving spouse is not the sole present beneficiary of the trust, and the property cannot qualify for the interspousal exclusion. C 8/31/1981.

[220.0763 \(../..../proptaxes/pdf/220_0763.pdf\)](#) **Trusts.** Property Tax rule 462(i)(2)(A) is applicable to any transactions occurring on and after March 1, 1975. C 7/9/1982.

[220.0764 \(../..../proptaxes/pdf/220_0764.pdf\)](#) **Trusts.** A trustor's transfer of real property to a trust does not constitute a change in ownership if the trustor or the trustor's spouse is the sole present beneficiary thereof. C 5/24/1982.

[220.0765 \(../..../proptaxes/pdf/220_0765.pdf\)](#) **Trusts.** A change in ownership occurs when a revocable trust becomes irrevocable. However, if all the beneficiaries of the trust are the wife and children of the settlor, then the change in ownership may be excluded under the interspousal and parent-child exclusions, even if the trustee has the power to invade the trust principal for the benefit of some or all of the beneficiaries. C 5/27/1997; C 11/5/1999.

220.0766 **Trusts.** C 2/23/1983 (Deleted 2017)

[220.0766.005 \(../..../proptaxes/pdf/220_0766_005.pdf\)](#) **Trusts.** A transfer of property to a trust where the present beneficiary has an income interest for a term less than 35 years is not a change in ownership of that property unless the trust to which the property is transferred qualifies as a "Clifford Trust" and the property does not revert to the grantor within 12 years as required by Revenue and Taxation Code section 62(d). Clifford Trusts are irrevocable, but temporary, trusts created primarily for income tax planning purposes, whereby income from the trust property is paid to the beneficiary and taxed to the beneficiary, but the property itself reverts back to the settlor when the trust expires. However, where the transfer of an income interest is to a trust that is not a Clifford Trust, the transfer would be analyzed according to the estate for years rule as set forth in Property Tax Rule 462.060(b). Rule 462.060(b) provides that the creation or transfer of an estate for years for less than 35 years is not a change in ownership, while an estate for years for a term of 35 years or more in real property is a change in ownership at the time of transfer (unless the instrument creating the estate for years reserves such estate in the transferor or the transferor's spouse, or registered domestic partner). C 1/28/2015.

[220.0767 \(../..../proptaxes/pdf/220_0767.pdf\)](#) **Trusts.** When a parent transfers property to a trust which provides that the children are to receive the trust assets on a share and share alike basis, unless the trust instrument specifies otherwise, the trustee has the power to distribute the property on a pro rata or non-pro rata basis. The distribution of sole ownership of a single asset to one child would qualify for the parent-child exclusion, except to the extent the value of the asset exceeds the value of that child's interest in the total trust estate. Such excess must be considered a non-excludable transfer from the other beneficiaries pursuant to a sale of their interests to the recipient. C 8/6/1990; C 9/10/1996; C 3/14/2000.

[220.0768 \(../..../proptaxes/pdf/220_0768.pdf\)](#) **Trusts.** A transfer of property to an irrevocable trust or to a revocable trust followed by a transfer to a beneficiary who is the child of the trustor(s) can qualify for the parent/child exclusion of Revenue and Taxation Code section 63.1. C 9/4/1987.

[220.0769 \(../..../proptaxes/pdf/220_0769.pdf\)](#) **Trusts.** The trustee of an irrevocable trust which holds capital and profits interests in a limited partnership does not have direct or indirect ownership of those partnership interests, except to the extent that he is also the present beneficiary of the trust. Where a partner, as an individual, owns a 40 percent partnership interest and four irrevocable trusts, in which the partner is trustee, each own a 10 percent partnership interest, the partner does not, thereby, hold a majority ownership interest in the partnership. The present beneficiaries of each trust and not the partner as "trustee," are the "owners" of the trusts' respective partnership interests. For purposes of Revenue and Taxation Code section 64(c), if the partner acquires an additional 15 percent of the partnership interests from the trusts, there would be a change in control of the limited partnership, since the partner would have obtained more than 50 percent of the total capital and profits interests. C 12/11/1991.

[220.0770 \(../..../proptaxes/pdf/220_0770.pdf\)](#) **Trusts.** The transfer of property to an irrevocable trust is not a change in ownership if the transferor/settlor is the sole beneficiary of the trust. On termination of the trust, either because of the death of the sole beneficiary or the passage of a time period specified in the trust instrument, a transfer to an "eligible transferee" son or daughter is excluded from change in ownership under Revenue and Taxation Code section 63.1 if all the other requirements for exclusion are met. If the contingent beneficiary son or daughter does not survive the expiration of the trust and the trust assets transfer to the child's estate, the parent/child exclusion is inapplicable. C 9/28/1990.

[Back to top \(#top\)](#)

[220.0771 \(../..../proptaxes/pdf/220_0771.pdf\)](#) **Trusts.** A trust beneficiary who exercises a general power of appointment (transfer) in favor of his/her spouse and children qualifies the transfers for the appropriate interspousal or parent/child exclusion. C 12/26/1990.

