



CALIFORNIA ASSESSORS' ASSOCIATION

POSITION PAPER: 04-002

DATE: August 5, 2004

SUBJECT: Application of Rule 462.240(k) – The Following Transfers do not constitute a Change in Ownership – Domestic Partner exclusion

RECOMMENDED ACTION: It is recommended that the Assessor follow the rule as written, and apply the exclusion only when separate property is inherited by a surviving domestic partner, as defined by subdivision (b) of section 37 of the Probate Code, by intestate succession. Inheritance by a domestic partner by will, trust, or other estate plan would not qualify. Letter to Assessors 2004/023, Question 11, incorrectly broadens the exclusion as stated and intended in Property Tax Rule 462.240(k).

BACKGROUND/DISCUSSION: The original proposal to amend Property Tax Rule 462.240 by adding subsection (k) was tied to the passage of AB 2216. AB 2216 was specifically intended to allow domestic partners to inherit under the laws of intestacy in the same manner as a surviving spouse. It identifies that a domestic partner has always been able to inherit under a will, trust, or estate plan. This bill was to diminish undue economic hardship on the surviving domestic partner when the deceased partner died *without* a will, trust, or estate plan. Proponents of the bill pointed to a study that shows that fewer than 43% of Californians prepare a will (and by implication a trust or an estate plan, since the study related to intestacy).

As stated above, domestic partners have always been able to inherit under a will, trust, or estate plan. Their right to inheritance, however, has not previously provided them with any exclusion from reassessment for property tax purposes, unless they have qualified under some other specific exclusion. AB 2216 does not address the property tax exclusion issue, and makes no changes to existing property tax laws.

In Letter to Assessors 2003/038, dated May 23, 2003, the proposed amendment to the rules was worded as follows:

The following transfers do not constitute a change in ownership:

(k) Any transfer of separate property as defined in Revenue and Taxation Code section 401.4, inherited by a surviving domestic partner, as defined in subdivision (b) of section 37 of the Property Code, whether by intestate succession, will, or trust, or other estate plan, upon the death of a registered domestic partner.

In Letter to Assessors 2003/052, dated July 22, 2003, the proposed amendment had been revised following a public hearing on July 9, 2003. The revision deleted the reference to Revenue and Taxation Code section 401.4, and deleted the reference to “trusts, wills or other estate plans.” The letter states, “The changes makes the rule consistent with the statutory provisions under which the Board has adopted these amendments.”

If the rule had intended an exclusion for domestic partners inheriting under “trusts, wills or other estate plans,” the rule would not have needed amending. No discussion would have been needed about what was intended, since the language would have made clear the intent. The amendment makes clear the rule is meant to exclude what it plainly states should be excluded, “Any transfer of separate property inherited by a surviving domestic partner...by *intestate* succession....” (Emphasis added.) [The courts look to “the plain meaning of [the rule]” in making a decision. *Pacific Southwest Realty Co. vs. County of Los Angeles* (1991) 1 Cal.4th 155, 159]

Letter to Assessors 2004/023 states, “Since the Legislature enacted AB 2216 to ensure that any surviving registered domestic partner would not suffer economic hardship from succeeding to the property interests of his/her deceased partner, regardless of whether the partner died testate or intestate, subdivision (k) should be applied in a manner that carries out the Legislature’s intent of affording all surviving registered domestic partners the same protections as surviving spouses.”

In fact, AB 2216 recognized the pre-existing rights of domestic partners to succeed under a will, trust, or estate plan, and does not specifically address any of those rights. It seeks only to recognize surviving domestic partners in the case of intestacy, and seeks to mitigate possible economic hardship for domestic partners in that particular situation. Nowhere in AB 2216 does it make any mention of property tax or exclusions that should or must be allowed under any other code sections.

Since the rule change was tied directly to the bill allowing succession under the laws of intestacy, the State argues that therefore all other successions, including trusts, wills, and estate plans should also qualify. They imply that because the bill gives domestic partners parity to surviving spouses under the laws of intestacy, therefore domestic partners should be given parity to spouses in all transfers by death under property tax law.

Civil Code section 300 states that a marriage is a civil contract between a man and a woman. Clearly, any “parity” between domestic partners, the majority of whom are either both men or both women, is only as stated in very specific language of various code sections, and should only relate to those very specific rights. AB 2216 only allowed domestic partners parity with surviving spouses under the specific circumstance of intestacy. It does not, and is not intended, to provide “parity” under any other circumstance.