



CALIFORNIA ASSESSORS' ASSOCIATION EXECUTIVE COMMITTEE

President

DON H. GAEKLE

Stanislaus County

gaekled@stancounty.com

Immediate Past President

***LESLIE K. DAVIS**

Calaveras County

ldavis@co.calaveras.ca.us

President-Elect

ERNEST J. DRONENBURG

San Diego County

ernest.dronenburg@sdcountry.ca.gov

Vice President

CARMEN CHU

San Francisco City & County

Carmen.Chu@sfgov.org

Treasurer

KRISTINE LEE

Kings County

kristine.lee@co.kings.ca.us

Presidential Appointments

***CHARLES LEONHARDT**

Plumas County

cleonhardt@countyofplumas.com

JEFFREY PRANG

Los Angeles County

jprang@assessor.lacounty.gov

***MARC TONNESEN**

Solano County

mctonsesen@solanocounty.com

***LARRY STONE**

Santa Clara County

lstone96@hotmail.com

***JIM ROONEY**

Amador County

jrooney@amadorgov.org

Regional Representatives

CHRISTINA WYNN

Sacramento County

wynnc@saccountry.net

PETER ALDANA

Riverside County

paldana@asrclkc.com

KARL WEILAND

El Dorado County

karl.weiland@edcgov.us

Ex-Officio/Secretary

LESLIE MORGAN

Shasta County

1450 Court Street, Ste 208

Redding, CA 96001

Phone (530) 225-3600

Committee Chairs

Standards

JON LIFQUIST

Kern County

Legislative

JESSE SALINAS

Yolo County

Education

CHRISTINA WYNN

Sacramento County

December 14, 2020

Honorable Antonio Vazquez, Chair
California State Board of Equalization
621 Capitol Mall, Suite 2100
Sacramento, CA 95814

**RE: Board of Equalization Meeting, December 17
Item K.3.b Proposition 19**

Dear Chair Vazquez,

As President of the California Assessors' Association (CAA) and as Stanislaus County Assessor I want to convey the initial CAA insights, surface challenges and administrative and legal barriers to implementation of Proposition 19. The CAA formed a Proposition 19 Sub-Committee comprised of Assessors and Assessor staff subject matter experts, along with Glenna Schultz from the BOE staff. The Committee has identified several dozen significant concerns with Proposition 19. I have attached their report which identifies the most significant concerns from their initial review and provides possible remedies. The CAA will continue to review Proposition 19 in anticipation of refining concerns and recommendations as more information is forthcoming and consensus legal interpretations become more available.

Proposition 19 is silent on many critical implementation issues. For example, effective April 1, Proposition 19 "permits homeowners who are over 55, severely disabled, or whose homes were destroyed by wildfire or disaster, to transfer their primary residence's property tax base value to a replacement residence of any value, anywhere in the state." However, the new constitutional provision is silent on whether both transactions must occur after April 1, or whether one transaction taking place before April 1 and one transaction occurring after April 1 would be qualifying. There are other instances noted throughout the attached report, including, needed clarity on how Assessors should handle the assessment of a principal residence should the acquiring child or grandchild move out of the property after establishing residency and the Homeowner's Exemption.

It remains unclear what Constitutional and Revenue and Taxation Code sections are retired and what sections survive from the existing Constitution and statutes. For example, as it relates to disaster relief in Proposition 19 the benefits are narrower than Proposition 110 and it appears that under certain circumstances Proposition 19 would be applied and in other circumstances, e.g. where the land is damaged, Prop 110 provisions would still need to be administered.

The attached report of concerns and the examples above reflect the most significant issues identified to date. In some instances, issues can be addressed through changes in forms, LTAs and Handbooks. In other instances, the CAA believes urgency legislation is essential prior to February 15 for Assessors to uniformly and fairly administer Proposition 19. It is also possible that the plain language of the changes to the

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Constitution may necessitate a cleanup initiative, akin to Proposition 8 passed six months after Proposition 13 in 1978. Where possible the CAA urges the BOE and the legislature to build upon and replicate administrative practices (forms, deadlines, processes etc.) utilized in the application of Propositions 60, 90, 110, 58, and 193. Additionally, new implementing legislation should utilize new code sections to easily distinguish from existing and remaining revenue and taxation codes.