[220.0773 \(../..../proptaxes/pdf/220_0773.pdf\)](#) **Trusts.** When multiple testamentary trusts are created with each holding an undivided interest in real property, the surrender by the beneficiary of one or more of the trusts of his or her interest(s) in the property in favor of one of the other beneficiaries is a change of ownership to the extent of the interest(s) surrendered. C 3/18/1991.

[220.0775 \(../..../proptaxes/pdf/220_0775.pdf\)](#) **Trusts.** A trustee's discretionary power to invade principal for the benefit of the remainder beneficiaries does not preclude the applicability of the interspousal exclusion where the surviving spouse is entitled to receive all of the trust income during his lifetime under the terms of the trust instrument. Interests created by powers of appointment are characterized as "future" interests, as opposed to "present" interests and therefore, do not affect the present beneficiary's enjoyment of the trust principal, except in certain cases for determining the amount of the \$1,000,000 parent-child exclusion. C 6/16/1995; C 1/20/2000.

[220.0776 \(../..../proptaxes/pdf/220_0776.pdf\)](#) **Trusts.** The termination of a trust, or a portion thereof, constitutes a change in ownership at the time of the termination of the trust. Probate Code section 15407 provides that a trust terminates when the term of the trust expires, the trust purpose is fulfilled, the trust purpose becomes unlawful, the trust purpose becomes impossible to fulfill, or the trust is revoked. On termination of the trust, the trustee continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust. C 6/1/1990.

[220.0778 \(../..../proptaxes/pdf/220_0778.pdf\)](#) **Trusts.** Upon the husband's death in 1976, his one-half interest in the community property went into a "Residual Trust" and the wife's one-half interest therein went into a "Marital Deduction Trust". The surviving children were the "Residual Trust" beneficiaries, with limitations on the timing and amount they could receive. The principle was to be distributed to them upon the youngest child's attaining a specified age. The wife was to receive income from the "Residual Trust" before the children *if* the amount she received annually from the "Marital Deduction Trust" was less than a specified sum.

Under these facts, the son and daughter became vested present interest beneficiaries in the "Residual Trust" in 1976, while the wife received only a contingent interest therein. Thus, the son and daughter obtained beneficial title to the property in the "Residual Trust" prior to the time the change in ownership statutes were enacted, and the subsequent transfer of bare legal title to the property to them in 1985 was covered by the exclusion contained in Property Tax rule 462(i)(4)(A). C 2/2/1989.

[220.0779 \(../..../proptaxes/pdf/220_0779.pdf\)](#) **Trusts.** An Individual Retirement Account (IRA) is a trust established, as its name implies, by an individual to provide income to the individual during his/her retirement years. Such an account does not qualify as an employee benefit plan "...established or maintained by an employer or by an employee organization, or by both...", as is required by federal law (29 U.S.C.A. Sec. 1002 (1)(2)(A).).

Transfers of real property to an IRA do not come within the exclusion from change in ownership provided by Revenue and Taxation Code section 66(b). C 2/14/1991.

[220.0780 \(../..../proptaxes/pdf/220_0780.pdf\)](#) **Trusts.** The creation of a life estate in property or in all of the income from that property constitutes a change in ownership unless a specific statutory exclusion applies. Likewise, on the termination of the first life estate, a second life estate, whether in the property or in all of the income it generates, may be created and constitute a change of ownership or not, again depending on the applicability of the various statutory exclusions. C 7/28/1989; C 1/20/2000.

[Back to top \(#top\)](#)

[220.0781 \(../..../proptaxes/pdf/220_0781.pdf\)](#) **Trusts.** The transfer of real property by a trustee to a partnership owned by the trust followed by transfers of partnership interests to the beneficiaries as they reach ages specified in the master trust instrument do not constitute changes in ownership. The transfer to the partnership constituted a change in the manner in which title to the property was held, and the distributions to the beneficiaries were transfers of legal title to the beneficial owners of the property. C 1/23/1989.

[220.0782 \(../..../proptaxes/pdf/220_0782.pdf\)](#) **Trusts.** The filing of a subdivision map so that property held in an irrevocable trust may be distributed to the beneficiaries of the trust is not a change in ownership. The distribution of the property would be such a change unless the property was reappraised at the time the trust was created or distribution resulted only in a change in the manner in which the beneficiaries held title to their respective interests. Statutory exclusions enacted subsequent to the creation of an irrevocable trust have no application unless specifically stated to be applicable. C 12/13/1989.

[220.0783 \(../..../proptaxes/pdf/220_0783.pdf\)](#) **Trusts.** A revocable trust, whose sole owner is grantor, owns a 50 percent interest in a general partnership and 100 percent interest of shares of a corporation. When the corporation purchases a 40 percent interest in the partnership from another partner, a change in ownership of the partnership occurs and the entire partnership real property should be reappraised. Through the corporation's purchase, the grantor has acquired indirect ownership and control of more than 50 percent of the total interest in the partnership capital and profits under Revenue and Taxation Code section 64(c). C 8/12/1988.

[220.0784 \(../..../proptaxes/pdf/220_0784.pdf\)](#) **Trusts.** Upon the dissolution of a corporation and the distribution of its property to testamentary or non-testamentary trusts holding its shares of stock, the proportionality rule applicable to corporate transfers of property to individual shareholders applies, i.e., the trusts must receive proportional interests in each property distributed, not equivalent interests in separate properties. C 12/13/1988.

