

## **Do You Need to Plan for Prop. 19?**

### **What is it?**

Prop. 19 was passed by California voters on November 3, 2020. Among other things, it *substantially limits* the ability of parents to transfer their Prop. 13 assessed value for property tax purposes to their children, resulting in a *dramatic increase* in property taxes for many families.

Prop. 19 is effective for transfers of real property on or after **February 16, 2021**. Death is considered a transfer.

### **What does it say?**

Under current law, parents can transfer their residence and cumulatively up to \$1,000,000 of assessed value of other real property (i.e., rentals and vacation homes) to their children and allow their children to keep their Prop. 13 assessed value, regardless of how the children use the transferred property.

Under Prop. 19, the ability of parents to transfer their Prop. 13 assessed value to their children is severely limited in three key ways:

1. Only the transfer of the parent's residence to a child is eligible for keeping the Prop. 13 assessed value. Rentals and vacation homes will be reassessed upon transfer.
2. The child receiving the parent's residence will only be able to keep the parent's Prop. 13 assessed value if the child uses the transferred residence as the child's principal residence.
3. There is a cap on the value of the property to be transferred: the current assessed value plus \$1,000,000. If the property is worth more than the cap, there will still be a partial reassessment, resulting in an increase in property tax.

### **Example:**

Robert purchased his California house in 1990. It has an assessed value under Prop. 13 of \$400,000 based upon his original purchase price. His property taxes under Prop. 13 are approximately \$4,000 per year. The house is now worth \$1,200,000. He plans to leave his house to his daughter, Sally, upon his death. Sally lives in Vermont and does not plan to use the California house as her principal residence.

Under current rules, Robert could transfer his house to Sally and Sally would be able to keep the same property tax.

Under Prop. 19, the house would be reassessed upon the transfer from Robert to Sally and Sally's property tax would be increase from approximately \$4,000 per year to approximately \$12,000 per year.

### **Should you act?**

1. Do you own real property located in California?
2. Do you plan to transfer real property located in California to children?
3. Does your real property have a low assessed value compared to the actual fair market value?
4. Do your children plan to keep the property after the transfer?
5. Are you willing to *give up substantial control* over your real property by transferring it to your children prior to February 16, 2021 in order to keep the low property taxes for your children?

If you answer “yes” to all of these questions then you should consider acting prior to Prop. 19 becoming effective.

### **Considerations:**

1. Transferring property to your children now means giving up substantial control over the property while you are still living.
2. Transferring real property to your children during life rather than waiting until death would result in higher capital gains taxes if the children ever sold the real property.
3. Transferring real property to your children during life could put your property into jeopardy if the children were sued, divorced, or pre-decease you. Careful planning with a special irrevocable gifting trust might mitigate some of these concerns.
4. If the real property to be transferred is subject to a mortgage, special considerations might apply.
5. If you make a lifetime transfer of your principal residence to your child but continue to live there, you might be required to pay your child rent.

### **Do not wait until the last minute!**

If Prop. 19 applies to you and you are willing to make lifetime transfers of your real property to your children prior to February 16, 2021, you should not wait until the last minute. You should *pretend that the deadline is February 1, 2021* and should obtain legal counsel prior to that date.

(Note: transfers from children to parents and, in limited circumstances, from grandparents to grandchildren, are also affected by Prop. 19.)