



SB 559: ANOTHER STEP TOWARDS LEGAL EQUALITY FOR CALIFORNIA'S REGIS- TERED DOMESTIC PARTNERS

by *Deb L. Kinney*

In March 2003, DLKLawGroup client Thom Anderson lost Mac, his partner of 27 years. Thom and Mac had purchased a home together in 1983 as "joint tenants with right of survivorship," the home they were still living in when Mac died. As the surviving joint tenant, Thom took ownership of Mac's half interest in the home and continued paying the annual property taxes.

What Thom did not know was that because he and Mac were not a married couple, this transfer constituted a change of ownership under California law, a situation that triggers a reassessment of the property. When Thom formally changed the title on the property in 2006, a reassessment was completed and Thom was stuck with a tax bill stretching back to 2003. The reassessed value of the home was over \$150,000 more than the base year value in 2002, and Thom's tax bill jumped more than 50%. Furthermore, since the reassessment did not actually occur until 2006, Thom was required to pay the back taxes and penalties for each of the previous three years. The increase was so great that Thom, who lives on a

fixed retirement income, has been struggling to pay the taxes and keep his home. Thom's experience provides a vivid reminder of the vulnerability of same-sex couples even in progressive California. Yet the march towards full legal equality for same-sex couples continues, and thanks to SB 559, the Fair and Equal Taxation for Surviving Partners Act, stories like Thom's should now be a thing of the past.

Proposition 13, which was adopted by California voters in 1978, created a property tax system based exclusively on the assessed value of a property. At that time, each property was assigned a *base year value* that reflected the property's assessed value as of 1975. Annual property taxes are a percentage of the base year value, which can be adjusted annually by no more than 2% unless there is a change of ownership or new construction. When there is a change of ownership or new construction, the property is reassessed at the current fair market value and the new price becomes the base year value upon which an owner is taxed. Reassessments almost always result in increased tax liabilities, some of which are quite substantial.

A *change of ownership* was not defined in Proposition 13, but has since been defined by statute as a "transfer of present interest in real property, including its beneficial use, the value of which is substantially equal to that of the full estate in the property." This generally applies to all transfers of residential and commercial properties, as well as to transfers between individuals and/or between legal entities. However, there are a few specific exceptions. For example, there is no change of ownership when one party to a marriage dies and that person's interest in real property is transferred to the surviving spouse, or when one party to a marriage takes on an entire property inter-

est as a result of a divorce. The purpose of these exceptions has been to insure that individuals would not be "taxed out" of their homes based on increased home values that could only be realized if they sold their home.

As can be expected, these inter-spousal exceptions did not apply to same-sex couples when they were adopted. In fact, it was not until SB 565 (Migden) took effect on January 1, 2006 that California Registered Domestic Partners (RDPs) could transfer real property between themselves without triggering a reassessment. This lack of comprehensive protection for domestic partner between January 1, 2000, the first date that partners could register with the state, and January 1, 2006 meant that RDPs like Thom Anderson, whose property was subject to a "change in ownership" only because of his partner's death, were not exempt from reassessment and, thus, were subject to increased tax liabilities at the time of a partner's death.

[SB 559](#), authored by [Senator Christine Kehoe](#) (D-San Diego) and sponsored by [Equality California \(EQCA\)](#), addresses this issue by allowing individuals like Thom to seek a reassessment that would restore the property to its prior appraised value. The bill specifically excludes transfers of property between RDPs that occurred between January 1, 2000 and January 1, 2006 from the definition of change of ownership. Individuals who have been party to such a transfer would be allowed to make an application for reassessment until June 30, 2009, and assessors would be required to reverse any prior reassessments and restore the appraised value accordingly. The former appraisal value will serve as the base year value for taxes going forward. The bill specifically prohibits refunds for taxes already paid by affected owners, but it should provide significant relief for those affected.

SB 559 was introduced in February 2007. It was adopted at the close of the legislative session and signed into law by Governor Schwarzenegger. It will become effective January 1, 2008.

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