

**Case No. S158007**

**IN THE  
SUPREME COURT OF CALIFORNIA**

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LORRAINE STEINHART,  
Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES,  
Defendant and Respondent.

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After a Decision By The Court of Appeal  
Second Appellate District, Division Three, Case No. B190957

Los Angeles Superior Court, Case No. LC073339  
Honorable Michael B. Harwin

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**ANSWER BRIEF ON THE MERITS**

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## STATEMENT OF THE CASE

### Nature of Appeal

This is an appeal by plaintiff and appellant Lorraine Steinhart (“Steinhart”) from a final judgment of dismissal by the Los Angeles Superior Court, Hon. Michael B. Harwin, Judge presiding, entered upon an order sustaining a demurrer to complaint without leave to amend in favor of defendant and respondent County of Los Angeles (“County”). AA 130.<sup>1</sup>

### Standard of Review

This appeal is subject to the independent/de novo standard of review relating to pure questions of law (*Ghirardo v. Antonioli* (1994) 8 C.4th 791, 799), in that it involves review of the trial court’s sustaining of a demurrer without leave to amend. Furthermore, it involves constitutional interpretation of Proposition 13, Cal. Const., Art. 13A (“Proposition 13”) and statutory interpretation of Revenue and Taxation Code § 60, et seq.<sup>2</sup> The interpretation and application of a statute is a question of law which is reviewed de novo on appeal. *Reilly v. City and County of San Francisco* (2006) 142 C.A.4th 480, 487.

### Procedural History/Factual Scenario

This action is based upon Steinhart’s Complaint for Recovery of Real Estate Taxes Paid and Declaratory Relief, filed on August 29, 2005 (AA 1), in which Steinhart prayed for the following relief: (1) a judicial declaration that pursuant to the terms of the subject trust, County was not legally authorized to tax the subject residence based upon a reappraisal of the value of the property when a life estate vested in the trustor’s sister at the trustor’s death; and (2) County’s

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<sup>1</sup> “AA” denotes Appellant’s Appendix in Lieu Clerk’s Transcript, followed by the relevant page reference of the Appellant’s Appendix.

<sup>2</sup> Unless otherwise expressly stated, all references to statutory sections are to the Revenue and Taxation Code.

refund to the life tenant Steinhart of the excess real property taxes she had previously paid on the residence for the several years that she had been billed based upon the reappraisal. AA 1-5. The Complaint alleged, through direct allegations of fact or by reference to exhibits incorporated by reference, as follows:

During her lifetime, decedent Helfrick (“decedent”) created a living Trust into which she transferred to herself as trustee the subject residential parcel of real property in Sherman Oaks (“residence”). Attached to the Complaint as Exhibit A is a copy of Steinhart’s Claim for Refund of Property Taxes, mentioned below. AA 8. A copy of the Trust document is attached to the Exhibit A Claim for Refund as Exhibit 1 thereto. AA 14. The Trust was revocable during decedent's lifetime, and upon her death, named successor co-trustees to succeed her, at which time the Trust would become irrevocable.

At decedent's death, if Steinhart, her sister, survived her, Steinhart would have the right to occupy the residence for as long as she lived, subject to her paying all taxes, insurance and assessments on the residence, and all necessary repairs and costs of utilities. When Steinhart and the trustees both concurred, the residence could be exchanged for residential property or sold with an amount, not in excess of the proceeds of the sale, applied toward the purchase of residential property at such location as Steinhart and the trustees approved, which subsequent property would be subject to the terms and conditions of the Trust. If Steinhart chose not to acquire another residence, the trustees were to hold and administer the proceeds from such sale for the benefit of Steinhart, and were to pay to or apply for the benefit of Steinhart so much of the income (and principal, if necessary) as the trustees, in their discretion, determined for the proper and reasonable health, support, and maintenance of Steinhart for her lifetime. Upon

Steinhart's death, the trustees were to sell the residence and the net proceeds therefrom were to be distributed to designated remaindermen. Trust, Article VII. AA 20-21.

The Trust also provided that no beneficiary would have the power to sell, transfer, assign, pledge, or mortgage, the principal or income of the trust estate in any manner whatsoever. Trust, Article III. AA 28.<sup>3</sup>

Decedent died on March 24, 2001. Pursuant to the terms of the Trust, decedent's position as trustee was taken over by co-trustees, and as a beneficiary of the trust, Steinhart became the equitable life tenant of the residence, subject to paying all taxes, etc.<sup>4</sup>

Prior to decedent's death, the last tax bill for the fiscal year 2000-2001 reflected taxes in the amount of \$1,105.79, based on the valuation of the residence under Proposition 13 in the amount of \$96,638. AA 33. After her death, County generated a Supplemental Property Tax Bill for the fiscal year 2000-2001, recalculating the tax for that year at \$4,340.75, and for the portion of the year following decedent's death at \$1,085.19, based on the reappraised valuation of the residence under Proposition 13 in the amount of \$499,000. AA 37.

For each fiscal year thereafter, County sent out escalating tax bills (all of which were paid by Steinhart) as follows:

2001-2002: \$5,492.67

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<sup>3</sup> Unless prohibited by the terms of the trust instrument, a beneficial life estate created by a trust may be transferred by the beneficiary. *Title Ins. & Trust Co. v. Duffill* (1923) 191 C. 629, 646, 649.

<sup>4</sup> Under trust law, the creation of a trust divides title, placing legal title in the trustee, and equitable title in the beneficiaries. *Reilly v. City and County of San Francisco* (2006), *supra* at 489.

2002-2003: \$5,764.45

2003-2004: \$6,245.33

Copies of the subject tax bills, and the fronts and backs of Steinhart's canceled checks reflecting her payment of the same, are attached as Exhibits 2-7 to the Exhibit A Claim for Refund. AA 33-48.

On or about April 4, 2004, plaintiff filed with County a Claim for Refund of Property Taxes on the ground that pursuant to the provisions of the trust, a "change in ownership" as defined with respect to Proposition 13 did not occur at decedent's death, as a consequence of which County was not legally authorized to reevaluate and tax the property under Proposition 13 at its value as of the date of decedent's death.

On or about March 3, 2005, County sent written notice that the transfer of the residence occurring as of the date of decedent's death constituted a "change in ownership" as defined by law, and that the 100% reappraisal of the property would stand, and the claim for refund was denied as to each of the aforesaid tax bills.

County's written notice consisted of two groups of documents: (1) a document dated March 3, 2005 Re: Investigation of Ownership Change; and (2) five separate letters, dated March 2, 2005, each containing the same content other than that each referred to a separate tax bill number. Copies of those six documents are attached to the Complaint as Exhibit B. AA 49.

The March 3 document, Re: Investigation of Ownership Change stated: "The real property transfer is a 'Change in Ownership', as defined by law, and the 100% reappraisal of the property will stand." At its bottom, it contained a Notice which stated: "This notice is your record of our action on your request for investigation. It is your responsibility to pay all billed tax installments. Disputes involving the assessed value of your property

should be formerly addressed to the Assessment Appeals Board at (213) 974-1471. ***If we have indicated that a correction is being made***, you have 60 days from the date of receipt of your ***corrected tax bill*** to file an appeal.” (Emphasis added).

