



## FACT SHEET

### Co-Owners Exclusion from Change in Ownership (SB 153)

Questions: [email@eqca.org](mailto:email@eqca.org)

*This legislation would allow two people, including same-sex couples, who co-own a home together and meet specified criteria to avoid a property tax increase upon the death of one co-owner.*

**Status:** Introduced January 22, 2008

**Author:** Senator Carole Migden

**Sponsor:** Equality California

#### **BACKGROUND**

Existing law, Article 13A of the California Constitution (Proposition 13), generally limits taxation of property in California by capping the rate at which real property can be taxed and by limiting increases in the assessed value of real property. Property is only taxed at its full market value when ownership changes hands. Since Proposition 13 was passed in 1978, the Legislature and the voters have carved out certain exclusions to the general “change in ownership” rule that will trigger a reassessment of property value. For example, a transfer of real property between a husband and wife upon the death of either is not considered a change in ownership. There are similar exclusions for transfers between parents and children or grandparents and grandchildren.

In 2003, the California Board of Equalization (BOE) passed two rules that allow same-sex couples who share a home to also be excluded from changes in ownership. 18 CCR Rule 462.240 excluded any transfer between domestic partners registered with the state. This rule was later codified through legislation, Senate Bill 565 (Migden), in 2005. 18 CCR Rule 462.040 provided an exclusion from change in ownership where property is transferred between co-owners from tenancy in common to joint tenancy or from joint tenancy to trust where the trust language states that the surviving owner inherits the property upon the death of the other owner. This rule, which covers same-sex couples who are not registered as domestic partners, has not been codified into law.

#### **WHAT THIS BILL WOULD DO**

Senate Bill 153 would allow two persons who co-own real property together to be excluded from a change in ownership when one of the co-owners dies, leaving his or her interest in the property to the surviving co-owner.

The bill includes a number of limitations in order to ensure fairness in the application of the exclusion, as follows:

- 1) The exclusion would not apply to properties where there are more than two co-owners.

- 2) The co-owners together must own 100% of the property.
- 3) Upon the death of one co-owner, the surviving co-owner must receive a 100% interest in the property.
- 4) The real property must be the principal residence of both co-owners.
- 5) The remaining property interest may pass to the survivor through a will or trust, via intestate succession, or by operation of law.
- 6) If any other change in ownership exclusion applies, this exclusion may not be used.
- 7) Business entities shall not qualify for this exclusion.

### **WHO WOULD QUALIFY FOR THIS EXCLUSION**

This exclusion would apply to co-owners who hold property as tenants in common or joint tenants with right of survivorship and intend for their interest in the property to pass to the other co-owner upon death. People who hold property in this manner may include:

- Domestic partners who are registered with a city or county but not the state.
- Loving and committed same-sex couples who are unregistered but co-habitate.
- Family members who co-own property but do not qualify under any of the other change in ownership exclusions provided for by state law.
- People who co-habitate in order to raise children together.
- Seniors who live together to share expenses and provide for one another.

### **PUBLIC POLICY CONSIDERATIONS**

As evidenced by the many recent legislative proposals to control mortgage interest rates, California has a long-standing public policy interest in keeping people in their homes. When people lose their homes, families and communities are hurt and more likely to turn to the state for support or public assistance. As a result of Proposition 13 and today's inflated real estate market in California, property tax reassessments often have the practical impact of forcing surviving owners from their homes.

### **FISCAL IMPACT**

The fiscal impact of this legislation is pending analysis by the BOE.

### **FOR MORE INFORMATION**

Alice Kessler, Equality California – (916) 554-7681 or [alice@eqca.org](mailto:alice@eqca.org)  
Eric Potashner, Office of Senator Carole Migden – (916) 651-4003 or [eric.Potashner@sen.ca.gov](mailto:eric.Potashner@sen.ca.gov)