[220.0785 \(../..../proptaxes/pdf/220_0785.pdf\)](#) **Trusts.** A trust established for the benefit of a survivor spouse and thereafter, for the benefit of the trustor's children creates a future interest in the children. The present beneficiary spouse could transfer property to and receive property from the trust without reappraisal. Transfers from the trust to the children on or after November 6, 1986 would be eligible for the parent/child exclusion. C 6/19/1987.

[220.0786 \(../..../proptaxes/pdf/220_0786.pdf\)](#) **Trusts.** Mother transferred her properties into a testamentary trust, which directed that after her death all income from the properties would be distributed semi-annually to her five sons in equal shares, and that upon each son's death, his beneficial interest would be re-allocated in equal shares to the surviving sons, until only one son remained. Upon the death of the fourth son, the trust ceased, and the trust properties would be distributed one-half to the surviving son and one-half in equal shares to Mother's grandchildren.

Upon the death of each son, his lifetime interest in the trust property terminates and transfers by prior directive of the transferor/Mother to the other surviving sons and, ultimately, to her grandchildren. Since Mother is the transferor, either the parent/child exclusion or the grandparent/grandchild exclusion may apply to exclude each of the transfers from change in ownership provided that all of the requirements of Revenue and Taxation Code section 63.1 are met. C 2/8/1999.

[220.0787 \(../..../proptaxes/pdf/220_0787.pdf\)](#) **Trusts.** If cash held by irrevocable trusts is used to purchase ownership interests in legal entities, then the present beneficial interests in those ownership interests become vested in the trusts. Termination of the trusts and distribution of the ownership interests in the legal entities to the respective present beneficiaries as individuals are not transfers of the present beneficial interests in the properties held by the trusts and, therefore, no changes in ownership occur. Furthermore, because the beneficiaries hold the present beneficial interests in the ownership interests prior to distribution, there is no transfer of ownership interests which might trigger a change in ownership of real property owned by the legal entities. Thus, the ownership interests distributed are not cumulated or counted for purposes of subdivision (d) of Revenue and Taxation Code section 64, and are not considered for purposes of determining whether a single person or entity has acquired "control" within the meaning of subdivision (c) of section 64. C 10/22/1997.

[Back to top \(#top\)](#)

[220.0790 \(../..../proptaxes/pdf/220_0790.pdf\)](#) **Trusts.** The transfer of real property into an irrevocable trust places legal title to the property in the trustee and equitable title thereto in the named beneficiary. Therefore, if the trust had been created prior to the adoption of article XIII A of the California Constitution, the beneficiary became the owner of the trust property at that time, and the subsequent distribution of the property by the trust to the beneficiary would be excluded from change in ownership. C 2/29/1988.

[220.0791 \(../..../proptaxes/pdf/220_0791.pdf\)](#) **Trusts.** The transfer by each of two persons as to an undivided one-half interest in real property to an irrevocable trust, reserving to themselves the entire net income of the trust, is excluded from change in ownership since the trustors are the present income beneficiaries of the trust. On the termination of the trust, a transfer of the property to the trustors could be excluded from change in ownership (Revenue and Taxation Code section 62(d)), as could a transfer of the property to a parent or child of one or both of the trustors (Revenue and Taxation Code section 63.1). C 9/20/1988.

[220.0792 \(../..../proptaxes/pdf/220_0792.pdf\)](#) **Trusts.** The sale of a residence held in an inter vivos, irrevocable "qualified personal residence trust" by the trustee back to the trustor prior to the termination of the trust is excluded from change in ownership. Since the trustee is transferring mere legal title, there is no change in ownership under Property Tax Rule 462.240(a). Further, since the trustor currently has beneficial ownership, the merger of legal and beneficial title in the trustor is excluded from change in ownership under Revenue and Taxation Code section 62(d). C 10/14/1999.

[220.0793 \(../..../proptaxes/pdf/220_0793.pdf\)](#) **Trusts.** A transfer of the present beneficial interest in a trust owning an interest in a partnership that owns real property is a transfer of the partnership interest for change in ownership purposes that can result in a change in ownership of the partnership real property. C 8/10/2000.

[220.0794 \(../..../proptaxes/pdf/220_0794.pdf\)](#) **Trusts.** Certain real property is owned by a grandparent's trust, which became irrevocable upon the grandparent's death. Under the terms of the trust, grandparent's child is the present lifetime beneficiary of the trust with the remainder to the grandchildren. It is proposed that the property be transferred to a limited liability company (LLC) of which the trust would be the sole member. Upon the death of the child, the LLC would be dissolved and the property would be transferred from the LLC to the trust and then distributed to the grandchildren. However, the proposed transfer of real property from the trust to an LLC will result in the grandchildren receiving interests in the LLC upon child's death, rather than real property. The transfer of interests in an LLC from a grandparent to a grandchild is not eligible for the grandparent-grandchild exclusion. C 10/1/2007.