The second group of documents (i.e., the five letters) stated in relevant part: “***The County has completed its review*** of your claim(s) for refund of taxes and/or penalties you filed with us on DECEMBER 21, 2004. Your claim(s) was reviewed by the ASSESSOR. Based on the documentation you submitted, they determined that your claim does not meet the provisions in the Revenue and Taxation Code for granting a refund. For this reason, ***your claim(s) for refund is denied*** effective of March 2, 2005. Section 5141 of the State of California Revenue and Taxation Code ***allows you six months from the effective date of denial of your claim(s) to commence an action in the Superior Court to seek judicial review of this denial.***” (Emphasis added).

The Complaint was filed as a Limited Civil Case—over \$10,000, in that a tax refund was sought for less than \$25,000. County filed a Demurrer to the Complaint. (AA 55). Steinhart filed Opposition to Demurrer (AA 63), which included a Request for Judicial Notice (AA 76). At the demurrer hearing, the limited civil case department ruled that it did not have jurisdiction over a complaint for declaratory relief pursuant to CCP § 86(a)(7), and thereupon ordered the case reclassified as an unlimited civil case; the case was thereupon given a new case number and transferred to an unlimited civil case department. AA 81, 82, and 83.

After the case was so transferred, County again filed a Demurrer to Complaint (AA 84) on three grounds:

1. Steinhart’s action was barred by her failure to exhaust administrative remedies.
2. Pursuant to Section 60, the transfer of a life estate in real property to a nonspouse third party, such as the transfer from the decedent to Steinhart under the Trust, constituted a

“change in ownership” pursuant to which a reassessment of the property valuation as of date of death is authorized.

3. Steinhart’s action for refund of taxes previously paid is prohibited by Section 4807, because it constitutes an action to enjoin or prevent the collection of taxes in that it improperly included a request for declaratory relief.

Steinhart filed Opposition to Demurrer (AA 95) incorporating the previously-filed Request for Judicial Notice by reference (footnote 2 at AA 107); and County filed a Reply to Opposition (AA 113) including a Request for Judicial Notice (AA 125).

## **ARGUMENT**

### **SUBSTANTIVE ISSUES**

#### **I. THE VESTING OF AN EQUITABLE LIFE ESTATE IN A NONSPOUSE THIRD PARTY, PURSUANT TO THE TERMS OF A LIVING TRUST AT THE DEATH OF THE TRUSTOR, DOES NOT CONSTITUTE A “CHANGE IN OWNERSHIP” PURSUANT TO PROPOSITION 13.**

The central issue in this case is the proper interpretation of the term “change in ownership” as contained in Proposition 13, Cal. Const., Art. 13A (“Proposition 13”), as that term is defined in Section 60 and applied to the vesting of an equitable life estate in real property in the beneficiary of a living revocable trust when the trust becomes irrevocable at the death of the trustor.

Proposition 13 provides that: (1) The maximum amount of any ad valorem tax on real property shall not exceed 1% of the full cash value of such property (Cal. Const., Art. 13A, § 1(a)); (2) the “full cash value” means the county assessor’s valuation of real property as shown on the 1975-76 tax bill under “full cash value” or, thereafter, the *appraised value* of real property when purchased, newly constructed, or a *change in ownership* has occurred after the 1975

assessment (Cal. Const., Art. 13A, § 2(a)); and (3) the full cash value base may reflect from year to year the inflationary rate not to exceed 2% for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction . . . . (Cal. Const., Art. 13A, § 2(b)). (Emphasis added).

Section 60 provides: “A ‘change in ownership’ means a transfer of a present interest in real property, including the beneficial use thereof, the *value* of which is substantially equal to the *value* of the fee interest.” (Emphasis supplied).

The central case authority in the instant case is *Pacific Southwest Realty Co. v. County of Los Angeles* (1992) 1 C.4th 155. In that case, plaintiff Pacific sold a fee simple absolute interest in an office building complex to Metropolitan and simultaneously acquired from Metropolitan a leasehold interest in two office buildings located on the property (constituting 73% of the property), one building for a period of 21 months, and the other for a period of 60 years with renewal options. The lease required Pacific to pay its share of the property tax. Pacific paid rent under the lease at the market rate. Concluding that the sale and leaseback resulted in a change in ownership of the entire parcel, the County accordingly reassessed the value of the entire property. Pacific paid the tax bill and filed a claim for refund under Section 5097(b). The County denied the claim without prejudice and Pacific sought relief in court. The trial court ruled that under the statutes and regulations implementing Proposition 13, Pacific was entitled to a refund. The Court of Appeal affirmed.

In reversing the Court of Appeal, *Pacific Southwest* held that the sale and leaseback transaction constituted a “change in ownership” within the meaning of Proposition 13 and Section 60. In so holding, the Supreme Court wrote an extensive law review type opinion in which it thoroughly discussed the constitutional/statutory scheme emanating from Proposition 13:

Following adoption of Proposition 13 by popular election, it fell to the Legislature to create consistent and uniform guidelines to define the phrase, “change in ownership,” in the Proposition. This task was delegated to the Task Force on Property Tax Administration, the recommendations of which resulted in the enactment of the aforesaid Sections 60, 61 and 62. The Task Force Report (“Report”) stated that it sought to distill the basic characteristics of a “change in ownership” and embody them in a single test (now Section 60) which could be applied evenhandedly to distinguish between “changes” and “non-changes,” both those which the Task Force could and those which it did not foresee. The Task Force was also anxious that the single test be sufficiently consistent with the normal understanding of “change in ownership” to withstand legal attack. The Task Force recommended that its general definition of change in ownership (Section 60) should control all transfers, both foreseen and unforeseen; and also recommended the use of statutory “examples” to elaborate on common transactions, foreseeing that lay assessors and taxpayers would otherwise have difficulty applying legal concepts such as “beneficial use” and “substantially equivalent.” Thus, common types of transfers were identified and concrete rules for them were set forth in Sections 61 and 62. The Report explained that: “It is important that the specific statutory examples be *consistent* with the general test” because “[t]he entire statutory design would be destroyed by providing statutory treatment of specific transfers which are inconsistent with the general test” in that “the general test would be overruled by the specific rules and the entire statutory design might be held invalid because of the lack of any consistent, rational interpretation of the constitutional phrase, ‘change in ownership.’” (Task force rep., *supra*, at pp. 40-41).” (At 161-162).

Section 60's governing test contains three parts: "A 'change in ownership' means [1] a transfer of a present interest in real property, [2] including the beneficial use thereof, [3] the value of which is substantially equal to the value of the fee interest."

In holding that the Section 60 test was satisfied under the facts of that case, the Court stated that in enacting the third prong of § 60, the Legislature meant to insulate from Proposition 13's effect transfers in which only an estate of lesser value than the fee was conveyed, observing that two examples illustrated the Legislature's intent when it enacted the statutory scheme of Section 60, et seq. One example considered the conveyance of a lease for one year. It would not be rational to apply a constitutional provision for reassessment following a "change in ownership" when the owner of an apartment leases it to another for one year, thereby conveying an estate of lesser value than that retained. By contrast, in enacting § 61(c)(1), the Legislature decided that the creation of a 35-year lease would constitute a change in ownership because the length of the lease would give the lessee's interest some of the practical attributes of a conveyance of a fee simple. A lease of that duration constitutes the main economic value of the land, even though the leaseholder does not own a freehold estate (i.e., an estate of indeterminate duration), in that lenders are willing to lend on the security of such an instrument, citing task force report pp. 39-41 (at 165).

