

Relocating and Wanting to Avoid Reassessment?

Lots of questions arise when an individual approaches retirement age and is also considering relocating. How and/or will the transfer be effected by Proposition 60 and/or Proposition 90. Proposition 60 deals with transfers of property *within* a county (intra) where as Proposition 90 involves properties of counties that have adopted the proposition. Currently, only eight counties support Proposition 90 (Alameda, El Dorado, Los Angeles, Orange, Santa Clara, San Diego, San Mateo and Ventura) so be sure to check with the assessor's office prior to making the purchase.

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Ordinarily, when the ownership of California real property changes, the property is reassessed at its current fair market value and the new owner pays property tax based on the reassessed value. However, the law provides certain exemptions from reassessment and, in certain instances, allows a taxpayer to transfer the base-year value of the property to a subsequent property without being reassessed. As a result of Proposition 13, a taxpayer's base-year value could be much lower than if based on the fair market value of the property.

This legal article summarizes some of the basic exemptions from property tax reassessment. The relevant California code sections are Revenue and Taxation Code Sections 63.1 (dealing with transfers between parents and children, as well as grandparents and grandchildren), 62 (dealing with transfers into revocable trusts), 63 (dealing with interspousal transfers), 69.5 (dealing with transfers by persons over 55 years of age or severely and permanently disabled persons).

[www.leginfo.ca.gov/.html/rtc_table_of_contents.html](http://www.leginfo.ca.gov/.html rtc_table_of_contents.html)

In addition, property which has had major renovations is normally subject to property tax reassessment. However, California law exempts certain property improvements from reassessment. More specifically, this legal article discusses Revenue and Taxation Code Sections 74.3 and 74.6 (dealing with improvements for disabled access), and 74.5 (dealing with seismic retrofitting improvements).

Readers should consult their own professional tax advisors when faced with situations not discussed in this article. This legal article is general in nature and slightly different facts may produce different results.

[SALE AND REPLACEMENT OF PRINCIPAL RESIDENCE BY TAXPAYERS 55 YEARS OF AGE OR OLDER.](#)

Q 1. *Is there a property tax reassessment exemption for taxpayers 55 years of age or older?*

A Yes. Under certain conditions as described below, a taxpayer who is 55 years of age or older may transfer the Proposition 13 base-year assessment value of his or her principal residence to any replacement dwelling of equal or lesser value in the same county and, sometimes, in another county (Cal. Rev. & Tax Code § 69.5(a)(1) and (2)).

Q 2. *Must the sale of the original property and the purchase of the replacement dwelling happen at the same time?*

A No. A taxpayer has either two years before the sale of the original dwelling or two years after the sale of the original dwelling to purchase or construct the replacement property. For this purpose, a "sale or purchase" occurs when title to the property is transferred (e.g., date of close of escrow). "Construction" occurs as of the date of completion. The taxpayer must actually own and occupy the new property as his or her principal residence within this period. __ (Cal. Rev. & Tax Code §§ 69.5(a)(1) and (b)(5).)

Q 3. *If the replacement dwelling is purchased or constructed before the original property is sold, can the base-year value be transferred at the time of the purchase or construction?*

A No. The base-year value of the original property cannot be transferred to the replacement dwelling until the original property is sold. In this case, the taxpayer would pay taxes on the new residence based on its purchase price until the old residence is sold. (Cal. Rev. & Tax Code § 69.5(b)(4).)

Q 4. *What sort of property is eligible for this reassessment exemption?*

A This exemption is available for any dwelling owned and occupied by a taxpayer as his or her principal residence, unless the dwelling is receiving a different real property exemption. The dwelling may be a single family home, a unit in a common interest development (e.g., co-op, condo, townhouse) or a mobilehome. (Cal. Rev. & Tax Code §§ 69.5(b)(7) and (c).)

Q 5. *Under what circumstances can a mobilehome owner qualify for this*

reassessment exemption?

A As long as the mobilehome is subject to property taxation and the other requirements stated above are met, the taxpayer is eligible whether he or she owns the mobilehome only, or both a mobilehome and the land beneath it. If either mobilehome or combination of mobilehome and land on which it is situated constitutes a taxpayer's original property, the assessor will transfer to the taxpayer's replacement dwelling the base-year value of the mobilehome or the base-year value of the mobilehome and the land, whichever is appropriate. Land owned by the claimant includes a pro-rata interest in a resident-owned mobilehome park. (Cal. Rev. & Tax Code § 69.5(c)(2).)