[220.0810 \(../..../proptaxes/pdf/220_0810.pdf\)](#) **Trusts—Charitable Remainder.** Such trusts, whether called charitable remainder annuity trusts, charitable remainder unitrusts, or charitable remainder net income trusts, involve a transfer of property to an irrevocable trust, with the income therefrom reserved to the trustor or other non-charitable beneficiary and with a charitable remainder in the property at the termination of the income interest. Accumulated but undistributed trust income is added to the trust principal and distributed to the charitable remainderman.

The transfer to the trust would not be a change in ownership if the trustor or the trustor's spouse is the present income beneficiary of the trust. The charitable remainderman interest, even in the undistributed income, is not a present one but is deferred until the trust terminates. C 8/30/1985.

[Back to top \(#top\)](#)

[220.0811 \(../..../proptaxes/pdf/220_0811.pdf\)](#) **Trusts—Defective Grantor Trust.** For federal income tax purposes, in exchange for an installment note, Grantor will transfer real property which is not used as his principal residence into an irrevocable intentionally defective grantor trust (IDGT). Once such property is transferred to the IDGT, Grantor would no longer have the power to sell or substitute the property. Grantor will not be a present or future beneficiary of the IDGT. Until the note to Grantor is repaid in full, although income may accumulate, no income may be paid out of the IDGT to any beneficiary. Once the IDGT has repaid the note, the IDGT trustee has discretion to distribute (or not distribute) income and/or principal to the beneficiary (or beneficiaries).

In this situation, Grantor proposes to transfer property to an IDGT of which he is not a beneficiary. Pursuant to Property Tax Rule 462.160(a), a transfer to the IDGT (an irrevocable trust) will result in a change in ownership unless an exclusion applies. For purposes of determining whether any exclusion(s) is available, the present beneficiaries of the IDGT will be regarded as the owner(s) of the property. A person may be the present beneficiary of a trust if current income may be paid to such beneficiary or accumulated in the trustee's discretion as long as no other person presently has a right to income or principal. If the present beneficiaries of the IDGT cannot receive distributions from the IDGT until the note has been repaid, they are nevertheless the present beneficiaries since no other person has the right to income or principal from the IDGT.

If Grantor's wife is the sole present beneficiary of the IDGT, then the interspousal exclusion would apply and no change in ownership would occur when the property is transferred to the IDGT. If Grantor has not used his \$1 million exclusion and Grantor's children become the present beneficiaries (upon the death of Grantor's wife or upon formation of the IDGT), by filing the appropriate claim forms the Grantor's children could utilize the parent-child exclusion. By contrast, if Grantor's nieces and nephews are the IDGT beneficiaries, no exclusion is available and a change in ownership would occur when Grantor transfers the property into the IDGT or when the nieces and nephews become the present beneficiaries of the trust or receive the remainder interest in the property upon wife's death. C 8/1/2012.

[220.0813 \(../..../proptaxes/pdf/220_0813.pdf\)](#) **Trusts—Income Beneficiary.** If trust provisions require that the accumulated income be distributed to one beneficiary on a regular basis, that sole present income beneficiary of the trust corpus is considered the owner of the trust for property tax purposes. Even though the trust allows the income beneficiary to direct the trustee to pay any of the trust principal or accumulated income to certain other named beneficiaries, the income beneficiary is considered to be the sole owner of the trust property because he is the sole *guaranteed* present income beneficiary. C 11/21/2008.

[220.0814 \(../..../proptaxes/pdf/220_0814.pdf\)](#) **Trusts—Land Trusts.** The characteristics of a land trust generally include the following: (1) the holding of both legal and equitable title of the trust property by the trustee; (2) management and control reserved to the beneficiary (or any person designated in writing by the beneficiary); (3) the beneficiary vested with the right to

direct the trustee to convey title; and (4) the interest of the beneficiary as personal property. As a result, business trusts and Illinois land trusts have some characteristics in common, such as the holding of legal and equitable title of the trust property by the trustee and the characterization of ownership interests in the entity as personal property. However, there is one significant difference between the entities: broad management powers are given to the trustee of a business trust to manage the entity, while management and control of an Illinois land trust are reserved to the beneficiary or beneficiaries of the trust. Thus, who controls the management of the entity, the trustee or the beneficiary, is the most significant characteristic in determining whether a business trust or an Illinois land trust has been created.

The sole owner of real property transferred the property into a land trust, an irrevocable trust; the transferor is the beneficiary of the trust; and legal title to the property in trust is held by a third party as trustee. The provisions of the trust provide that the trustee shall not act unless instructed to do so by the trust beneficiary, and that the trustee shall not manage or operate the trust properties. Thus, the subject land trust was not operated as a business entity, but rather for the holding and conservation of property. As a result, since the trustors are the present beneficiaries of the trust, Revenue and Taxation Code section 62(d) would apply to exclude the transfer of real property into the trust from a change in ownership. C 6/26/2000.

[Back to top \(#top\)](#)

[220.0815 \(../..../proptaxes/pdf/220_0815.pdf\)](#) **Trusts—Massachusetts or Business Trust.** A Massachusetts or business trust rather than a partnership is created where the contract vests management control in the trustees rather than the certificate unit holders. Nevertheless, such a trust should be treated as a separate legal entity for property tax purposes where the contract provides that (1) the organization is a separate legal entity having its own common law identity; (2) the trustees shall hold both equitable and legal title to the property of the organization; and (3) the ownership of certificate units, which are in the nature of shares of stock, shall not entitle the holder to any legal or equitable title or any undivided interest in the property of the organization. C 4/26/1994.