In closing, Assessors have received a steady stream of inquiries as to how they will implement Proposition 19. It is extraordinarily urgent that ambiguities in the law are resolved, stakeholders are engaged and urgency legislation is initiated. The CAA intends to stay engaged with all stakeholders as this process moves forward.

Sincerely,



Don H. Gaekle, President
California Assessors' Association

enclosure

Cc: The Honorable Mike Schaefer, Vice Chair, BOE Member District 4
The Honorable Ted Gaines, BOE Member District 1
The Honorable Malia Cohen, BOE Member District 2
Ms. Yvette Stowers, Deputy State Controller for Taxation
Ms. Brenda Fleming, BOE Executive Director
Ms. Catherine Taylor, Chief of Board Proceedings
CAA Members
Mr. Rob Grossglouser, Pinnacle Advocacy, LLC, CAA Advocate

**California Assessors' Association
Proposition 19 Ad Hoc Committee
Initial Report and Findings 12/11/2020**

What we know

1. Transfers that have been allowed under Prop. 58 (193) will not be reassessed either retroactively or prospectively under Prop. 19 [E.g. If a rental property received a parent/child exclusion on July 1, 2019, the property will not now be reassessed beginning Feb. 16, 2021.]
2. If an event date (equity transfer, date of death, etc.) occurs on or before 2/15/2021, it falls under existing Prop. 58 rules. If the event date occurs on or after 2/16/2021, it falls under Prop. 19 rules.
3. For base year value transfers, Prop. 19 allows people to “buy up,” or to purchase property with a value higher than they sold their original residence for. However, the increase in value will be taxable at full cash value.
4. People can transfer their base year value from county to county. All counties will need to coordinate to pass along base year value information for original properties to counties where a replacement residence was purchased.
Possible remedy: The BOE/CAA Forms Committee create a form and/or electronic process that will be used by all counties to convey the necessary information about the original property to another county. This will promote consistency in both content and format. Following initial implementation, CAA Technology committee evaluate options for improved transmission of information

What needs legislation/legal opinion

1. Requirement for counties to report all base year value transfers to the BOE.
Concerns: The most logical source for tracking the number of times a claimant transfers is through the data base already established by the BOE. Prop. 19 states a three-time limit, but does not address reporting requirements to track the transfers. Also, since there is no cap on the number of times a disaster victim may transfer their base year value, if a person transferred a base year value due to a disaster, would that count toward their three-time limit?
Possible remedy: Recommend legislation to mandate reporting and clarify if disaster transfers count toward maximum transfer of three. However, if a mandate is impossible, the strongest language possible should be used to encourage reporting.
2. Clarification whether claimants may use either R&T 70/170 or Prop. 19, but not both.
Concerns: If a residence is destroyed, then rebuilt and an exclusion claimed under R&T 70/170, then the property is sold and a base year value exclusion claimed under Prop. 19, should the property owner be eligible for both exclusions?
Possible remedy: Clarifying legislation to exclude the ability to claim both exclusions.
3. Prop. 19 states a person must only be “severely disabled,” not “severely and permanently disabled.”
Concerns: Is there a difference? Would this now include mental disability as well as physical disability?

Possible remedy: Request a legal opinion on the difference in definition, if any, and how it applies to the exclusion.

4. Clarification regarding “three time” transfer of base year value for spouses.

Concerns: Does this mean spouses will actually be able to transfer up to six times – three times for each spouse? Currently knowledgeable spouses can structure transfers so that each spouse can claim a base year value exclusion. Will this loophole continue? (Note: Couples that are not married already have the right to transfer up to six times.)

Also, if someone received the benefit of a base year transfer under Prop. 60, does that count towards the three times they are allowed under Prop. 19, or was the number re-set to zero when the new amendment was passed?

Possible remedy: If one spouse has already used their 3 times, further claims be denied, even if the other spouse has not used their 3 times as an individual. Regarding a transfer prior to Prop. 19, we request clarification be included in an LTA from the BOE.

5. Clarification of when full market value and assessed value is determined for purposes of comparison between original and replacement properties.

Concerns: Should the value be determined strictly on the date of the event, even if the sale and purchase are two years apart? Should the value of both properties be based on the market value as of the date of the latest event? What date should be used for new construction of the replacement, and what date should the land for the replacement residence be used if the date for new construction is different than the date for the land purchase?