Similarly, if either the mobilehome or mobilehome and land constitutes a taxpayer's replacement dwelling, the assessor will transfer the base-year value of the original property either to the mobilehome or to the mobilehome and land, as is appropriate. However, land constituting a part of the replacement dwelling includes only an "area of reasonable size which is used as a site for a residence." (Cal. Rev. & Tax Code §§ 69.5(c)(2) and (g)(3).)

Q 6. *Must a taxpayer actually live in the original property or the replacement property in order to be eligible for this exemption?*

A Yes. In order to claim this exemption, a taxpayer must be both an owner and resident of the original property either at the time of the sale of that property, or within two years of the purchase or new construction of the replacement dwelling, and the property must be his or her principal residence. Moreover, a taxpayer is not eligible for the tax relief until he or she actually owns and occupies the replacement dwelling as his or her principal place of residence. (Cal. Rev. & Tax Code §§ 69.5(b)(1) and (4).)

Q 7. *May any firm, partnership, association, corporation or other legal entity transfer base-year value pursuant to this legislation?*

A This exemption is limited to individual taxpayers. The statute is silent as to its applicability to those cases in which the taxpayers have title to the property in a revocable living trust. It is recommended that taxpayers consult with the local assessor's office. Clearly a good argument can be made for those situations in which the trustor, trustee, and beneficiary includes the taxpayer who is 55 or older. (Cal. Rev. & Tax Code §§ 69.5(g)(9) and (11).)

Q 8. *Is this exemption also available to taxpayers who are co-owners of the original property, such as joint tenants, tenants-in-common, or joint owners of community property?*

A Yes. If a replacement dwelling is purchased or constructed by all of the co-owners and each co-owner retains an interest in the replacement dwelling, only one co-owner needs to be at least 55 and use the property as a principal residence in order for the property to qualify for the reassessment exemption (Cal. Rev. & Tax Code § 69.5(d)).

Q 9. *If each of the two or more co-owners of the original property purchases or constructs a separate replacement dwelling, is each of them eligible for the exemption?*

A No. Only one of the co-owners can take advantage of this reassessment exemption. They must determine by mutual agreement which one it will be (Cal. Rev. & Tax Code § 69.5(d)(2)).

Q 10. *If each of the two or more co-owners of a multi-unit building live in separate units of the building and each of them purchases or constructs a separate replacement dwelling, is each of them now eligible for the exemption?*

A Yes. If two co-owners occupied separate units in their original, multi-unit property, each one is eligible for the exemption if he or she purchases a separate replacement dwelling (Cal. Rev. & Tax Code § 69.5(d)).

Q 11. *May a taxpayer transfer the base-year value to a replacement property multiple times?*

A No. A taxpayer may take advantage of this law only once. However, if a claimant transfers the base-year value to a replacement property because he or she is at least 55 years old and, subsequently, becomes severely and permanently disabled, then he or she may transfer the base-year value again. (Cal. Rev. & Tax Code § 69.5(b)(7).)

Q 12. *Is the case of married taxpayers, must both spouses be at least 55 years old in order to qualify for this exemption?*

A No. Only one spouse needs to meet the age requirement (Cal. Rev. & Tax Code §§ 69.5(b)(3) and(g)(1)).

Q 13. *What happens if two replacement dwellings are separately purchased or constructed by current or former spouses who held the original property as community property?*

A Only one of the spouses (or ex-spouses) is eligible for the exemption. If both are at least 55 years old, they must determine by mutual agreement who will take the exemption. If only one of them is at least 55, then that person is the one who is eligible for the exemption. (Cal. Rev. & Tax Code § 69.5(d)(3).)

Q 14. *What happens if one spouse (or ex-spouse) in Question 13 was ineligible to take the exemption and did not receive the reassessment exemption on the replacement property? Is this spouse eligible to take this reassessment exemption in the future?*

A Yes, but only if this spouse was not a co-owner of the replacement property that received the exemption (Cal. Rev. & Tax Code § 69.5(g)(9)).

