

# Kimball, Tiley & St. John LLP

## Proposition 19 and California Real Property Taxes

*Charles Scott, Esq.*

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Proposition 19 was passed at the recent election, amending Article XIII (A) of the California Constitution. As part of the measure, children who inherit their parents' houses will no longer receive a property tax break if they intend to keep it as a second home or rent it out. The measure will have a very serious effect on the traditional parent-child exemption from reassessment under Prop 13. Previously, transfers of the principal residence of a parent, and up to \$1 million of assessed valuation of other property, passed to children without being reassessed for local County property tax purposes, thereby preserving the benefits of Prop 13 for heirs and trust beneficiaries.

That has now changed dramatically. In the future, the exemption from property tax reassessment for property inherited from a parent (or grandparent if the parents are deceased) will only apply if the child becomes the owner/occupant of the real property, and files a homeowner's exemption application at the time of the transfer or within one year.

The other part of the new measure provides that older homeowners will receive a property tax benefit when they buy a more expensive home anywhere in the state, and can use that tax break up to three times. Homeowners with disabilities will also be able to do that, as well as victims of wildfires and other natural disasters whose homes are damaged.

Eliminating the former broad parent-child Prop 13 exemption from reassessment is a major change in the law, and it may affect the situation of many children inheriting California real property. There is a very brief window of opportunity before the law takes effect. The exact cutoff date is not entirely clear yet, and there are many unanswered questions. The consensus of most experts is that transfers completed and deeds recorded before February 15, 2021 will likely be able to take advantage of the former law and avoid reassessment, although there is no absolute guarantee as to how the courts will interpret it.

However, heirs should definitely not put this off until the last minute. If an heir or Trustee is planning on trying to transfer property to preserve the Prop 13 property tax benefits of the former parent-child transfer for property that the children do not intend to occupy (or even if they do intend to occupy it, to simplify qualifying) we recommend in the strongest possible terms to complete the transfer of ownership as soon as possible, rather than waiting until close to the deadline. Documents filed close to the deadline may not be recorded in time because of technical defects, particularly with the pandemic, where it is often not possible to record documents in person but only through the mail or a third party vendor. Heirs might not find out until it was too late if they push it right up until the last minute. Also, if anyone is contemplating taking out loans to equalize distributions to preserve the Prop 13 exemption, where one person takes encumbered real property and the others take cash, that is often a slow process that has last-minute glitches. In other words, that process needs to be started now.

That includes drafting and negotiating written distribution arguments between heirs, where certain people take certain pieces of property. If siblings take title together as co-owners from a trust or estate, they won't be able to preserve the full Prop 13 benefits if they do later partial-interest transfers between themselves. However, even if siblings can't come to a full agreement

on a distribution agreement, it may be better to take title together, to preserve at least partial Prop 13 benefits, rather than losing them completely under the new law.

This new law has nothing to do with the capital gains tax basis, which is a matter of Federal income tax law, and is not affected in any way by this new legislation. It also does not affect non-California real property. It affects local property taxes under Prop 13 for California real property only. The new measure also means that real property that is not going to be occupied by a child will presumably be reassessed for property tax purposes retroactive to the date of death, even if it is sold during trust or probate administration, so there will be increased property taxes due for the period between the date of death and the time of sale. That has not been the case up until now for most situations where children inherit and sell real property during trust or probate administration. There are other unanswered questions here, such as how it will apply to open administrations, where property exemptions were previously granted under the former parent-child rules but where property has not yet been deeded or distributed.

With the holidays approaching, this is the time to move quickly on this, if you plan to take title to a decedent's property and want to try to keep the Prop 13 benefits. We are available to research your individual situation and to advise you, and draw up appropriate documents, but time is short.

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- *Living trusts, wills, power of attorney, and health care directives*
- *Trust administration and distribution of estate assets*
- *Probate and non-probate administration*
- *Representation in probate, trust, guardianship and conservatorship matters*

*For additional information or assistance, contact Charles Scott or Leanne Maestre at (800) 574-5587 or [estateplanning@kts-law.com](mailto:estateplanning@kts-law.com).*

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