[220.0816 \(../..../proptaxes/pdf/220_0816.pdf\)](#) **Trusts—Massachusetts or Business Trust.** Whether trusts fall into the business trust or the non-business (or "ordinary" or "traditional" trust) category is generally a question of fact. First, business trusts differ from the common-law (traditional) trust in that the purpose of the traditional trust is to conserve property, with incidental powers of sale and investment, while the acknowledged goal of the business trust is to carry on a business enterprise for profit. Without a business purpose, a Trust cannot qualify as a business trust. Additionally, a business trust is formed by the voluntary, consensual act of the parties, and is based upon contract. In contrast, the beneficiaries of ordinary trusts do no more than accept the benefits thereof by gift from the settlor, and are not the voluntary planners or creators of the trust arrangement. Furthermore, the certificates representing shares of beneficial interest in a business trust resemble shares in a corporation and are issued and transferred in a similar manner. Holders are entitled to share ratably in the income of the trust and, upon termination of the trust, in the proceeds of the business. They also have the same right to examine the records of the trustee as do shareholders in a corporation. Further, a court will examine the "economic realities of the situation" to determine the validity of a business trust. If a trust is a valid business trust, it should be regarded as a legal entity for property tax law purposes. Therefore, the legal entity rules governing transfers of property to and from legal entities would apply. C 9/10/2012.

[220.0818 \(../..../proptaxes/pdf/220_0818.pdf\)](#) **Trusts—Powers of Appointment.** California Civil Code section 600 and following sections provide for the creation of a power of appointment whereby a person may appoint or transfer to others an interest in property held by an inter vivos or testamentary trust.

If a power of appointment allows for the transfer of property from the trust to the holder of the power, his estate, his creditors, the creditors of his estate, or any of them, it is a general power of appointment. A grant of a general power of appointment is equivalent to a grant of absolute ownership. Thus, the exercise of a general power of appointment in favor of the decedent's spouse and children is legally equivalent to the transfer by the decedent of the property held by the trust to the decedent's spouse and children.

To the extent that a trust includes interests in real property, a transfer of real property through exercise of a general power of appointment may qualify for the interspousal exclusion if to a spouse, or for the parent-child exclusion if to a child, provided timely claims for exclusion are filed and all other requirements of Revenue and Taxation Code sections 63 or 63.1, as appropriate, are satisfied. C 12/26/1990.

[220.0819 \(../..../proptaxes/pdf/220_0819.pdf\)](#) **Trusts—Resulting Trust.** An individual purchased parcels of land and recorded title in his nominee's name. Purchaser delivered the purchase money with his checks, paid all taxes, recorded a continuing farming agreement, and had a verbal agreement and a power of attorney from the nominee. The nominee executed quitclaim deeds

conveying title to the purchaser shortly after the purchase, but they were not recorded until years later in conjunction with the purchaser's transfer of the parcels to his trust.

The nominee's transfer of the parcels by quitclaim deeds to the purchaser did not result in a change in ownership either when the deeds were delivered or when they were recorded, since the nominee was not the beneficial owner of the parcels. While Evidence Code section 662 provides that the owner of legal title is also the beneficial owner of the property, this presumption may be rebutted by clear and convincing proof that another person has beneficial ownership. In addition to the possibility of a nominee relationship, a resulting trust is established when the evidence shows that a transfer of property is made to one person, and the purchase price is paid by another. C 8/25/1992; C 8/1/1994.

[Back to top \(#top\)](#)

[220.0820 \(../..../proptaxes/pdf/220_0820.pdf\)](#) **Trusts—Security Interest Transfers.** The use of a trust arrangement to protect the interest of a "beneficiary" who obtains refinancing for property owned and occupied by the nominal trustor does not result in a change of ownership if the tests contained in Property Tax rule 462(k) are satisfied, thereby overcoming the Civil Code section 1105 rebuttable presumption that a conveyance (including one made to a trust) is what it is purported to be; i.e., a transfer of property. C 4/30/1991.

[220.0821 \(../..../proptaxes/pdf/220_0821.pdf\)](#) **Trusts—Sprinkle/Spray Provisions.** A transfer of real property to an irrevocable trust results in a change in ownership when, under the terms of the trust, the trustee may exercise his or her discretion by distributing all of the trust income or principal to one or more unidentified beneficiaries for whom no change in ownership exclusion is available. Pursuant to Property Tax Rule 462.160(b)(1)(A), a transfer of real property to an irrevocable trust with a "sprinkle/spray" provision results in a change in ownership unless *all* of the persons included as beneficiaries under that provision qualify for an exclusion from change in ownership. C 7/22/2002; C 11/5/1999; C 8/13/2013.

[220.0823 \(../..../proptaxes/pdf/220_0823.pdf\)](#) **Trusts—Successor Trustee.** When a trustor-trustee becomes incapacitated and another person succeeds as successor trustee, no change in ownership occurs as long as the trustor remains the present beneficiary of the trust. For change in ownership purposes, it is necessary to look through the trust to determine the parties between whom a transfer is taking place. If there is no transfer of the beneficial interest, then no change in ownership occurs. C 11/15/2006.