Q 15. *At what point in the transaction must the taxpayer be 55 years old in order to qualify for the exemption?*

A The taxpayer or the taxpayer's spouse must be 55 years old at the time of the sale of the original property (Cal. Rev. & Tax Code § 69.5(g)(1)).

Q 16. *Must a "claimant"--person claiming the property tax exemption--prove that the age requirement has been satisfied?*

A Yes. The claimant must provide either proof of age or certify under penalty of perjury that the age requirement is satisfied (Cal. Rev. & Tax Code § 69.5(f)(2)).

Q 17. *If any portion of the replacement dwelling, or any portion of the land on which it is situated, is located in a county other than the one in which the original property is located, is the taxpayer still eligible for this exemption?*

A Maybe. The answer depends on the county in which the replacement property is located. Under the original version of the law, enacted by Proposition 60, the replacement dwelling, including the land on which it was situated, had to be located entirely within the same county as the taxpayer's original property. However, Proposition 90 extended the rule of Proposition 60, under certain circumstances, to other counties. The county board of supervisors of the county in which the replacement property is located must adopt an ordinance making the provisions of Proposition 90 applicable to their county. See the legal article, [Proposition 90 Watch](#), for a list of those counties that have adopted a Proposition 90 ordinance. It is also advisable to contact the county board of supervisors to confirm their participation in Proposition 90. Because many cities are experiencing a financial crunch, they may choose to opt out of Proposition 90. Once a city passes a Proposition 90 ordinance, the city may not opt out for 5 years. __ (Cal. Rev. & Tax Code § 69.5(a)(2).)

Q 18. *Is it possible to transfer base-year value to a replacement dwelling located in another county if that county has not adopted such an ordinance as required by Proposition 90?*

A No. (Cal. Rev. & Tax Code § 69.5(a)(2).)

Q 19. *Does a taxpayer get any property tax relief if the replacement dwelling is not of "equal or lesser value"?*

A No. (Cal. Rev. & Tax Code § 69.5(a)(1).)

Q 20. *What is the definition of "equal or lesser value"?*

A If the replacement dwelling is purchased or built prior to the sale of the original property, then "equal or lesser value" means the full cash value (i.e., sales price) of the replacement dwelling cannot exceed the full cash value (sales price) of the original property.

If the replacement property is purchased or constructed during the first year after the sale of the original property, then "equal or lesser value" means that the full cash value of the replacement property cannot exceed 105 percent of the full cash value of the original property.

If the replacement property is purchased or constructed during the second year after the sale of the original property, then "equal or lesser value"

means that the full cash value of the replacement property cannot exceed 110 percent of the full cash value of the original property.

For example, if the original property sold January 1, 2003 for \$500,000, the replacement property can cost up to \$525,000 if it is purchased or constructed on or before January 1, 2004 (but after January 1, 2003) and it can cost up to \$550,000 if it is purchased or constructed on or before January 1, 2005 (but after January 1, 2004). __ (Cal. Rev. & Tax Code § 69.5(g)(5).)

Q 21. *What is the "base-year value" of the original property that is transferred to the replacement dwelling?*

A It is the original property's base-year value, as determined in accordance with Revenue and Taxation Code Section 110.1, increased annually for the Proposition 13 inflation factor (2 percent maximum), determined as of the date immediately prior to the date that the original property is sold by the taxpayer (Cal. Rev. & Tax Code § 69.5(g)(2)).

Q 22. *When does this adjustment of the base-year value of the replacement dwelling take place?*

A It is the latter of, the date the original property is sold, the date the replacement dwelling is purchased, or the date construction of the replacement dwelling is completed (Cal. Rev. & Tax Code § 69.5(h)).

Q 23. *What if the taxpayer purchases a replacement property, is granted a transfer of base-year value from his or her original residence, and then performs new construction on the replacement property, will the transfer apply to the replacement property, as improved, or will the new construction trigger a reassessment?*

A There will be no reassessment on the improved property so long as:

- the new construction is completed within two years of the date of sale of the original property and the owner provides a notice of completion to the assessor in writing within 30 days; and
- the fair market value of the additional construction on the date of completion plus the full cash value of the replacement dwelling on the date of acquisition is not more than the full cash value of the original property (as defined in Question 20). __ (Cal. Rev. & Tax Code § 69.5(h)(4).)