A second example is the conveyance of a fee simple from parent to child subject to the reservation of a life estate in the parent, which the Legislature included in its list of examples of transfers exempt from "change in ownership," referring to Section 62(e). With reference to this example, the Court went on to hold at 165-166:

***"But even if the Legislature had not done so [by specific example in § 62(e)], reassessment would be barred under the carefully drafted basic test of***

*section 60* [emphasis added], not only because the beneficial use would not have transferred, but also because the value of each divided interest in the estate would not approach that of a fee. A purchaser of the reserved estate would be buying a life estate *per autre vie*--a freehold estate, to be sure, ***but an estate of questionable value because subject to complete defeasance at an unknown time. Rare is the mortgagee willing to lend on the security of an estate so ephemeral.***

The value of the reversionary or remainder interest would also be reduced because the time of vesting would be uncertain and, depending on the care with which the original conveyance was drafted, the value of the ultimate estate might be less at the time of vesting because of intervening conveyances, creditors' demands, and the like.

***"By contrast, when a life estate ends and the remainder or reversion indefeasibly vests in the grantees the value of the estate is known and is identical to the value of the fee. It is at that point that a change in ownership has occurred, as the Legislature specifically provided in accord with the task force's recommendation. (§ 61, subd. [former] (f))."*** (Emphasis added).

The *Steinhart* court found the discussion of the value of a life estate in *Pacific Southwest* to be persuasive and chose to follow it, observing that although it was aware that *Leckie v. County of Orange* (1998) 65 C.A.4th 334 dismissed *Pacific Southwest's* discussion of the value of a life estate as dicta:

“However, even properly characterized as dictum, statements of our Supreme Court should be considered ‘persuasive’ . . . and ‘its dicta command a serious respect . . .’ When, as here, ‘the Supreme Court has conducted a thorough analysis of the issues

and such analysis reflects compelling logic, its dictum should be followed . . . .” Slip op., p. 13.

The *Steinhart* court thereupon held, and the persuasiveness of that holding is commended to this Court:

“Thus, in *Pacific Southwest*, the Supreme Court recognized the obvious – a life estate is an estate of questionable value subject to complete defeasance at an unknown time. Therefore, by definition, the value of a life estate is not ‘substantially equal to the value of the fee interest’ for purposes of a statutory change in ownership. (§ 60). . . . Guided by *Pacific Southwest*, we conclude the conveyance a life estate to Steinhart is not a transfer ‘substantially equal to the value of the fee interest.’ (§ 60.) Therefore, there was no change in ownership for purposes of Proposition 13.” Slip op., p. 12-13.

County’s primary contention is that the vesting of a life estate in a non-exempt party always constitutes a change in ownership. It bases this contention on the reasoning in the Task Force Report that an owner of a life estate, whether a retained or transferred life estate, “has the dominant and primary interest in the property;” and the value of the dominant and primary interest in the property is by definition “substantially equal to the value of the fee interest.” Opening Brief, pp. 16-17. The Report states at 40, 44:

“[I]n determining whether a change in ownership has occurred it is necessary to identify but one **primary owner**. Otherwise assessor’s would be forced to value, and account for separate base year values for landlords and tenants on all leases, and for other forms of split ownership. This would enormously complicate the assessor’s job. A major purpose of this third element [value equivalence], therefore, is to avoid such unwarranted complexity by identifying the **primary owner**, so that **only a transfer by him will be a change in ownership** and when it occurs the whole property will be reappraised.

If the hypothetical lease previously mentioned was a short-term lease (the landlord owned the *main economic value*), the landlord's sale, subject to the lease would count [as a change in ownership]. If, on the other hand, the lease was a long-term lease (the lessee's interest was the *main economic package*), the lease assignment would count. In either case the entire fee value of the leased premises would be reappraised." (Italicized emphasis added).

The Report states at 44:

"Transfers with a retained life estate are not ownership changes until the life tenant dies. *The life tenant has the dominant or primary interest* under the "value equivalence" element of the general change in ownership definition, and there is no transfer of the present interest in the property until the life tenant dies and the property vests in the remainder." (Italicized emphasis added).

Pursuant to the above excerpts, with regard to taxable properties with split ownership interests, the Report contends that:

1. A major purpose of the value equivalence element of Section 60 is to determine the one primary owner of the property, being the party that owns the split interest that constitutes the main economic value of the property.
2. The interest that constitutes the main economic value of the property is ipso facto deemed to be substantially equal to the value of the fee interest.
3. Only a transfer by the primary owner will constitute a change in ownership.
4. A life tenant has the dominant or primary interest under the value equivalence element and therefore is the primary owner.

Steinhart respectfully disputes the merit of the Report's contentions, and hence the merit of County's argument. The terms "primary owner," "main economic value," and "main

economic package” do not appear in Proposition 13 nor Sections 60, et seq.. The rules of statutory construction require that in statutory interpretation, a court must first consider the language of the statute itself:

“The rules of statutory construction teach us that courts should ascertain the Legislature’s intent so as to effect the purpose of the law in question. In fulfilling this rule, *we look first to the language of the statute itself*, considering that language in the context of the entire statute and statutory scheme. Further, we are called to give effect to statutes according to the ordinary, usual import of the language used in framing them. We construe words in their context, mindful of the nature and obvious purpose the statute where they appear.” *Slocum v. State Board of Equalization* (2005) 134 CA4th 969, 976-977. (Emphasis added).

The plain language of the value equivalence element of Section 60 has nothing to do with the “primary owner” nor the “main economic value” of the property. It simply provides that there is a change in ownership only when the *value* of a transferred present interest is *substantially equal* to the *value* of the fee interest of the property. In Proposition 13, the term “value” means the *fair market value* of the fee interest in the property.<sup>5</sup> Because Section 60 is a legislative adjunct to Proposition 13, promulgated to provide a rational interpretation of “change in ownership,” the term “value” in Section 60 should be interpreted consistently with Proposition 13 to mean the fair market value of whatever interest is being evaluated to determine whether it is substantially equal to the value of the fee interest. Fair market value is traditionally defined as:

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<sup>5</sup> Proposition 13 instructs that such value is to be the assessor’s appraised value when a change in ownership has occurred after 1975. Cal. Const. Art. 13A, § 2(a). Assessors are to assess all taxable property at its full value (Section 401) by the comparative sales of other like properties method provided in Section 402.5. See Section 1609.8 (“When valuing property, a county board [of equalization] shall follow the provisions set forth in Section 402.5.”).

“the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for doing so, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for doing so, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.” Code of Civil Procedure § 1263.320(a) (definition of fair market value for purposes of eminent domain compensation).

Assuming *arguendo* that the concepts of “primary owner” or “main economic value” have any relevance to the value equivalence element in a split ownership scenario, it would be proper to state that the primary owner is the owner of the interest the value of which is substantially equal to the value of the fee interest. The Task Force Report improperly reverses this concept. Without engaging in a determination of the fair market value of the split interest in question, the Report simply pontificates, for instance, that a life estate and a 35 year lease<sup>6</sup> constitute the main economic value of the property, and that by definition, the main economic value is substantially equal to the value of the fee interest.

As will be discussed below, the market value of a lease can be determined by a method which is consistent with the rules of evidence. The market value of a life estate can only be determined by suspending the rule of evidence that prohibits making speculative inferences (i.e., inferring the life expectancy of the person whose life measures the life estate), and permitting this inference to be made with reference to an approved life expectancy table.