[220.0830 \(../..../proptaxes/pdf/220_0830.pdf\)](#) **Trusts—Resolution Trust Corp. (RTC) and Federal Savings/Loan Insurance Corp. (FSLIC).** When the RTC takes control of the assets of a failed savings institution or when the FSLIC takes control of the assets of a failed bank, each does so as a conservator or receiver and must manage the property for the benefit of the failed entity, its shareholders and its creditors. Since there is not a transfer of a beneficial interest in real property to the conservator/receiver, there is no change in ownership.

Property held by either of these federal entities is pursuant to express federal law subject to property tax and transfers of real property by them to individuals or other entities constitute changes in ownership unless a specific Revenue and Taxation Code exclusion is applicable. C 2/1/1991.

[Back to top \(#top\)](#)

[220.0855 \(../..../proptaxes/pdf/220_0855.pdf\)](#) **Undivided Interest.** Upon transfer of an undivided interest in property, only the interest or portion transferred will be reappraised. However, a transfer of an undivided interest with a market value of less than 5 percent of the value of the total property will not be reappraised if the market value of the interest transferred is less than \$10,000. A transfer of an undivided interest of 1 percent is subject to reappraisal if the value of the property transferred equals or exceeds \$10,000. Transfers during a single assessment year must be cumulated to determine if the transfers exceed the allowable minimums. LTA 12/9/1980 (No. 80/180).

[220.0860 \(../..../proptaxes/pdf/220_0860.pdf\)](#) **Unincorporated Association.** As unincorporated associations are entitled to general recognition as separate legal entities (*White v. Cox*, 17 Cal.App.3d 824), and as Revenue and Taxation Code section 61(i) provides that the transfer of any interest in real property between a legal entity and an individual is a change in ownership, the transfer of property by an unincorporated association to various individuals, some members and some not, gives rise to reappraisal of the entire property since the members do not retain the same proportional interests in the property after the transfer as required by Revenue and Taxation Code section 62(a). C 5/13/1981.

[220.0865 \(../..../proptaxes/pdf/220_0865.pdf\)](#) **U.S. Forest Service Permittees.** Changes in ownership may occur when an association of U.S. Forest Service permittees combines to purchase land and then exchanges the newly purchased land for the sites the permittees have been using and have been assessed possessory interests for in prior years. In effect, the permittees are purchasing reversionary interests and become absolute owners of the sites.

1. The creation, renewal, sublease or assignment of a taxable possessory interest in tax exempt real property, whether the reversionary interest or the leasehold interest, constitutes a change in ownership of the entire property. Thus, reappraisal of the entire sites is proper since reversionary interests/taxable possessory interests have been transferred.
2. With regard to improvements on the sites, the specific circumstances will govern:
 - (a) No change in ownership occurs where permittees have held title to the improvements through the years.
 - (b) Where the Forest Service has held title to the improvements through the years, the improvements should be treated like the sites and reappraised entirely.

Relevant considerations in this regard are who built the improvements; whether the lease, contract, or other written instrument provides who has title to the improvements; and whether permittees are able to remove the improvements at the end of their terms or whether they must leave them on their sites. Where a permittee built the improvement and is required to remove it at the end of the term, title can be said to be held by the permittee. On the other hand, where title to the improvement vests in the Forest Service (regardless of who built it) or a permittee cannot remove the improvement at the end of the term, title is held by the Forest Service. C 3/6/1983.

[220.0867 \(../..../proptaxes/pdf/220_0867.pdf\)](#) **Unrecorded Transfer.** Deeds are used when an owner of an interest (the grantor) transfers, sells, or gives the interest to another (the grantee) by executing a written document with certain requirements. The requirements for a valid deed are a grantor, a grantee, a writing and subscription, delivery, and acceptance. Recordation is not required. Thus, an unrecorded deed is valid as between the parties and as to all those who have notice thereof. Revenue and Taxation Code section 405 provides that the assessor may assess the property on the secured roll to "the person owning, claiming, possessing, or controlling it on the lien date." If the assessor accepts an unrecorded deed as conveying full interest in property, the former owner's name should be removed from the secured tax roll. C 2/24/2016.

[220.0870 \(../..../proptaxes/pdf/220_0870.pdf\)](#) **Void Contract.** A contract of sale which is void from the inception under Civil Code section 1041 does not result in a change in ownership and may not be the basis for reappraisal. C 7/16/1980; C 1/21/2009.

[220.0871 \(../..../proptaxes/pdf/220_0871.pdf\)](#) **Void Contract.** A void contract, agreement etc. is without legal significance from the outset, whereas, a voidable contract, agreement etc. is effective until rescinded or voided. A transfer of property which is voidable results in a change of ownership, a reappraisal and taxes based on the new value. If the transfer is rescinded or voided, no refund of taxes would be due. The opposite is true when a transfer is void from the outset. In that case, the base year value at the time of the execution of the agreement should be reinstated, factored to its current assessable value and enrolled. The taxes paid on the value of the property based on the void transfer should be refunded. C 9/25/1989; C 1/21/2009.

