

PROPERTY TAX ALERT: THE IMMEDIATE IMPACTS OF PROPOSITION 19 ON PROPERTY TAXES

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With the passage of Proposition 19 last month, California property owners will see some of the most dramatic changes to property tax laws in recent years. Positively, the Proposition extends the benefits available to certain homeowners to allow more homeowners to sell their homes and purchase new homes without triggering substantially higher property taxes. The downside for many property owners, however, is the effect that Proposition 19 will have on certain intra-family transfers.

Property owners who have planned to leave the family cabin to a child only have until February 15, 2021, to take the necessary action to preserve the current California property tax benefits for future generations. We encourage anyone intending to transfer ownership of California real property to a child or grandchild to speak to their estate planning attorney immediately.

Changes to the Parent-Child Exclusion

Proposition 19 eliminates the parent-child and grandparent-grandchild exclusion from reassessment for properties other than a “family home.” Prior to the passage of Proposition 19, and through the effective date of February 16, 2021, a parent can transfer a primary residence and an additional \$1,000,000 of assessed value in any other property (rental properties, commercial property, vacation home, etc.) to children or grandchildren and the property’s value for tax assessment purposes is not reassessed.

After February 16, 2021, however, unless a property is both the parents’ residence and the child makes it his or her residence, there will be reassessment to current value for property tax purposes. Furthermore, even if the residence becomes the child’s personal residence, there is a

cap of \$1,000,000 on the exclusion, meaning that if the increase in fair market value is greater than \$1,000,000, the portion of the fair market value above the first \$1,000,000 will be reassessed and added to the property tax assessed value.

Knowing that property tax laws affecting reassessment will be changing in a little over two months, planning opportunities still exist for parents until February 16, 2021, especially when parents are considering gifting or selling California real estate to their children and desire to keep the low property tax base for their children. Caution is advised, however, as gifting involves several financial and tax issues, including income tax basis. Property transferred by gift takes a carry-over basis while property transferred at death, under current law, receives a step-up in income tax basis. Don't let the property tax tail wag the dog. A parent may be relying on the income being produced by real estate for living expenses. Children may ultimately want to liquidate property after the parent dies. If children acquire carry-over basis property received from a lifetime gift, they lose the step-up in basis at the death of the parent, subjecting them to capital gain taxes on sale of the property. A careful analysis needs to be completed before gifts are made solely to save property taxes.

Changes to Property Tax Calculation for Homeowners

Under existing law, which modified the original Proposition 13 homeowners over 55 years of age or certain disabled persons are entitled to retain their existing tax level if they sell their home and move to a new property, so long as (1) their new home is in the same county as their old home; and (2) the value of their new home is less than or equal to the value of their old home.

This portion of the new law, which takes effect on April 1, 2021, expands the class of homeowners who are able to transfer their taxable value to include victims of wildfire or other natural disasters, regardless of age or disability status. The new law also removes the restriction that the replacement home must be in the same county as the old home. Now such replacements must simply be in California.

No real planning needs to be done in connection with this change, but homeowners should be aware of these new opportunities to transfer their low property tax base when they move. Keep in mind that the ability to transfer such taxable value is not automatic, and homeowners who wish to make use of the benefit must apply for the benefit by filing a claim with the assessor and

providing certain information required by the statute.

As always, please contact one of the attorneys in the Estate Planning Department of Trainor Fairbrook if you have questions regarding how Proposition 19 can impact your estate plan.