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Sharon Everett

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Removing the Reassessment of Property Value When Transferred Between Registered Domestic Partners

Sharon Everett

Code Section Affected

Revenue and Tax Code § 62 (amended).

SB 565 (Migden); 2005 STAT. Ch. 416 (effective September 29, 2005).

I. INTRODUCTION

The loss of a spouse, through either death or divorce, is one of the most traumatic things one can go through in life. Lives are shattered and finances can become a concern, if not an overwhelming threat. The law establishes methods of dealing with transfers of property between spouses that reduces the uncertainty and trauma of these events on the remaining spouse. When one loses a spouse through divorce or death the personal property is inherited or divided, the bank accounts transfer, and the taxes on real property remain the same.¹

Before Chapter 416, registered domestic partners did not receive the same protection in these circumstances.² Upon the loss of a partner, with whom the person may have been for years or even decades, the remaining partner was possibly left with not only shattered dreams and plans, but also with “devastating property tax liability” because the value of the home was reassessed for tax purposes.³ As property prices rise rapidly throughout California, the dissolution of even a five-year relationship can trigger a property value increase of hundreds of thousands of dollars.⁴ Every \$100,000 of that property value increase can increase the tax burden by \$1,000 or more each year.⁵ Advocates for Chapter 416

1. See, e.g., CAL. CONST. art. XIII, § 2(g) (providing for inter-spousal transfer of property without value reassessment); CAL. PROB. CODE § 6401 (West 2004) (allowing intestate succession between spouses and domestic partners).

2. See Letter from Steve Hansen, Legis. Dir., Equality Cal., to Senator Carole Migden, Cal. State Senate (June 20, 2005) (on file with the *McGeorge Law Review*) (discussing inequitable treatment of gay and lesbian couples by the property tax system).

3. Letter from Willie L. Pelote, Sr., Assistant Dir. of Political Action, Int'l, Am. Fed'n of State, County, and Mun. Employees, AFL-CIO, to Assembly Member Dave Jones, Cal. State Assembly (June 24, 2005) (on file with the *McGeorge Law Review*).

4. See RealEstateABC.com, California Real Estate Median Prices of Existing Homes Since 1968, <http://www.realestateabc.com/graphs/calmedian.htm> (last visited July 22, 2005) (on file with the *McGeorge Law Review*) (showing California property prices rising at an average of 15.8% since 2000 and reporting the increase in value of the median price of a home from \$240,000 in 2000 to over \$450,000 in 2005).

5. See CAL. CONST. art. XIII, § 1 (setting the property tax rate at a maximum of one percent of the assessed value plus any special assessments).

articulated that the tax increase was yet another form of economic discrimination against gay, lesbian, and bisexual Californians.⁶

II. LEGAL BACKGROUND

A. Registered Domestic Partners

In 1999, Senator Migden introduced the bill that later became Chapter 588, which gives same-sex adults the ability to register as domestic partners and have many of the same rights and responsibilities as married couples.⁷ The law defines a domestic partnership as “two adults who have chosen to share one another’s lives in an intimate and committed relationship of mutual caring,”⁸ and provides for both registration and dissolution of those partnerships.⁹ Chapter 588 also establishes a community property system for registered domestic partners,¹⁰ instructs employers to offer health coverage to domestic partners that is equal to those benefits provided to other family members,¹¹ and allows hospital visitation rights for domestic partners.¹²

Since passage of Chapter 588, additional rights have been added for registered domestic partners, bringing them ever closer to the legal rights of spouses in California. For example, registered domestic partners now have the right to inherit,¹³ they can take time off of work for judicial proceedings when their partner has been involved in a crime,¹⁴ they can benefit from a partner’s State Teachers Retirement Plan,¹⁵ and generally have the same rights and responsibilities as married partners.¹⁶ Chapter 416 is another step toward helping California move “closer to fulfilling the promises of inalienable rights, liberty, and equality expressed in Sections 1 and 7 of Article 1 of the California Constitution.”¹⁷

6. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 565, at 2-3 (June 28, 2005).

7. CAL. FAM. CODE § 297 (West 2004) (as enacted by 1999 Stat. ch. 588).

8. *Id.*

9. *See* CAL. FAM. CODE § 298 *et seq.* (West 2005) (as enacted by 1999 Stat. ch. 588) (establishing the registration procedures); *see also id.* § 299 (establishing termination procedures); *see also* 2003 Cal. Stat. ch. 421 (clarifying the processes for establishing and dissolving domestic partnerships; also known as the California Domestic Partner Rights and Responsibilities Act of 2003).

10. CAL. FAM. CODE § 299.5 (West 2004) (as enacted by 1999 Stat. ch. 588).

11. CAL. GOV’T. CODE § 22871 (West 2004) (as amended by 1999 Stat. ch. 588).

12. CAL. HEALTH & SAFETY CODE § 1261(a) (West 2004) (as enacted by 1999 Stat. ch. 588).

13. CAL. PROB. CODE § 6401 (West 2004) (as amended by 2002 Stat. ch. 447).

14. CAL. LAB. CODE § 230.2 (West Supp. 2005) (as enacted by 2003 Stat. ch. 630).

15. CAL. EDUC. CODE § 22007.5 (West Supp. 2005) (as by 2004 Stat. ch. 912).

16. *See* CAL. FAM. CODE § 297.5 (West 2004) (“[R]egistered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law . . . as are granted to and imposed upon spouses.”).

17. 2005 Cal. Stat. ch. 421, § 1.