Q 24. *What if a taxpayer does not want to transfer his or her base-year value to the new home? Is this new tax treatment automatic?*

A No. The exemption applies only if the taxpayer decides to take the exemption and completes the required form from the local county assessor's office (Cal. Rev. & Tax Code § 69.5(h) Some offices have links to the actual forms to request this reassessment exemption.

Q 25. *What is the time limit for filing an exemption claim?*

A A claim for exemption from reassessment pursuant to Proposition 60/90 must be filed within three years of the date the replacement dwelling is purchased or the construction of the replacement dwelling is completed (Cal. Rev. & Tax Code § 69.5(f)).

Q 26. *Is it possible for a taxpayer to rescind a claim for transfer of base-year value after having filed it with the county assessor's office?*

A Yes, under certain circumstances. To rescind a claim for transfer of a residential base-year value and, therefore, not be considered to have received property tax relief for purposes of future transfers, the taxpayer/claimant must deliver a written notice of rescission to the office of the assessor in which the original claim was filed and signed by all the original claimants.

The notice must be delivered to the assessor's office before the date that the county first issues a refund check for the property taxes imposed on the replacement dwelling. If no refund is involved, then the notice of rescission must be delivered before payment is first made (or before payment would be delinquent if not paid) of any property taxes imposed on the replacement dwelling consistent with the granting of the transfer request. In addition, the taxpayer must accompany the written rescission notice with a fee required by the assessor's office. __ (Cal. Rev. & Tax Code § 69.5(i).)5 and 74.3(e.)

TRANSFERS BETWEEN PARENTS AND CHILDREN AND BETWEEN GRANDPARENTS AND GRANDCHILDREN

Q 27. *What is the basic rule regarding transfers between parents and children and between grandparents and grandchildren?*

A Subject to certain restrictions, the law provides that if a parent or parents

transfer any type of real property to his/her/their children, the transfer does not constitute a change in ownership that would trigger a reassessment of the property for property tax purposes. The same is true for transfers between grandparents and their grandchildren. (Cal. Rev. & Tax Code § 63.1.) See Questions 34, 37, and 40 for restrictions on exempt transfers.

Q 28. *Does the same hold true for transfers in the reverse direction, that is, children to parents or grandchildren to grandparents?*

A Yes but only for parent/child transfers (Cal. Rev. & Tax Code § 63.1(c)(1)). Transfers from a grandparent to a child are exempt (under certain circumstances) but not child to grandparent (Cal. Rev. & Tax Code § 63.1(c)(2)).

Q 29. *Does this exemption between parents and children apply to an unlimited number or dollar value of transfers of real property?*

A No. This exemption applies to a transfer of a principal residence regardless of value, but only to the first one million dollars of "full cash value" (cumulative value per transfer) of all other real property (Cal. Rev. & Tax Code § 63.1(A)(1) and (2)).

Q 30. *For purposes of this law, who is included in the category of "children"?*

A A "child" of the transferor includes:

- any natural child of the transferor, except a child who has been adopted by other persons;
- an adoptee if adopted before age 18;
- a daughter-in-law or a son-in-law while the relationship of parent and son-in-law or daughter-in-law exists. The relationship is deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law;
- stepchildren, or a spouse of a stepchild, while the relationship exists. The

relationship is deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent. __ (Cal. Rev. & Tax Code § 63.1(c)(3).)

Q 31. *Is a transfer between siblings (between brothers and sisters, between sisters, between brothers) exempt from property tax reassessment as well?*

A No (Cal. Rev. & Tax Code § 63.1).

Q 32. *Are there any restrictions on transfers between grandparents and grandchildren?*

A Yes. This exemption applies to a transfer of a principal residence regardless of value, but only to the first one million dollars of ?full cash value? (cumulative value per transfer) of all other real property provided that all the parents of the grandchild or grandchildren (that is the children of the grandparents) are deceased (Cal. Rev. & Tax Code § 63.1(a)(3)(A)).

However, if a grandchild (or grandchildren) received a principal residence exempt from reassessment from their parent or parents, then any principal residence they receive from a grandparent will not be exempt from reassessment as a principal residence. But the value of this principal residence will be added to the value of any other real property the grandchild received from his or her parents up to the total of one million dollars and that amount will be exempt from reassessment. (Cal. Rev. & Tax Code § 63.1(a)(3)(B).)

See Question 40 for additional restrictions.