Moreover, the concepts of primary owner and main economic value of split interests in property are apt to cause confusion rather than clarity with regard to the value equivalence test. If the value of a particular split interest, be it a life estate, lease, or otherwise, is, for instance,

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<sup>6</sup> Report, pp. 44, 49.

60% of the value of the fee interest, it could be said that the owner of that interest is the primary owner who has the main economic value of the property. However, the value equivalence element is not satisfied unless the value of the interest in question is “substantially equal” to the value of the fee interest. There is no dispute that 60% of the value of the fee interest does not constitute substantial equivalence. Reasonably, a value of *at least* 90% would be required to satisfy that test.

The Report also causes confusion in the stating that the owner of a life estate is the primary owner, and that only a *transfer* by the primary owner constitutes a change in ownership. In the case of a life estate, a change in ownership occurs only when the life tenant dies and the property vests in the remainder. Report, pp. 40,44, 49; see also Section 61(g) (the statutory enactment of the Report’s recommendation). Other than in the instance of a life tenant’s assignment of his interest (a situation not relevant to the instant case),<sup>7</sup> the vesting of an interest succeeding the life estate does not occur by *transfer* of the life estate, but by the *extinguishment* of the life estate. Therefore, the reversionary or remainder interest, even if it is a succeeding life estate (rather than some other succeeding interest), will never be equal in value to the extinguished life estate because in order for a life estate to terminate, the life that measures its length (be it the life of the life tenant or a third-party) must end.

The upshot of the above discussion is that pursuant to the language of the controlling test in Section 60, whether a particular transfer constitutes a change in ownership is not to be a determination of whether it is a transfer of the interest of the “primary owner,” but rather a determination of whether the *market value* of the new interest (whether it comes into existence

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<sup>7</sup> Unless prohibited by the terms of a trust that creates an equitable life estate, the life estate beneficiary can transfer his interest. *Title Ins. & Trust Co. v. Duffill* (1923) 191 C. 629, 649. However, in the instant case, such an assignment is not possible because the terms of the trust prohibit Steinhart from assigning her life estate interest.

by a *transfer*, or merely *vests* by the occurrence of an antecedent event, such as the death of a person) is substantially equal to the *market value* of the fee interest.

In addition to the above, the reasoning of the Report is also unpersuasive because it does not even follow its own rules. In support of its argument that specific statutory examples should be furnished to assist lay assessors and taxpayers to apply the legal concepts of “beneficial use” and “substantially equivalent,” the Report states that each specific example set forth in Sections 61 and 62 must be consistent with the superseding, general test set forth in Section 60, including the “value equivalence” test; and furthermore, each specific example must have a “rational basis.” Report, pp. 40-41. In setting forth a lease of 35 years or more as a specific example of a transfer that constitutes a change in ownership, the *rational basis* offered in the Report is: “Lenders will lend on the security of a lease for 35 years or longer.” Report, p. 41. However, in stating that, “The life tenant has the dominant or primary interest” under the “value equivalence” element of the general change in ownership definition, the Report offers no rational basis for that assertion. Indeed, no rational basis to support that assertion exists. As noted, the alleged rational basis for the assertion that a lease of 35 years or more satisfies the value equivalence element is because lenders will lend on the security of such an interest. The Supreme Court in *Pacific Southwest* at 165 came to exactly the opposite conclusion in opining that a life estate does not satisfy the value equivalence test because:

“[I]t is in estate of questionable value because subject to complete defeasance at an unknown time. *Rare is the mortgagee willing lend on the security of an estate so ephemeral.*” (Emphasis added).

The specific examples in the Report are essentially the opinions of a body of experts on the subject of what constitutes “change in ownership” for the purpose of Proposition 13 in various factual contexts. “[An] expert’s opinion rendered without a reasoned explanation of why

the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based.” *Powell v. Kleinman* (2007) 151 C.A.4th 112, 123. Therefore, the conclusory statement in the Report that the “life tenant has the dominant or primary interest” is of no evidentiary value since it is unsupported by a reasoned explanation of why the underlying facts lead to the ultimate conclusion.

With respect to question of whether the value of a life estate is substantially equal to the value of the fee interest in a particular parcel of property for the purpose of Proposition 13, there are three possible answers:

1. The value of a life estate is ***never*** substantially equal to the value of the fee interest because it is an ephemeral estate of questionable value subject to complete defeasance at an unknown time. This is the position stated in *Pacific Southwest* and by the *Steinhart* court.<sup>8</sup>
2. The value of a life estate is ***always*** equal to the value of the fee interest. This is the portion of the Report and 18 Cal. Code of Regs. § 462.060(a).
3. The value of a life estate may ***sometimes*** be equal to the value of the fee interest, depending upon the speculative number of years of remaining life expectancy of the person whose life measures the length of the particular life estate.

The third possibility begs the question: can the value of a life estate actually be determined? The answer is an enigmatic yes and no! A life tenant of real property is given the beneficial use thereof, i.e., the rent-free use and enjoyment of the property and/or the income therefrom for a lifetime (whether measured by the life of the tenant or the life of a third party). It is obvious that rent-free use of a parcel of property for 20 years is of greater value than rent-free

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<sup>8</sup> Contrary to a suggestion in County’s Opening Brief, this position does not depend upon whether or not the person whose life measures the length of the life estate is the life tenant, because everyone’s life is subject to complete defeasance at an unknown time.

use of the property for five years. Therefore, in order to properly assess the value of any given life estate at any point in time, one would have to know the remaining number of years in the life of the person whose life measures the length of the life estate. However, this fact is unknowable with respect to any given person's life. Based on this truth, the value of a life estate can never be ascertained.

Nonetheless, there are at least two instances when the values of life estates are "ascertained" and money is disbursed based upon such evaluation. When real property subject to a life estate and remainder interests is partitioned and sold, the court has discretion to ascertain the proportion of the proceeds of sale that will be a just and reasonable sum for the satisfaction of the estate of the life tenant and shall ascertain the proportional value of any vested or contingent future right or estate in the property and shall order such respective amounts distributed to those parties or held for their respective benefits; or the court may establish a trust with the proceeds of sale which shall pay the income and distribute the remainder in accordance with the rights of the life tenant and the remainder. Code of Civil Procedure § 873.840. In the context of a taking of real property under eminent domain, where the property so acquired is subject to a life tenancy, on petition of the life tenant or any other person having an interest in the property, the court may order any of the following: 1) an apportionment and distribution of the award based on the value of the interests of the life tenant and remainderman; 2) the compensation to be used to purchase comparable property to be held subject to the life tenancy; 3) the compensation to be held in trust and invested and the income (and, to the extent the instrument that created the life tenancy permits, principal) to be distributed to the life tenant for the remainder of the tenancy; or 4) such other arrangement as will be equitable under the circumstances. Code of Civil Procedure § 1265.420.