Possible remedy: Legislation is needed to clarify what dates should be used to determine value for the properties in order to also determine what values should be used to establish whether the replacement property is more than the value of the original property.

6. Clarification about what, if any, purchase or sale of residence for a base year value transfer would be qualifying for Prop. 19 if it occurs before 4/1/2021.

Concerns: If a person purchased a replacement residence in January 2021, and sold their original property in April 2021, would they qualify? If a person sold their original residence in January 2021, and purchased their replacement property in April 2021, would they qualify?

Possible remedy: Legislation to clarify whether all parts of the transaction must be after the effective date, or whether only one part needs to be after the effective date. Request the BOE write a follow-up LTA covering the various transactions that will or will not qualify.

7. Under Prop. 60, the value of the replacement can be up to 105% greater in the first year and up to 110% greater in the second year. Prop. 19 does not mention this percentage difference, only that if the value of the replacement is greater than the original, the difference is to be added to the base year being transferred.

Concern: The difference between have the “free” 5% or 10% can mean quite a bit in tax dollars for the claimant, so there would be differences in opinion about what is qualifying under Prop. 19.

Possible remedy: Request the BOE write an LTA that clearly identifies how or if the 5% / 10% difference applies under Prop. 19, and include examples for how the calculations should be done. Alternatively, recommend clarifying legislation.

8. Clarification about correct application of calculations for various situations for both base year value transfers and parent/child¹ transfers. (I.e. Value increases, value decreases, fractionals, multiple APN's, etc.)

Concerns: If a parent/child exclusion is allowed for a fractional interest, how should it be calculated? What if the fractional interest is for a family farm and there are multiple APN's? What if the property is under the Williamson Act, so there is site value? Etc. If the parent has a high value property, and so transfers small percentages to the transferee resident over time, is this allowed, and how will the calculations for such transfers be calculated? [e.g. To avoid having a transfer exceed the amount allowable under the Prop. 19 calculations, perhaps 10% transfers would remain under the amount that would trigger value being added to the base year. Could this be done multiple times so eventually the entire residence would remain under the old base year value? Would the step transaction doctrine apply? Is there any limit to the number of transfers a transferor can make in their lifetime?]

Possible remedy: Request the BOE write one or more LTA's covering the various transactions, and the proper method of calculation for each.

9. The effective date for Prop. 19 is February 16, 2021. The last date to effect a Prop. 58 transfer is February 15, 2021. In 2021, February 15 is a legal holiday.

Concern: Normally filing dates ending on a holiday are extended to the following work day. Does this mean the actual final date for Prop. 58 is February 16, 2021, and the beginning date for Prop. 19 is February 17, 2021?

Also, what are the recommendations for counties where the Recorder's Office is behind in their recordings? Is there a time frame where the signature/notarization date should be used as the effective date? If this is done for the parent/child exclusion, then should it be done for the base year value transfers as well? (For example, if a deed is signed in escrow before April 1, 2021, but is not recorded until after April 1, 2021?)

Possible remedy: Request the BOE issue an LTA regarding the legal effective date for the beginning date of Prop. 19 for parent/child transfers. There should also be a discussion about signature vs. recording dates, and how counties should process such anomalies.

10. Rules for timely filing of claims, prospective filings, protective filings, etc.

Concerns: Prop. 19 is silent on filing dates, whether there are deadlines, whether there can be prospective filings, what is considered an untimely filing, etc.

For example, suppose on a death a parent leaves a property to Child A and B. A lives on the property, and files a HOX claim and a parent/child claim. However, two years later, it is determined that the property will go to Child B, who is not eligible. What is the date of the change in ownership? The date of death or the date of the deed to Child B? (A was living in the property until B was deeded the property when the final decision was made.)

¹ Going forward all references to parent/child also includes grandparent/grandchild

Possible remedy: Legislation to clarify filing dates. Recommend claim filing dates for the parent/child exclusion align with the existing filing requirements for Prop. 58, allowing for prospective filings as well as protective filings.

11. Clarification regarding the residency requirement if there are multiple beneficiaries.

Concern: Many families have more than one child. Suppose property is in a trust, the trustor/parent dies, and the property is left equally to three children. Do all three children have to live in the property in order to claim a 100% exclusion? If only one child lives in the property, would this mean reassessment of a 2/3 interest?

