

## **What Does Proposition 19 Mean to You???**

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Proposition 19 has passed and the time for residents of San Mateo, Santa Clara, San Francisco, Alameda and all other California Counties to consider their estate planning needs is NOW.

After February 15, 2021 (actually February 12, 2021 due to holidays) parents will no longer be able to transfer “other” California real property to their kids *without* reassessment. “Other” real property includes ALL California real property except the primary residence and certain farm property. If you own a vacation property, a second home, a rental property, a business property, then you own ‘other’ property that will be subject to reassessment under Proposition 19 when it is transferred to your children.

Even the parents’ primary residence cannot be transferred to the kids without restrictions imposed by Proposition 19. Restrictions include the use of the residence as a primary residence by the child with formal confirmation filed with the county within 1 year of transfer or the property tax exemption will be lost. Moreover, only \$1 million in *MARKET* value of the primary residence may be transferred without reassessment, and the amount subject to reassessment will grow not at Proposition 13’s maximum rate of 2%, but by an index that is surely to outpace the 2%.

With these new rules about to become applicable, here is an overview on solutions that may be available to you:

Family Home: If you believe your primary residence will have a market value of less than \$1 million when you transfer it to your children, and one of your children will live at the property, and your estate plan identifies the child who is going to reside at the property as the beneficiary of the property, then you may be okay. However, the chances of having all of these factors in place is unlikely. Transfer of the family home requires special consideration. These should be explored before a strategy is selected for the transfer.

Vacation Home/Second Home: Depending on how the property is used and the family’s plans for the property in the future, the need to avoid reassessment may be of primary concern. The burden imposed by a significant increase in property tax may make the property’s use as vacation property impractical or impossible. Therefore, a current transfer to the children may be appropriate. This comes with consequences. The property is now the children’s and the tax basis of the property will not be adjusted at the death of the parents unless special trusts are

utilized. The loss of the basis adjustment may or may not be important and there are strategies to keep control of the property at least partially with the parents.

Rental Properties: Assuming the family wishes to hold rental properties, there are sophisticated strategies using business entities. These strategies allow for the family to maintain the current property tax assessment and also allows for a partial adjustment in the tax basis of the property at the death of the parent or parents. It also allows for the parents to maintain control of the properties and at least partially benefit from income generated by the properties.

Other Strategies?: There may be other sophisticated strategies applicable to your facts that will allow for the present transfer of property to the children so as to maintain the current assessed value and later provide for an adjustment in the income tax basis at the death of the parent.

In summary, the range of solutions are, on one extreme, do nothing, and, on the other, a current transfer of the property to the kids. There are a multitude of solutions between the two extremes. Contact our office to explore those solutions. Remember, the solution must be in place by no later than February 15, 2021 if the goal is to avoid reassessment of 'other' property or mitigate reassessment of the primary residence. There is no time to lose.

Should you have any questions or would like to learn more, please feel free to consult with one of our attorneys at McDowall Cotter by giving us a call at 650-572-7933. The attorneys of McDowall Cotter work in civil litigation, business services, and estate planning and are located in San Mateo. Our experienced and knowledgeable team will be able to help you with any of your needs or concerns. Additionally, you can find McDowall Cotter on Facebook, Instagram, Twitter and LinkedIn @McDowallCotter.