In either the case of partition and sale or the treatment of an eminent domain award, the court may choose to apportion and distribute the proceeds of the transaction as between the life tenant and the remainderman. In order to properly do so, the court must ascertain the value of the life estate, a task no finder of fact can actually perform in accordance with the rules of evidence. The number of years remaining in a particular person's life is an inference which one would try to draw from evidentiary facts. However, "It is axiomatic that 'an inference may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guesswork.'" *California Shoppers, Inc. v. Royal Globe Ins.* (1985) 175 C.A.3d 1, 45. How long a particular individual will live is truly a matter of speculation, surmise or conjecture even if the person's age and state of health are known. No one knows whether some random disaster may terminate his life tomorrow. Nonetheless, for the purpose of resolving issues which are dependent on a determination of the remaining length of a person's life, such as apportioning partition sale proceeds or an eminent domain award, or awarding damages to a permanently disabled plaintiff in a personal injury case, triers of fact are permitted to resort to information on an approved life expectancy table as a basis for making such a determination. Traditionally, the life expectancy table provided with the standard California jury instructions is used in court proceedings. One would suppose that the same table, or some other recognized life expectancy table, would be used in a partition or eminent domain context. Nonetheless, in making use of a life expectancy table, it must be recognized that its use is simply an expedient granting of permission to a finder of fact to engage in what otherwise would be impermissible speculation in order to come to resolution of an issue where resolution is necessary. A life expectancy table is based upon the "law of large numbers," which is a theorem in probability which "guarantees" stable long-term results for random events given a sufficiently large number of such events, in this case deaths of a large number of persons. See Wikipedia, The Law of Large Numbers.

Insurance companies rely on such actuarial information to operate profitably. However, when the life of only one person is concerned, the length of that person's life expectancy is pure speculation!

Based on the foregoing, the value of any particular life estate can only be speculated by the expedient of resort to a life expectancy table. In using that expedient, one can determine the value of any particular life estate arithmetically by appraising the value of the real property, determining how much money could be earned by investing that amount at a reasonably available rate of return in an investment that does not risk wasting the principal,<sup>9</sup> then determining the present value of that stream of income for the number of years in the remaining life expectancy of the life that measures the length of the life estate.

If one were permitted to speculatively determine the value of a life estate for the purpose of applying the third prong of Section 60, one could determine whether the *value* of any particular life estate so determined was substantially equivalent to the *value* of the fee in a particular parcel of property. In the instant case, the value of the fee at the date of decedent's death, according to the appraisal of County, was \$499,000. AA 37. The length of the life estate in question was measured by the life of Steinhart. At time of decedent's death, Steinhart had a life expectancy of 14 years (rounded) according to the life expectancy table provided with the standard California jury instructions. Steinhart has retained the services of Dr. Jules Kamin, a court-qualified economics/financial expert, to prepare a report, including exhibits, showing the value of Steinhart's life estate at the time of decedent's death, as well as the values of life estates of different lengths based upon rates of return from 2% through 14%.

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<sup>9</sup> Unless otherwise specified in the instrument creating a life estate, a life tenant may not waste the principal. Civil Code § 818.

In a separate Request for Judicial Notice, Steinhart requests that this Court take judicial notice of Dr. Kamin's report in aid of determining whether to take judicial notice of the results of "ascertaining" the value of a life estate by use of the life expectancy table methodology.

With reference to Dr. Kamin's report, including the exhibits submitted therewith, the value of Steinhart's life estate is not substantially equal to the value of the fee interest in the residence. The value of the fee interest was \$499,000 on the date of the trustor's death and the value of Steinhart's life estate on that date was \$257,000 (rounded). Furthermore, the Exhibit 8 spreadsheet to Kamin's report readily demonstrates that even using life estates with substantially longer durations, and using interest rates substantially higher than that available to Steinhart on the date of decedent's death, only a life estate with a long duration and a high rate of interest would have a market value substantially equal to the market value of the fee interest. Under the supposition that in order to be substantially equal to the value of the fee interest, the value of the other interest in question must be at least equal to 90% of the value of the fee, Steinhart has presented in **bold type** on the Exhibit 8 spreadsheet, the values at different life expectancy years and different rates of interest at which the 90% value occurs.

The conclusion to be drawn from the above is the following: The value of a life estate cannot be determined without engaging in evidentiarily impermissible speculation. Because of necessity, in certain situations it has been allowed to be determined in contravention of the rules of evidence by using the expedient of a life expectancy table as a reasonable means of speculation. If one cannot properly determine the value of a life estate, it cannot be determined whether the value of that estate is substantially equal to the value of the fee interest in a parcel of property. Even if one resorts to the life expectancy table expedient, a high interest rate and a lengthy remaining life expectancy are required for a life estate to satisfy the value equivalence test. Even using the life expectancy table expedient, it is obvious that the value of a majority of

life estates would be determined not to be substantially equal to the value of the fee interest.

Therefore, County's assertion that the value of a life estate is *always* equal to the value of the fee interest is demonstrably without merit.

- **The Holdings of the Leckie and Reilly Cases Should Be Disapproved.**

With regard to the substantive issue of whether the value of a life estate is always (i.e., inherently) substantially equal to the value of the fee interest, *Leckie v. County of Orange* (1998) 73 C.A.4th 334, and *Reilly v. City and County of San Francisco* (2006) 142 C.A.4th 480, are directly in conflict with the position of the *Steinhart* court, which is the position espoused in this Brief. Since the holdings of *Leckie* and *Reilly* on that issue are erroneous, they should be disapproved.

- **Because 18 Cal. Code of Regs. § 462.060(a) Exceeds the Legislature's Grant of Authority, it Is Without Effect and Cannot Be Enforced.**

In *Pacific Southwest Realty*, plaintiff argued that the administrative rule contained in 18 Cal. Code of Regs § 462(k)(4) should have been applied to reach a result favorable to the taxpayer. In rejecting that argument, the Court held at 171:

“[A]n administrative rule that exceeds the Legislature's grant of authority as expressed in section 60 et seq. is without effect and may not be enforced. [Citations.]

Therefore, to the extent the regulation conflicts with the Constitution and the Revenue and Taxation Code as construed in this opinion, well-settled principles of administrative law proscribe its enforcement.”

Based upon the quoted principle enunciated in *Pacific Southwest*, and for all of the reasons set forth above, Section 462.060(a) should be held to exceed the Legislature's grant of authority, and to be in conflict with the Constitution, and hence, to be without effect and unenforceable.

**II. THE SCHEME OF STATUTORY EXAMPLES SET FORTH IN SECTIONS 61 AND 62 IS UNRELIABLE AND SHOULD BE AVOIDED BECAUSE SEVERAL EXAMPLES ARE DEMONSTRABLY INCONSISTENT WITH THE GENERAL DEFINITION IN SECTION 60.**

The foregoing discussion adequately disposes of the merits of the substantive issue in this case. However, it is important to focus on the vice warned about by the Task Force, that the specific statutory examples set forth in Sections 61 and 62 must be consistent with the general definition in Section 60, lest the general test be overruled by the specific rules, and the entire statutory design be destroyed and held invalid because of the lack of any consistent, rational interpretation of the constitutional phrase “change in ownership.” In reviewing the statutory scheme, Steinhart has ascertained that the vice warned about by the Task Force is in fact manifest. Several of the specific statutory examples set forth in Sections 61 and 62 are demonstrably inconsistent with the general test set forth in Section 60.

Section 61(h).

Section 61(h) provides that a change in ownership, includes:

“Any interests in real property that vest in persons other than the trustor . . . when a revocable trust becomes irrevocable.”

Applying the language section 61(h) literally to the facts of the instant case would lead to the conclusion that when the Trust became irrevocable upon the death of the trustor, and an equitable life estate vested in Steinhart as the life beneficiary, a change in ownership occurred. However, such an interpretation is improper because it is in conflict with the general definition of change in ownership set forth in Section 60.