Q 33. *How is "principal residence" defined for purposes of this law?*

A Principal residence means a dwelling for which a homeowners' exemption or a disabled veterans' residence exemption has been granted in the name of the eligible transferor. In addition, principal residence includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence. (Cal. Rev. & Tax Code § 63.1(b)(1).) In other words, if the house is built on 56 acres of land, most likely not all of the 56 acres would be considered exempt as a principal residence. Reasonable size would depend on the size of typical residential lots in that particular part of the county.

Q 34. *For purposes of this law, does "real property" include interests in corporations or other legal entities that own real property?*

A No (Cal. Rev. & Tax Code § 63.1(c)(8)).

Q 35. *Are there any other limitations on the transfer between parents and children and grandparents and grandchildren?*

A Yes. The reassessment exemption does not apply for any property in which the eligible transferor's interest was received through joint tenancy, unless the transferor was one of the persons who originally transferred his or her own property into the joint tenancy (Cal. Rev. & Tax Code § 63.1(b)(2)).

Q 36. *If several transferors (eligible under this law) own property together, does the one million dollar limit apply separately to property transferred by each transferor?*

A Yes. The one million dollar limit applies separately to each eligible transferor with respect to all eligible transfers of real property other than the principal residence. If the transfer involves two or more eligible transferors, they may combine their separate one million dollar exemptions and may jointly sell or transfer property with a full cash value of the combined amount. For example, a married couple may transfer up to a total of two million dollars in real property that is not their principal residence to their children. If the principal residence is also transferred, it does not impact the full cash value for purposes of determining the monetary limit. (Cal. Rev. & Tax Code § 63.1(b)(2).)

Q 37. *How does the child or grandchild or other eligible transferee apply for this exemption?*

A By filing a claim with the local county assessor and furnishing the following items:

- a written certification by the transferee made under penalty of perjury that the transferee is a parent/child/grandparent/grandchild of the transferor; and

- a copy of a written certification by the transferor, his or her legal representative, or the executor or administrator of his or her estate, made under penalty or perjury that the transferor is a parent/child/grandparent/grandchild of the transferee;
- if the property is the transferor's principal residence, a certification of that fact and if the property (properties) is not the transferor's principal residence, a certification as to the full cash value of the real property transferred, the location of the real property, the social security number of each eligible transferor, and the names of the eligible transferees. __ (Cal. Rev. & Tax Code § 63.1(d)(1).)

Q 38. *Are there any time limits for applying for this exemption?*

A Yes. An exemption claim must be filed with the local county assessor's office within three years of the date of purchase or transfer of the real property, or prior to transfer of the property to a third party, whichever is earlier. Regardless of the previous sentence, a claim is considered timely filed if it is filed within 6 months after the date of mailing of a notice of supplemental or escape assessment issued as a result of the purchase or transfer of real property for which the claim is filed. (Cal. Rev. & Tax Code § 63.1(e)(1).)

Q 39. *What happens if the full cash value of the property transferred exceeds the permissible exemption monetary limit of the transferor(s)?*

A The transferee must specify in his or her claim the amount and the allocation of the exemption he or she is seeking. If a particular real property exceeds the exemption amount, then the exemption is applied on a pro rata basis. (Cal. Rev. & Tax Code § 63.1(d)(2).)

Q 40. *Does this reassessment exemption apply to voluntary transfers and also transfers resulting from a court order or judicial decree?*

A Yes (Cal. Rev. & Tax Code § 63.1(g)).

INTERSPOUSAL TRANSFERS

Q 41. *Are all transfers of real property between spouses exempt from*

property tax reassessment?

A Yes (Cal. Rev. & Tax Code § 63).

Q 42. *Are all transfers of real property between ex-spouses exempt from property tax reassessment?*

A Such transfers are exempt from reassessment only in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation (Cal. Rev. & Tax Code § 63(c)).

TRANSFERS INTO A REVOCABLE TRUST

Q 43. *Is a transfer by a person alone, or with his or her spouse, of any real property into a revocable trust exempt from property tax reassessment?*

A Yes (Cal. Rev. & Tax Code § 62(d)).

Q 44. *Is the transfer back from the revocable trust to the person who created the trust (called the trustor) exempt from property tax reassessment?*

A Yes (Cal. Rev. & Tax Code § 62(d)).