Possible remedy: Recommend as long as one of the beneficiaries is using the property as their principal residence, the transfer would qualify for the full exclusion. (Is it reasonable to assume that all children and their families must reside in the same house in order for the exclusion to apply fully? This would mean that families with only one child had an unfair advantage over families that had, for example, four children, eight children, or even two children.)

12. Clarification regarding timing for transferee to establish a property as a principal residence.

Concerns: Must it be a principal residence on the date of transfer, or can it be up to 1 year after the transfer? Prop. 19 requires a claim to be filed within one year after the transfer, but is silent on when the transferee must be living in the property. If, for example, a parent passes away, is it reasonable to expect the child to be living on the property on that date, or can they move in within one year after that date? What is the assessor's responsibility for verifying the property is the principal residence of the transferee?

Possible remedy: Legislation to clarify, but recommend allowing the transferee to move in within one year after the date of transfer. (If a veteran is living on the property, but is still working with the DVA to establish their percentage of disability, they should be filing a HOX until such time as a DVX is approved. Would the primary residence responsibility would be the same as for any homeowner claiming the HOX/DVX, or a claimant for the base year value transfer which includes a residency requirement?)

13. Clarification about whether a transferee moving out of a property after an exclusion is applied has any effect on the exclusion.

Concerns: If a transferee claims the exclusion, but then moves out of the property six months later and the property becomes a rental, does that mean the exclusion should be removed and reassessed? What about if the transferee moves out five years later? What if the transferee moves out "temporarily" for work? What if the transferee had to move into a nursing home? What if the transferee were in the military and had multiple tours overseas? What if the transferee added joint tenants to title (so no change in ownership), and the original child moved out but the joint tenant continued as a resident so there was no break in the HOX eligibility? What if the transferee transferred to their child – would that be considered another parent/child, or would that be a grandparent/grandchild since the original exclusion went back to the original primary transferor? Would the date the principal residency ceased be the new transfer date, or would it be a factored enrollment of value established on the original date of transfer? Under what authority could the property be reassessed if there is no change in ownership or completion of new construction? Would the

change in value be supplementally effective, and if so, under what authority, or would the new value be enrolled on the upcoming lien date (like a rescission)?

Possible remedy: Legislation needed to clarify. There are many mixed opinions regarding the intent versus the actual language in Prop. 19.

14. Clarification regarding **transferor** for parent/child transfers. Do they need a HOX/DVX, and/or other documentation?

Concerns:

- Do all the transferors have to use the property as their principal residence? For example, if the husband lives on the property but the wife does not, is only the husband's interest eligible for exclusion, or since it is from both parents, does residency of only one qualify both interests?
- Prop. 19 language only requires the transferee to file for the HOX/DVX. Does the transferor also need to have filed for a HOX/DVX?
- If not, is there specific documentation needed? Is this reported to BOE?

Possible remedy: Request the BOE issue an LTA to clarify.

15. Definition and clarification of terms, such as "family farm," "owner," "claimant," etc.

Concerns: What is the meaning of "family?" (Is it any blood relation? Adopted? Step-parents or children? Only lineal descendants such as children and grandchildren? How long does it need to be in the family before it is a "family farm?") Does "family farm" refer to the appraisal unit, which might include multiple APN's, or only where the principal residence is located? Is a family farm without a homesite eligible for exclusion? Should the claimant be able to specify to what part of the family farm they want the exclusion applied? (For example, if the farm is in the Williamson Act, only the APN where there is site value.) Or, should it be applied to the appraisal unit as a whole?

Possible remedy: Request the BOE issue an LTA clarifying the meaning of various terms, with examples to illustrate how exclusion calculations should be applied under various scenarios. Legislation may be needed to further clarify the definitions.

16. Clarification of whether mixed use property, other than a family farm, is eligible for a parent/child exclusion.

Concerns: If, for example, an owner lives above a commercial enterprise, would a transfer of the property be eligible for a partial parent/child exclusion? Since there is specific language allowing family farms to qualify, one might interpret the language as only allowing mixed usage of family farms as qualifying.