In *Pacific Southwest*, Pacific, the lessee-taxpayer, contended for a literal interpretation of Section 62(e), which provides that a change in ownership does not include: “Any transfer by an

instrument whose terms reserve to the transferor an estate for years or an estate for life.” In rejecting such interpretation, the Court held at 169:

“Although plaintiffs’ interpretation arguably comports with the language of the code provision, it disregards other pertinent sections . . . of the Revenue and Taxation Code.

“As we have already observed, code sections in *pari materia* must be harmonized with each other to the extent possible; a section should be construed in light of the whole system of law of which it is a part. [Citations.] Considered in isolation, we might agree with plaintiff that the language of subdivision (e) of section 62 appears to confer an exemption from reassessment . . . .

“We have already explained that the transaction did achieve a change in ownership within the meaning of section 60, which was intended as the fundamental rule implementing Proposition 13. As we have also observed, the report drafters declared their intention that the examples set forth in sections 61 and 62 were to be derivative or explanatory, and not to conflict with section 60’s general rule. . . . We therefore conclude that the Legislature did not intend for a sale and leaseback to fall within the ambit of section 62, subdivision (e). Any other conclusion would render meaningless the preeminent command of section 60 – a result we are constrained to avoid.”

In the instant case, a literal application of the language in Section 61(h) would lead to the conclusion that when the life estate vested in Steinhart when the revocable trust became irrevocable, a change in ownership occurred. However, based upon the foregoing application of the superceding, general test in Section 60, that conclusion is erroneous because the value of a life estate is never substantially equal to the value of the fee interest, or alternatively, the value of Steinhart’s specific life estate is not substantially equal to the value of the fee interest in the

residence. Furthermore, Section 61(h) is logically unsound in providing that a change in ownership occurs when “any interest” in real property vests in a person other than the trustor when a revocable trust becomes irrevocable. Literally, this would mean that if an estate for one year vested in a party on the death of a trustor, a change in ownership would have occurred. However, as noted in *Pacific Southwest*, the conveyance of a lease for one year does not constitute a change in ownership. Therefore, Section 61(h) is invalid and should not be applied.

#### Section 61(a).

The Report made the recommendation in its proposed language for section 61(a) that section 60 be deemed to include as a change in ownership “the creation, renewal, sublease, assignment or other transfer of the right to produce or extract oil, gas or other minerals *for so long as they can be produced or extracted in paying quantities.*” (Emphasis added). Report, p. 49. However, the Legislature declined to implement that suggestion, modifying it to provide in Section 61(a):

“The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals *regardless of the period during which the right may be exercised. The balance of the property, other than the mineral rights, shall not be reappraised pursuant to this section.* (Emphasis added).

The principle set forth in the Report was that whenever the owner of the primary interest transfers his interest, the value of the *entire* parcel of land, both that of the primary and secondary interests, is to be reappraised as a change in ownership under Proposition 13. Report, p. 40. In regard to section 61(a), the Legislature wholly departed from this concept, providing that any transfer of the right to extract minerals constitutes a change in ownership, “regardless of the period during which the right may be exercised,” even if the right may be exercised only for a year, or only for a month! Furthermore, realizing the arbitrariness of this change in ownership

example, the Legislature further departed from the Section 60 general test by providing arbitrarily that the balance of the interests in the property, other than the mineral rights, shall not be reappraised! Finally, the Report's opinion that the value of an interest to extract minerals from property is inherently equal to the value of the fee should be soundly rejected as not premised on a rational basis. The actual value of such a right is speculative, since it is unknown what the quantity and quality, and hence the value, of the minerals is before they are extracted. Without knowing that fact, the mineral rights interest cannot be evaluated.

Sections 61(c) and 62(g).

Section 61(c) includes as a change in ownership: The creation of a leasehold interest in taxable real property for a term of 35 years or more, or any transfer of the lessor's interest in taxable real property subject to a lease with a remaining term of less than 35 years. Section 62(g) excludes from a change in ownership any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term of 35 years or more.

Respectfully, the 35 year leasehold interest rule is inconsistent with the general test of Section 60, and furthermore, is inconsistent with the observations of this Court in its holding in *Pacific Southwest*. In determining that the "beneficial use" element of the Section 60 general test was satisfied by the conveyance of the fee to Metropolitan subject to a 60 year lease back to Pacific, the Court at 164 held that Metropolitan had received the beneficial use of the purchased property, even though it did not receive physical possession of the leased portion:

"There can therefore be no question that when the Metropolitan Life purchased the property in fee simple absolute it acquired its beneficial use during the lease term. Metropolitan Life's decision to exercise its beneficial interest by exacting rent from plaintiff grantor rather than acquiring physical control of the demised premises does not alter the character of the transaction. 'The fact that [Metropolitan Life] may not occupy

the property during the lease period does not deprive it of its right to enjoy the *value* of its property represented by the rent.” [Emphasis in original].

In holding that Section 62(e) [“Any transfer by an instrument whose terms reserves to the transferor an estate for years . . . “ does not constitute a change in ownership, the Court noted that the reservation of an estate for years contemplated in Section 62(e) was a rent-free estate for years rather than a lease requiring payment of rent, such as typically reserved by a parent to himself in a conveyance to his children wherein the transferor retains the “beneficial use” of the property during the transferor’s life or for years. The Court thereupon held at 170-171:

“It is immediately evident that the transaction before us does not fall within the exemption set forth in subdivision (e) of section 62 as we have construed it. Plaintiff [seller/lessee] did not retain the beneficial use of the property for itself; ***it pays rent to Metropolitan Life, which enjoys the entire beneficial interest in the property.***”

(Emphasis added).

Respectfully, according to *Pacific Southwest*, and contrary to Sections 61(c) and 62(g), the lessee of a leasehold interest with a term of more than 35 years [in *Pacific Southwest*, at least 60 years] cannot be deemed to enjoy the beneficial use of the leased property, since because the lessee pays rent to the lessor, the lessor is deemed to enjoy the entire beneficial interest of the property by exacting rent from the lessee. Therefore, Sections 61(c) and 62(g) are contrary to the “beneficial use” element of Section 60. Furthermore, in many if not most instances, it would appear that the value of a leasehold would not be substantially equal to the value of the fee interest, no matter what the term of the lease. If a lease is assignable, its maximum market value would be the difference between the present value of the rent for the entire remaining lease period at the then current rental rate for such property, less the present value of the rent obligation for the entire remaining period of the lease pursuant to its terms. Only if that

difference were substantially equal to the value of the fee interest would the value equivalence element of Section 60 be satisfied. In most cases, the difference between those two numbers, if any, would be small, because most long-term leases contain a provision that the amount of rent is to be adjusted by inflationary changes in the Consumer Price Index. One instance in which there may be an appreciable difference between the two numbers is where a long-term tenant substantially improves the leased premises at its expense, intending to amortize the cost of the improvement over the length of the lease. If during the term of the lease, the tenant decided to assign his interest, it may be that at current rental rates, the rate of rent for the improved property might be significantly more than the rate of rent provided in the lease. Only in that type of a situation might the value equivalence test be satisfied. However, even if it were, as noted above, the beneficial use test would not be satisfied, since no matter what the length of the lease, if the tenant pays market value rent, it is the lessor, not the lessee, that has the beneficial use.

