

MSK Blog



TRUSTS & ESTATES

Time to Make Gifts of California Real Property May be Running Out

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On November 3, 2020, Californians will vote on Proposition 19, the “Property Tax Transfers, Exemptions, and Revenue for Wildlife Agencies and Counties Amendment,” a measure that seeks to amend the California Constitution with respect to the current property tax system. If the proposed constitutional amendment passes, it will significantly narrow one of the most commonly used exemptions from property tax reassessment: that is, Proposition 58, the parent-child exemption.

Proposition 13, which was enacted by California voters in 1978 with 64.79% of the vote, mandates that real estate be reassessed for property tax purposes upon (1) a change of ownership, or (2) completion of new construction. When a change of ownership or completion of new construction occurs as to a real property, the local county assessor reassesses the property to its fair market value. The reassessed value then becomes the base figure used to determine the property taxes that will be levied on the property. While a property is maintained under the same ownership (*i.e.*, if neither of the ‘triggering’ events described above occur), then the assessed value of the property will increase by no more than 2% annually for property tax purposes, regardless of the actual market value of the property. In this way, California property owners have held on to real estate for years, decades, and even generations, while paying property taxes at a base figure that is drastically lower than the current value of the real estate.

In 1986, Proposition 58 was enacted to create an exception to the rule of Proposition 13. This measure exempts certain transfers of California real property between parents and children from reassessment, even though such transfers constitute a change of ownership and would otherwise trigger reassessment under Proposition 13. Specifically, the parent-to-child transfer of (1) a primary residence, and (2) the first \$1,000,000 of assessed value of other real estate (both residential and commercial) are exempt from reassessment and property tax increases under the current law. Note that the assessed value means the value on the property tax bill, not the property’s market value, making it possible for a parent to pass property worth well more than \$1,000,000 to children without reassessment. (The ballot measure’s effects will also impact Proposition 193, which exempts similar transfers between grandparents and grandchildren under limited circumstances.)

Earlier this year, the California Assembly and the California Senate approved Proposition 19 with a 2/3 majority vote, paving the way for the proposition to be included on the November ballot. Proposition 19 will significantly limit the scope of the Proposition 58 parent-child exemption. Accordingly, all real estate transfers between parents and children will be subject to property tax reassessment unless the transferee (in most cases, the child) uses the property as his or her primary residence. Furthermore, if the market value of the property exceeds \$1,000,000 as of the date of the transfer, an upward adjustment will be made to the assessed value. Proposition 19 will be enacted if it receives a majority of the popular vote in November. If it passes, the measure will take effect on February 16, 2021 and the revenue generated by the measure will be allocated to agencies that fight wildfires, and to the counties in which the properties are located. (In addition to the foregoing, Proposition 19 would allow property owners aged 55 and older, persons with severe disabilities, and victims of natural disasters and hazardous waste contamination to be eligible to transfer their assessed property values to a different home of equal or lesser market value.)

The November election will of course have far reaching consequences, potentially particularly impacting individuals with high net worth and/or real estate dominant balance sheets. Proposition 19, combined with the reduced value of real estate due to the economic effects of the coronavirus pandemic, and the possibility that the federal estate and gift tax exemption will be cut in half if Democrats control Congress and the White House, make now a better time than ever to make gifts of California real estate before the end of the year. The window to pass wealth and real estate to younger generations free of estate tax may be rapidly shrinking.

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