Possible remedy: Legislation to clarify. Request the BOE follow up with an LTA including different examples to illustrate how the exclusion should work, and what calculations should be used.

17. Clarification regarding the ability to appeal a denial of a parent/child exclusion if a HOX/DVX is denied by an assessor.

Concern: An owner does not have the right to appeal the denial of an exemption before a local appeals board. If an owner wants to appeal the denial of a parent/child exclusion based on the denial of a HOX/DVX, would that mean an owner has to go to court to prove a property is their principal place of residence?

Possible remedy: Legislation to clarify if an owner should be able to bring before a local appeals board before being required to go to court.

What needs clean-up language to Constitution via initiative

1. Disaster requirements. Prop. 19 has eliminated R&T 69 and 69.3, both of which had much more liberal requirements. (E.g the timeframe for selling and buying have been reduced to only 2 years. There is general agreement this is an almost impossibly short time to meet the qualifications. The permitting process and insurance payout will only rarely occur in two years, to say nothing of having to sell the original property in a disaster area where very few people will be willing to purchase.)
2. Prop. 19 specifies damage or destruction of **improvements** must be more than 50%, while previously statutes indicated **improvements or land** must be more than 50%. Initiative needed to clean up language. In the interim does Prop 110 remain as it relates to damage to land?
3. Depending on legal opinion, may need clean language to state a claimant must be both “severely” and “permanently” disabled to qualify for the base year value exclusion.

Where did Prop. 19 narrow existing exclusions?

1. Disaster victims.
 - Only principal residences qualify. (Under R&T 69, could be any kind of property.)
 - Required to sell original property. (Under R&T 69, did not have to sell original property.)
 - Timing changes. (Under R&T 69, must replace within 5 years after disaster. Under 69.3, must replace within 3 years after disaster. Under Prop. 19, must replace within 2 years of sale of original.)
 - Damage must be more than 50% of improvements (only), not land (except for restricted access).
 - Damage must be due to wildfire or Governor-declared natural disaster. (Under R&T 69.5, damage to original residence could have been due to any “misfortune or calamity.”)
2. Any value increase of replacement property over original property is taxable at full cash value. (Does not allow for the 105%, 110% [under R&T 69.3 and 69.5], 115% [under R&T 69.3] or 120% [under R&T 69] value increases.)
3. Removes parent/child exclusion for any property that is not a principal residence of the transferor.
4. Removes parent/child exclusion for any principal residence that is not also a principal residence of the transferee.
5. If a principal residence qualifies, it may only partially qualify if market value exceeds a certain formula.

Where did Prop. 19 expand existing exclusions?
1. Allows claimant to transfer base year value up to three times. (Unlimited if victim of wildfire or Governor-declared disaster.)
2. Allows claimant to purchase replacement home anywhere in the state.
3. Allows claimant to purchase replacement home with value greater than original home.
4. Allows disaster victim to purchase replacement home anywhere in the state.

What additional work considerations might this mean for office staff?
1. New reporting requirements. Assessors will need to supply data so that County Finance Agencies/Controllers can assist Department of Finance/CDTFA in determining amount of revenue increases based on properties that are reassessed that would formerly have been eligible for the Prop. 58 exclusion (probably including the effect on each local agency, and the amount of revenue loss due to base year value transfers on property that would originally have been reassessed (for counties that did not have Prop. 90 in place).
2. Staff training. All affected Assessor and BOE staff will need training to familiarize them with the changes and differences from existing law necessitated by Prop. 19. Assessors and the BOE will need to create new internal procedures and policies as well as strategies for communicating with and answering questions from the public.
3. Increase in coordination and appraisal time for all parent/child transfers (to determine if value exceeds Prop. 19 formula and requires a change in value/supplemental assessment. Coordination may involve additional programming time.
4. Increase in number of base year value transfers to be processed each year, and the additional coordination among Assessor staff to process them correctly given the new formula for additional value.
5. Increase urgency to complete and return requests from other counties for information regarding original properties that were sold and base year values are being transferred to elsewhere in the state.
6. Increase in public service calls to explain the new rules for both base year value transfers and parent/child exclusions.
7. Writing FAQ's and/or pamphlets for their county website, and/or for other public distribution.
8. Potential increase in appeals, as values may result in tax increases assessees did not anticipate or may disagree with.