## PROCEDURAL ISSUES

### III. THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES

#### IS NOT A BAR TO STEINHART’S CLAIM FOR A REFUND OF TAXES PAID

BECAUSE:<sup>10</sup>

#### A. A Taxpayer Is Not Required to Exhaust Administrative Remedies When an Assessment Is a Nullity as a Matter of Law, and No Factual Questions Exist Regarding the Valuation of the Property.

In *Stenocord Corporation v. City and County of San Francisco* (1970) 2 C.3d 984, 987, the Supreme Court held:

“Ordinarily a taxpayer seeking relief from an erroneous assessment must exhaust available administrative remedies before resorting to the courts. [Citations.] *An exception is made when the assessment is a nullity as a matter of law* because, for example, the property is tax exempt, non-existent or outside the jurisdiction [Citations], *and no factual questions exist regarding the valuation of the property which, upon review by the board of equalization, might be resolved in the taxpayer’s favor, thereby making further litigation unnecessary* [Citations].” (Emphasis supplied).

This principle was applied in *Star-Kist Foods, Inc. v. Quinn* (1960) 54 C.2d 507, 511 (a case relied upon by *Stenocord*), wherein the Supreme Court held in relevant part:

“[W]e think there is a real and distinct difference between those cases in which it may properly be said that the error is one of overvaluation and those cases in which the

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<sup>10</sup> In footnote 2 of County’s Opening Brief (“Opening Brief”), County states that despite this alleged threshold bar to Steinhart’s action, and without waiving that defense, County respectfully requests that the court reach the change in ownership issue, citing *Connolly v. Orange County* (1992) 1105, 1115-1116. Presumably, that means that if Steinhart were to prevail on the change in ownership issue before this Court, the Opinion would vindicate her position, but she would not be entitled to a refund from County.

overvaluation is a mere incidental result of an erroneous assessment of property which should not have been assessed.’ The necessity of recourse to the board [administrative remedy] is properly determined by the nature of the issues in dispute . . . . The only substantive issue in the present case is whether section 107.1 is unconstitutional on its face. As in cases involving only the question whether property is taxable, ***there is no question of valuation that the local board of equalization has special competence to decide. There is no dispute as to the facts and no possibility that action by the board might avoid the necessity of deciding the constitutional issue or modify its nature.***

[Citation.] Under the circumstances, therefore, recourse to the local board of equalization was not required before seeking a judicial determination of the constitutionality of section 107.1.” (Emphasis added).

The question as to whether Steinhart is entitled to a refund of the real property taxes she previously paid to County is a pure question of law (i.e., constitutional interpretation of Proposition 13 and statutory interpretation of Section 60) as to whether a transfer of a life estate in real property to a nonspouse third party, pursuant to the terms of a living trust at the death of the trustor, constitutes a “change in ownership” upon which a reassessment of value at date of death can legally be based. Steinhart did not contest the ***amount of the reevaluation*** by County. She merely contended that County did not have the ***legal right to perform the reevaluation*** because the undisputed, relevant facts of this case do not constitute a “change in ownership.” Therefore, there was no question of valuation that the local board had special competence to decide; nor was there any dispute as to the relevant facts and no possibility that action by the board might avoid the necessity of a court’s deciding the constitutional/statutory interpretation issue. Therefore, pursuant to *Star-Kist* and *Stenocord*, Steinhart was not required to exhaust administrative remedies in this case, but could resort immediately to the courts.

In seeking to deflect Steinhart's reliance on *Stenocord*, County emphasizes the following language from *Stenocord*: "An exception is made when the assessment is a nullity as a matter of law *because, for example, the property is tax exempt, non-existent or outside the jurisdiction . . .*." (Emphasis added). County argues that *Stenocord* does not apply because the constitutional/statutory interpretation issue of law presented here is not one of the *Stenocord* examples, in that Steinhart is not contending that the residence is tax exempt, non-existent, nor outside the jurisdiction. Respectfully, *Stenocord* merely cited those three circumstances as *examples*, without stating they constituted the only circumstances in which exhaustion of administrative remedies is not required. If one removes the recitation of those examples from the court's statement, the principle of the holding is made clear: "An exception is made [to the exhaustion of remedies requirement] when the assessment is a nullity as a matter of law . . . and no factual questions exist regarding the valuation of the property which, upon review by the board of equalization, might be resolved in the taxpayer's favor, thereby making further litigation unnecessary."

Steinhart's contention that the three exemplar legal issues mentioned in *Stenocord* is not an exhaustive list is supported by *Star-Kist*, the case upon which *Stenocord* is based. In *Star-kist*, the issue of law which obviated application of the doctrine of exhaustion of administrative remedies was whether a particular statutory section was constitutional, which is not one of the three exemplar issues mentioned in *Stenocord*.

In *Star-Kist*, the taxpayer leased certain land and improvements. For the purpose of taxation, pursuant to Section 107.1, in evaluating such leasehold interests, the assessor was required to deduct the present value of rentals for the unexpired terms of the leases. There, the assessor valued the subject leasehold interests without applying such deduction on the ground that § 107.1 was void because it was inconsistent with the other sections of the California

Constitution. The assessor's contention was unmeritorious, because in another Supreme Court case, the applicable portion of § 107.1 was held to be valid. The taxpayer did not apply to the Los Angeles Board of Equalization (aka Assessment Appeals Board) for correction of the erroneous assessments but sought and obtained a writ of mandate commanding the assessor to cancel those assessments and reassess the leasehold interest in accordance with § 107.1.

Rejecting the county's contention that the taxpayer's claim was barred for failure to exhaust administrative remedies, the Court pointed out that the only substantive issue in that case was whether § 107.1 was constitutional, and there was no question of valuation that the local board of equalization had special competence to decide, nor was there a dispute as to the facts and no possibility that action by the Board might avoid the necessity of deciding the constitutional issue.

The instant case is analogous to *Star-Kist* since the determination of whether there was a change in ownership in this case includes a determination of whether or not Section 61(h) and 18 Cal. Code of Regs. § 462.060(a) (relied upon by County) are consistent with the Proposition 13's constitutional requirement of a change in ownership (as defined in Section 60) as a prerequisite to reappraisal. It is fundamental that statutes or administrative regulations that are inconsistent with the Constitution are unconstitutional, and hence void. *Slocum v. State Board of Equalization* (2005) 134 C.A.4th 969, 977.

In the instant case, Steinhart does not dispute the ***amount of the reevaluation*** of the residence as of date of death. Rather, Steinhart disputes the ***fact of the reevaluation***, contending that there was no change in ownership, as required by Proposition 13, authorizing County to make such reevaluation.

**B. Pursuant to the Doctrine of Futility, Exhaustion of Administrative Remedies Is Not Required If it Can Be Positively Stated What the Administrative Agency’s Ruling Will Be in a Particular Case.**

It is a maxim of jurisprudence that “the law neither does nor requires idle acts.” Civil Code § 3532. Thus, futility is an exception to the exhaustion of administrative remedies doctrine. *McKee v. Bell-Carter Olive Co.* (1986) 186 C.A.3d 1230, 1245. Exhaustion of administrative remedies is not required if it can be positively stated what the administrative agency’s ruling will be in a particular case. *Gantner & Mattern Co. v. California E. Com.* (1941) 17 C.3d 314, 318; *George Arekelian Farms, Inc. v. Agricultural Labor Relations Bd.* (1985) 40 C.3d 654, 662. At the trial court level, before the Court of Appeal, and before this Court, County has steadfastly asserted that as a matter of law, the transfer to Steinhart of an equitable life estate pursuant to the provisions of her late sister’s living Trust constitutes a change in ownership. Steinhart agrees with the observation in the opinion of the *Steinhart* court:

“In view of the County’s unyielding position on this legal issue, an administrative challenge by Steinhart certainly would have been futile. Therefore, the County’s exhaustion argument is meritless.” Slip Op., p. 7.

