



## **Domestic Partner Policy for the Office of Assessor-Recorder Phil Ting Updated September 2008**

I uphold a commitment to the residents of San Francisco to apply California revenue and taxation laws in a fair, just, and consistent manner for all property owners.

As you may be aware, the property tax treatment of registered domestic partners under California property tax law has gone through a number of changes in recent years. In addition to the information that has been previously posted on our website, there have been additional changes to the property tax law for couples who are married, registered domestic partners, non-registered domestic partners and those living together as co-owners of real property.

### **California State Law**

A change in ownership of real property is defined as a transfer of the ownership in the property that also includes the right to use the property and is typically accompanied by a property tax re-assessment. The California Revenue and Taxation Code, Section 60, defines a change in ownership "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." This state law includes some exceptions to what is considered "change in ownership". These exceptions are known as exclusions in the law and pertain to real property transfers occurring between spouses and registered domestic partners. Parent(s) and Child(ren), Child(ren) and Parent(s), Grandparent(s) to Grand(child), may be excluded provided a claim form is submitted and all the requirements are met.

### **Transfers between Married Couples**

The transfer of real property between spouses will not cause a reappraisal as it is excluded from the change in ownership definition. The definition of married couples includes both same-sex as well as opposite sex couples. This exclusion includes transfers between spouses pursuant to a divorce decree as well as transfers resulting from the death of a spouse. The purpose is to protect a surviving spouse when a death occurs or when a spouse retains property in a divorce settlement.

### **Registered Domestic Partner Exclusion**

According to state law, in order to be eligible for this exclusion, domestic partners must be registered with the California Secretary of State. In order to be registered, the couple must file a Declaration of Domestic Partnership with the state. State law enacted in 2007 provides retroactive relief for any real property transfer between registered domestic partners that occurred between 1/1/2000 and 1/1/2006. This law (SB 559) provides registered domestic partners with the same retroactive assessment benefits that are granted to other parties who are eligible for assessment exclusions. If a property owner can substantiate that he/she was in a registered domestic partnership at the time of the transfer, this relief will be applied on a retroactive basis.



### **Joint Tenancy Exclusion**

With the passage of Rule 462.040 in 2003, the State Board of Equalization amended the joint tenancy rules to allow for surviving joint tenants to inherit a property interest from a decedent joint tenant without being reassessed. This means that two individuals who own real property as tenants-in-common can transfer such property into a joint tenancy resulting in each joint tenant being considered an “original transferor”. This exclusion is available to non-registered domestic partners. The death of either joint tenant would not trigger a tax reassessment since the surviving joint tenant remains an “original transferor”. Utilizing Rule 462.040, non registered domestic partners are able to implement their own estate planning by being on title as joint tenants, which would allow each of them to qualify as “an original transferor.” This exclusion applies to both residential and commercial properties.

### **Domestic Partners not registered with the State**

There are a number of reasons why some couples will chose to register as Domestic Partners with the State of California. Some may chose to instead register as domestic partners with the City and County of San Francisco, and some may not register at all. For those not registered with the state, exclusion may be available under those provisions described above.

### **FAQs**

- (1) Do I have to be in a registered domestic partnership in order for the real property exclusion to apply?

Yes, in order for the registered domestic partnership exclusion to be applicable, both the Grantor (transferor) and Grantee (transferee) are required to be registered domestic partners with the State of California at the time the real property is transferred. However, even if you and your partner are not registered domestic partners, the joint tenancy or the co-tenancy exclusion discussed above may be applicable.

- (2) Does the domestic partnership exclusion apply to members of the opposite sex?

Yes, provided that they are registered with the state of California.

- (3) My partner and I are registered as domestic partners with the City and County of San Francisco, do we need to be registered with the California Secretary of State?

You and your partner are required to be registered domestic partners with the California Secretary of State in order to obtain the full benefits of California’s domestic partnership exclusion. This form is available on the California Secretary of State’s website at [www.sos.ca.gov](http://www.sos.ca.gov).

- (4) My domestic partner transferred a 30% interest in her personal residence to me as a tenant-in-common. Is the transfer exempt from reassessment?



No, the transfer will constitute a change of ownership because you and your partner were not registered domestic partners with the state at the time the transfer occurred. Therefore, the transfer is not exempt from a tax reassessment.

- (5) My registered domestic partner transferred his separately held home into his living trust in which I am the beneficiary. Will the home be reassessed after his death?

No, the home will not be reassessed when it is transferred to you as the beneficiary of your partner's living trust because you and your partner were registered domestic partners at the time of his death.

- (6) My domestic partner and I have decided to terminate our domestic partnership. We have agreed to split the real property whereby he will transfer a 50% interest in our residence to me. I will take title as a tenant-in-common. The property is held in my partner's name alone. Does taking title to the residence as a tenant-in-common pursuant to the property settlement create a reassessment?

No, the home will not be reassessed provided that the transfer is in connection to a property settlement agreement that you and your former domestic partner executed. A change of ownership does not occur with regard to real property transfers to a domestic partner or former domestic partner in connection with a property settlement agreement or decree of dissolution of a domestic partnership or legal separation.

- (7) My partner and I are buying a home together. Other than being registered domestic partners with the state, is there anything else we need to do to ensure that the real property exclusion will apply?

Real property is reassessed when there is a change of ownership. Since you and your domestic partner are purchasing your home from a third party, there will be a change of ownership because title will transfer from the third party as the seller/transferor to you and your partner as the buyers/transferees. There is no exclusion that will prevent a tax reassessment. Afterwards, a transfer of an interest in the home between you and your partner will be exempt since you are both registered domestic partners. However, prior to taking title to the property, it is advisable that you and your partner consult with an attorney regarding a number of issues, including: (i) how to hold title to the property (joint tenancy vs. tenancy-in-common), (ii) whether you and domestic partner should have a written property agreement setting forth your rights and obligations regarding the co-ownership of the home; and (iii) how you and your domestic partner can utilize estate planning and tax planning strategies to minimize both federal and state property and income tax consequences.

- (8) Is my domestic partner required to actually own a partial interest in my real property in order for the exclusion to apply if I intend to transfer her all my property upon my death?



No, the exclusion will apply even if the property was held in your name alone as long as you and your partner were registered domestic partners at the time of your death (see example 5 above).

(9) What do I need to do if my domestic partner and I do not live in San Francisco?

If the property is located in San Francisco then any transfer of real property between you and your domestic partner will be exempt from a reassessment. If the real property is located elsewhere, you should contact the Assessor's office in the county where the property is located.

**PLEASE NOTE:** Before transferring real property and/or implementing an estate plan with your domestic partner, it is advisable that you and your domestic partners should first speak with an attorney, a financial planner, and/or CPA who understands the complexities involving estate planning, taxation, and/or family law with regard to domestic partnerships.