[220.0875 \(../..../proptaxes/pdf/220_0875.pdf\)](#) **Water Rights.** A limited partnership owns water rights to 6,490 acre feet of groundwater. The partnership will transfer to its various limited partners all of its water rights as a part of the dissolution of the partnership. If the incidence of ownership of the water rights owned by the individual former partners does not remain the same before and after the transfers, the transfer would constitute a change in ownership of the property transferred, resulting in a 100 percent reappraisal of the water rights pursuant to Revenue and Taxation Code section 61(j). C 3/30/1998.

[Back to top \(#top\)](#)

[220.0878 \(../..../proptaxes/pdf/220_0878.pdf\)](#) **Wetlands Credits.** Wetlands credits relate to zoning and development restrictions and the purchase of such credits does not transfer a present interest in real property and should not be treated as an appraisal event. Wetlands credits are distinguishable from transferable development rights (TDRs) in that wetlands credits do not transfer any part of the bundle of rights arising from the ownership of a wetlands mitigation bank site to a permittee. Wetlands credits are further distinguishable from TDRs by the fact that TDRs are development rights that have gone unused by the seller. In other words, TDRs come into existence regarding a property and have value because the property was not fully developed, such that the TDRs represent an unused "right" in the property. The seller of TDRs had development rights to his property but has decided to not fully exercise those rights. With the sale of the TDRs, the seller loses his right in perpetuity to further develop his property.

Wetlands credits, on the other hand, have no such characteristics. A purchaser of wetlands credits must purchase these credits as a prerequisite for development, but the seller ("bank") continues to own the wetlands. The seller of wetlands credits, a wetlands mitigation bank, does not lose an unused "right" as the result of selling wetlands credits. As such, the transfer of wetlands credits should not be treated as an appraisable event since the wetlands remain assessable to the seller ("bank"). C 5/3/2001.

[220.0880 \(../..../proptaxes/pdf/220_0880.pdf\)](#) **Wills.** A parent's transfer of property by will to his/her children on a share and share alike basis, without further limitations, makes the children "owners in common" of all of the estate property. See Probate Code section 6143.

Unless the will allows for the distribution of estate assets on a pro rata or non-pro rata basis, a distribution of a single asset to one child will be considered a transfer by the siblings of their interests in the asset and a transfer by the deceased parent of the "owner in common" interest provided for in the will. C 8/6/1990; C 5/26/1994.

[220.0881 \(../..../proptaxes/pdf/220_0881.pdf\)](#) **Wills.** A parent's transfer of property by will to his/her children in equal shares makes the children "owners in common" of the estate property. A child's claim that the parent had taken title to his/her undivided interest in a residence at the time of purchase merely as a security device, in order to secure the repayment of funds advanced by the parent in the purchase of such residence, must be substantiated by clear and convincing evidence. Without such evidence, the property would pass to the children for which the parent-child exclusion is available. Any subsequent transfers between the siblings would be considered changes in ownership for which no exclusions are available. C 6/5/1989.

[220.0885 \(../..../proptaxes/pdf/220_0885.pdf\)](#) **Wills—Share & Share Alike.** Whether a change in ownership occurs when a child receives a 100 percent interest in real property from a parent's estate when the estate is distributed according to a will on a share and share alike basis depends on whether the will gives the executor a clear grant of broad discretion to distribute property in kind on a pro rata or non-pro rata basis. LTA 1/23/1991 (No. 91/08); C 2/19/2009.

[220.0890 \(../..../proptaxes/pdf/220_0890.pdf\)](#) **Working Interests and Royalties.** Upon the transfer of the right to extract oil and gas, the entire interest (working interest and royalty) should be revalued at market value as of the date of the transfer. The transfer of a royalty interest alone, however, does not give rise to a reappraisal of the mineral rights. LTA 1/27/1981 (No. 81/15).

[220.0895 \(../..../proptaxes/pdf/220_0895.pdf\)](#) **Working Interests in Term Oil and Gas Leases.** Where mineral reserves measured in terms of years exceed lease periods for which working interests therein have been entered into, both working interests and reversionary interests are created. In such instances, the transfers of working interests are not equivalent to transfers of fee interests. Rather, the terms of the lease periods are determinative (Revenue and Taxation Code section 61(c)(1)), and where lease periods are for terms less than 35 years, transfers thereof do not constitute changes in ownership. Where lease periods are for terms more than 35 years, however, transfers thereof are changes in ownership, with the result that the transfers give rise to reappraisals. C 10/2/1980.

[220.0900 \(../..../proptaxes/pdf/220_0900.pdf\)](#) **Zoning Change.** A change of zoning does not constitute a change in ownership and, therefore, is not a basis for reappraisal under article XIII A of the California Constitution. C 11/20/1978.

