

Estate Planning for Real Property in 2024: All the Bad News, Hot Tips, and Issue Spotting Guidance

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About Us



The Bad News: Proposition 19 and the Parent-Child Exclusion

Old Law (Prop. 58/193)

- Effective through February 15, 2021
- Principal residence of transferor (parent), with no value limit
- Other real property – lifetime limit of \$1M of factored base year value
- File claim for exclusion within three years or before transfer to third party

New Law (Prop. 19)

- Effective February 16, 2021
- Principal residence of transferor (parent) and transferee (child) within one year, with a value limit of current taxable value plus \$1M
- No exclusion for other real property
- Child must file for Homeowners' Exemption within 1 year and file claim for exclusion within 3 years or before transfer to third party

More Bad News: You've Been Doing it Wrong – Taking Title to Real Property

- Joint tenancy with children
- Revocable Transfer on Death Deed
- Marriage and divorce – taking title correctly
- Out-of-state real estate and community property
- Qualified Personal Residence Trusts (QPRT)
- Reliance on title officers



Hot Tips for Real Property Lawyers

- Estate Planning
 - Timeshares
 - Purchase options from the trust vs. transactions between children
 - Transmutations
 - Use a lawyer
 - All owners on title please – Statute of Frauds!
 - Loans from family not on title – documents!
- Trust and Probate Administration
 - Stale A/B Trust divisions
 - Homeowners' Exemption
 - Corporate Transparency Act reporting

Issue Spotting and Guidance

- Transfers to a revocable living trust are not magical
- Revocable living trusts and asset protection
- Rights of occupancy
 - How will the property be maintained? Liquidity!!
 - Will there be a reassessment?
 - What about local landlord tenant laws?
- Adult children as holdover tenants after death



Our Wish List for Unmarried TICs and Joint Tenants

- Require estate planning... please
- Require life insurance
- Require umbrella insurance with periodic review
- Consider utilizing an LLC – but!
Insurance and Mortgage Issue, not just a legal issue.

▶ What About Asset Protection?

Don't let your clients create LLC's on Legal Zoom

Don't let the clients CPA create their LLC

No Asset Protection for LLCs unless they follow the rules.

Constructive Fraud

Questions?

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