B. Property Tax Assessment

Since California voters passed Proposition 13 in 1978, taxes on real property in California have been capped at one percent of the cash value of the property.¹⁸ “Cash value” is defined as either the assessment as recorded in the 1975-1976 tax bill or the value as assessed when the property is purchased, newly constructed, or changes ownership.¹⁹ Proposition 13 exempted transfers between spouses at death or dissolution of the marriage from the definitions of “purchased” and “change of ownership.”²⁰

In 1979, the Legislature enacted section 62 of the Revenue and Tax Code to refine the definition of “change of ownership.”²¹ In certain circumstances, section 62 allows transfers of ownership not to trigger the property value reassessment.²² These circumstances include:

- 1) changes to the method of holding title that do not change the actual ownership interests,
- 2) transfers to perfect title or correct a deed,
- 3) creation of a trust or change of trustee,
- 4) transfers which create a life estate in the transferor,²³
- 5) transfers of a lessor’s interest in property when the lessee has a remaining term, including renewal options, of over thirty-five years,
- 6) transfers of stock in a partnership, housing cooperative, or pooled fund,
- 7) transfers between organizations of the same religious denomination,
- 8) house transfers to or between minor children on the death of a parent,
or
- 9) transfers from parents or guardians to a disabled child.²⁴

Until the enactment of Chapter 416, transfers between registered domestic partners continued to trigger the property value reassessment.²⁵ Chapter 416 removes this trigger and brings this aspect of the law into line with the Constitutional promises of equality and the Legislature’s intent to reduce or remove discrimination based on sexual orientation.

18. CAL. CONST. art. XIII A, § 1.

19. *Id.* § 2.

20. *Id.* § 2(g).

21. CAL. REV. & TAX CODE § 62 (West Supp. 2005).

22. *Id.*

23. *See* CAL. CONST. art. XIII A § 2(g) (stating that terminating a life estate may constitute a change in ownership).

24. CAL. REV. & TAX. CODE § 62.

25. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 565, at 2 (June 28, 2005).

III. CHAPTER 416

Chapter 416 treats real property transfers between registered domestic partners the same as transfers between spouses.²⁶ The language in Chapter 416 closely mirrors the language in the spousal exemption written into the California Constitution by Proposition 13.²⁷ The Chapter permits transfers between registered domestic partners when one partner dies, in conjunction with a property settlement upon dissolution of the partnership, or to adjust the ownership interest between the partners without triggering the value reassessment.²⁸

The Legislature enacted Chapter 416 to “guarantee equality for all Californians, regardless of gender or sexual orientation,” especially during times of life crisis such as the death of a loved one or the dissolution of a relationship.²⁹ The statute clarifies that treating registered domestic partners and spouses equally for purposes of property tax assessment reduces discrimination against gay, lesbian, bisexual, and transgender individuals, “consistent with the California Constitution.”³⁰ This reduction of discrimination is one major goal of Chapter 416.³¹

IV. CHAPTER ANALYSIS

In 2002, the Legislature gave registered domestic partners similar intestate succession rights as spouses.³² The California Board of Equalization amended Property Tax Rules 462.040 and 462.240 in 2003 to include registered domestic partners in the laws for joint tenancy and intestate succession.³³ Chapter 416 continues toward the goal of equal treatment in succession and property ownership by giving registered domestic partners an exception to the property value reassessment.³⁴ Without this exception, “a house, in which the couple may have lived for decades, is treated as though it were being inherited or sold rather than as the surviving partner’s home.”³⁵

26. *Id.* at 1.

27. Compare CAL. REV. & TAX CODE § 62(p) (enacted by Chapter 416) (granting exemption for tax value reassessment to registered domestic partners) with CAL. CONST. art. XIII A, § 2(g) (exempting spousal transfers from property value reassessment).

28. CAL. REV. & TAX. CODE § 62(p) (as enacted by Chapter 416).

29. 2005 Cal. Stat. ch. 416, § 1(a).

30. *Id.* § 1(d).

31. See *id.* § 1 (discussing the purposes of the bill).

32. CAL. PROB. CODE § 6401 (as amended by 2002 Cal. Stat. ch. 447).

33. Letter from Betty T. Yee, Acting Member, First Dist., Cal. State Bd. of Equalization to Assembly Member Johan Klehs, Cal. State Assembly (June 20, 2005) (on file with the *McGeorge Law Review*).

34. CAL. REV. & TAX CODE § 62 (amended by Chapter 416).

35. Letter from Willie L. Pelote to Assembly Judiciary Comm., *supra* note 3.

The Board of Equalization estimates that allowing registered domestic partners to transfer property without reassessment would cost the cities and counties of California approximately \$865,000 annually. Under Proposition 98,³⁶ \$337,000 of this must come from the State.³⁷ However, even with this fiscal effect, no opposition registered against Chapter 416.

V. CONCLUSION

Chapter 416 aligns the property value reassessment process for registered domestic partners with other laws recognizing registered domestic partners.³⁸ Chapter 416 allows property transferred at the death of a partner or dissolution of a partnership to not trigger the value reassessment for taxation purposes by creating a very similar exemption to the one already allowed for spouses under the California Constitution.³⁹ This Chapter further removes discrimination against the gay, lesbian, and bisexual community and takes California one step closer to protecting all its citizens from discrimination.⁴⁰

36. Proposition 98, passed by the voters in 1988, guarantees the state schools a consistent level of funding, independent of rising or falling state revenues. Any decrease in the local tax base would therefore have to be made up by the State. *See* Media Briefing, Cal. Dep't of Educ., Proposition 98: A Primer (Dec. 7, 2004), available at <http://www.cde.ca.gov/nr/ht/prop98atte.asp> (on file with the *McGeorge Law Review*) (giving an overview of Proposition 98).

37. ASSEMBLY APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF SB 565, at 2 (July 12, 2005).

38. *See* text accompanying notes 11-17.

39. *See* text accompanying notes 25-26.

40. 2005 Cal. Stat. ch. 416, § 1.

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