[Back to top \(#top\)](#)

Taxpayers' Rights Advocate (www.cdtfa.ca.gov/tra/)

TALK WITH BOE

[How to Contact Us \(www.cdtfa.ca.gov/contact/\)](http://www.cdtfa.ca.gov/contact/)

[Sign Up for BOE Updates \(www.cdtfa.ca.gov/info/enotify.htm\)](http://www.cdtfa.ca.gov/info/enotify.htm)

[Report Problems with Website \(www.cdtfa.ca.gov/app/webissues.aspx\)](http://www.cdtfa.ca.gov/app/webissues.aspx)

SOCIAL MEDIA

-  (<https://www.facebook.com/CABoardOfEqualization>)
-  (https://twitter.com/CA_BOE_News)
-  (<https://www.instagram.com/boardofequalization/>)
-  (<https://www.linkedin.com/company/california-state-board-of-equalization/>)
-  (<https://www.youtube.com/user/BoardOfEqualization>)
-  (www.cdtfa.ca.gov/news/newsRSS.xml)

BOE RESOURCES

- [BOE Open Data Portal \(www.cdtfa.ca.gov/dataportal/\)](http://www.cdtfa.ca.gov/dataportal/)
- [Annual Report \(www.cdtfa.ca.gov/legislative-research-and-stats/research-and-stats.htm#Reports_Resources\)](http://www.cdtfa.ca.gov/legislative-research-and-stats/research-and-stats.htm#Reports_Resources)
- [Accessing Public Records \(www.cdtfa.ca.gov/info/publicrecords.htm\)](http://www.cdtfa.ca.gov/info/publicrecords.htm)
- [Careers at BOE \(https://jobs.ca.gov/CalHRPublic/Search/JobSearchResults.aspx#depid=304\)](https://jobs.ca.gov/CalHRPublic/Search/JobSearchResults.aspx#depid=304)

[Tax Appeals \(www.cdtfa.ca.gov/appeals/\)](http://www.cdtfa.ca.gov/appeals/)

LEGAL RESOURCES

- [Legal Department \(www.cdtfa.ca.gov/legal/legaldiv.htm\)](http://www.cdtfa.ca.gov/legal/legaldiv.htm)
- [Legislation \(www.cdtfa.ca.gov/legislative-research-and-stats/\)](http://www.cdtfa.ca.gov/legislative-research-and-stats/)
- [Current Litigation \(www.cdtfa.ca.gov/legal/litroster.html\)](http://www.cdtfa.ca.gov/legal/litroster.html)
- [Laws, Annotations, Rules and Regulations \(www.cdtfa.ca.gov/info/annotations.html\)](http://www.cdtfa.ca.gov/info/annotations.html)
- [Business Taxes Law Guide \(https://www.cdtfa.ca.gov/lawguides/#BTLG\)](https://www.cdtfa.ca.gov/lawguides/#BTLG)
- [Property Taxes Law Guide \(www.cdtfa.ca.gov/lawguides/#Property-Taxes-Legal-Resources\)](http://www.cdtfa.ca.gov/lawguides/#Property-Taxes-Legal-Resources)
- [Bankruptcy \(www.cdtfa.ca.gov/legal/legalbankruptcy.htm\)](http://www.cdtfa.ca.gov/legal/legalbankruptcy.htm)

[Additional Legal Resources \(www.cdtfa.ca.gov/legal/lrr.htm\)](http://www.cdtfa.ca.gov/legal/lrr.htm)

EXTERNAL TAX RESOURCES

- [California Department of Tax and Fee Administration \(https://www.cdtfa.ca.gov/\)](https://www.cdtfa.ca.gov/)
- [Unclaimed Property Program \(SCO\) \(https://www.sco.ca.gov/upd_msg.html\)](https://www.sco.ca.gov/upd_msg.html)
- [Property Tax Postponement Program \(SCO\) \(https://www.sco.ca.gov/ardtax_prop_tax_postponement.html\)](https://www.sco.ca.gov/ardtax_prop_tax_postponement.html)
- [California Mortgage Relief Program \(https://camortgagerelief.org/\)](https://camortgagerelief.org/)
- [Secretary of State Business Programs \(https://www.sos.ca.gov/business/be/starting-a-business.htm\)](https://www.sos.ca.gov/business/be/starting-a-business.htm)
- [Employment Development Department \(https://www.edd.ca.gov/payroll_taxes/\)](https://www.edd.ca.gov/payroll_taxes/)
- [Franchise Tax Board \(https://ftb.ca.gov/\)](https://ftb.ca.gov/)
- [Office of the Governor \(https://gov.ca.gov/\)](https://gov.ca.gov/)

[Disclaimer \(www.cdtfa.ca.gov/info/disclaimer.htm\)](http://www.cdtfa.ca.gov/info/disclaimer.htm)

[Descargo de responsabilidad \(www.cdtfa.ca.gov/info/disclaimer_s.htm\)](http://www.cdtfa.ca.gov/info/disclaimer_s.htm)

[Privacy Policy \(www.cdtfa.ca.gov/info/privacy.htm\)](http://www.cdtfa.ca.gov/info/privacy.htm)

[Accessibility \(www.cdtfa.ca.gov/info/accessibility.htm\)](http://www.cdtfa.ca.gov/info/accessibility.htm)

 [Accessibility Certificate](#)

[Conditions of Use \(www.cdtfa.ca.gov/info/conditofuse.htm\)](http://www.cdtfa.ca.gov/info/conditofuse.htm)

[Register to Vote \(http://registertovote.ca.gov/?t=n&id=12\)](http://registertovote.ca.gov/?t=n&id=12)

[Languages \(www.cdtfa.ca.gov/languages.htm\)](http://www.cdtfa.ca.gov/languages.htm)