**C. County Is Estopped from Contending That Steinhart Failed to Exhaust Administrative Remedies.**

*Star-Kist* held that the taxpayer in that case should have proceeded by a claim for refund rather than by a petition for mandate. The current statutory scheme regulating claims for refund is Section 5096, et seq. Section 5096 provides that any taxes paid before or after delinquency shall be refunded if they were illegally assessed or levied. Section 5097.02 specifies the format of the claim, which shall be in writing, specifying whether the whole assessment is claimed to be void or, if only a part, what portion; and the grounds on which the claim is founded. Section

5140 provides that the person who paid the tax, or his representative, may bring an action only in the Superior Court against a county or city to recover a tax which a board of supervisors or city council has refused to refund on a claim filed pursuant to Section 5096. Section 5141(a) provides that an action brought under section 5140 shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part.

Premised upon the advice of the Court in *Star-Kist*, in late 2004, Steinhart made a Claim for Refund of Property Taxes on a form provided therefor by the County of Los Angeles. See AA 8. In due course, on March 3, 2005, Steinhart received a notice from the office of the County Assessor stating: “We have determined the law applicable to this investigation and completed the indicated actions as follows: . . . The real property transferred is a ‘Change in Ownership’, as defined by law, and the 100% reappraisal of the property will stand.” Almost simultaneously on March 2, 2005, Steinhart received five separate letters from the County of Los Angeles, Department of Auditor-Controller (one for each of the tax bills involved in her claim for refund) stating” ***The County has completed its review of your claim(s)*** for refund of taxes and/or penalties you filed with us on DECEMBER 21, 2004. Your claim(s) was reviewed by the ASSESSOR. Based on the documentation you submitted, they determined that your claim does not meet the provisions in the Revenue and Taxation Code for granting a refund. For this reason, your claim(s) for refund is denied effective March 2, 2005. Section 5141 of the State of California Revenue and Taxation Code allows you six months from the effective date of denial of your claim(s) to commence an action in the Superior Court to seek judicial review of the denial.” AA 49-54 (Emphasis supplied).

The March 3 letter stated that: “if we have indicated that a correction is being made, you have 60 days from the date of receipt of your corrected bill to file an appeal [to the Assessment

Appeals Board aka Board of Equalization].” That letter did not indicate that a correction was being made; and no corrected tax bill was generated or received by Steinhart. Therefore, the language regarding appealing within 60 days was not relevant.

*Star-Kist* held that the appropriate procedure for a taxpayer disputing an assessment was to file a claim for refund. Steinhart followed the claim for refund procedure. She received notice of denial of her claim from both the County Assessor and the County Department of Auditor-Controller. The latter notice referred Steinhart to Section 5141 (which as noted above, is in the claim for refund statutory scheme), and paraphrased its provision that a taxpayer has six months from the effective date of denial of his claim for refund to commence an action in the Superior Court. According to the five letters from the Department of Auditor-Controller, Steinhart was notified that: “**The County** has completed its review of your claim(s) for refund . . . .” It therefore appeared that the “County” had spoken, and its word was that Steinhart’s claim had been denied, and pursuant to the applicable claim for refund statutory scheme, she had six months in which to commence an action in the Superior Court. Although Steinhart was advised that should she have any questions or need further assistance she could contact the office of the Assessor, she did not have any questions and did not feel in need of further assistance.

Taken together, the correspondence from County advised Steinhart that: The **County** (not merely the County Assessor) had completed its review of Steinhart’s claim for refund and that it did not pass statutory muster for the granting of a refund, as a result of which the claim had been denied, and that Steinhart had six months to seek judicial relief to obtain a refund. Nowhere did it advise her that under the circumstances of her case, prior to seeking judicial relief within said six-month period, she was first required to seek equalization by the Assessment Appeals Board. The March 3 letter specified the factual circumstances under which review by the Board was required, which circumstances were different from those in the instant case.

County contends that Steinhart should have pursued a request for equalization before the Assessment Appeals Board aka Board of Equalization, rather than pursuing a claim for refund. Opening Brief, 9-13. In none of the notices from County was Steinhart advised that she should have proceeded by a request for equalization under Section 1601 et seq., rather than a claim for refund under Section 5096 et seq.; nor that prior to filing her action in the Superior Court within six months of the denial of her claim, she must first seek equalization by the Assessment Appeals Board. Having read *Star-Kist*, the applicable claim for refund statutory scheme, and the notices from County denying her claim, Steinhart naturally and normally proceeded to timely file her claim for refund lawsuit in the Superior Court, being understandably ignorant of any alleged requirement that she was first to proceed to the Assessment Appeals Board.

Upon review of County's demurrer papers filed in the Superior Court (AA 114), Steinhart first became aware of Section 1605.5, which provides that the board [assessment appeals board per Section 1601(a)] shall hear applications for a reduction in an assessment in cases in which the issue was whether or not property has been subject to a change in ownership as defined in Section 60. As noted above, Steinhart had proceeded under the refund procedure, which commences with Section 5096, that provides that any taxes paid before or after delinquency shall be refunded if they were "illegally assessed or levied." It was Steinhart's contention in her claim for refund to County, and is her contention in the instant civil action, that the increased taxes assessed and levied on her property on the basis of reassessment as of the date of the decedent's death were unconstitutionally illegal because there was no change in ownership as required by Proposition 13. Proceeding under the refund procedure appears to be an alternative method to proceeding under the equalization method were taxes have been illegally assessed or levied.

Furthermore, the equalization procedure provided in Section 1601, et seq. would appear to be an awkward and inapplicable method of proceeding. Section 1603(a) provides that a

reduction in an assessment shall not be made unless the party affected files an application with the board showing the facts claimed to require the reduction and the “applicant’s opinion of the full value of the property.” Section 1603(c) provides that if the board fails to make a final determination on the application for reduction in assessment within two years of the filing of the application, the taxpayer’s opinion of market value as reflected on the application shall be the value upon which the taxes are to be levied for the year covered by the application. Section 1609.8 provides that when valuing property, the board shall follow the provisions set forth in Section 402.5, valuing the subject property by comparison with sales of other like properties.

Taking all of the aforesaid equalization provisions together, it would appear that application to the board of equalization is in order when the taxpayer disputes the market value appraisal assessed to his property by the county, whether or not the assessment has been made on the basis that there has been a change in ownership. As noted above, Steinhart did not dispute the “amount” of the appraisal on the ground that it did not equate to the market value of property at the date of decedent’s death, but rather disputed the “fact” of the reappraisal, contending that County had no authority to reassess the property at date of death on the ground that it had undergone a change in ownership.

Furthermore, on application for reduction in assessment to the board of equalization, the board has two years in which to make a final determination of the application. Section 1603(c). Because under the refund procedure, and pursuant to a written notice from County thereunder, a taxpayer must institute a civil action in the Superior Court for a refund within six months of the decision, the equalization procedure would not suffice, since the board could defeat the taxpayer’s refund lawsuit merely by waiting until after the six-month period expires to render its final equalization decision.

County concedes that a claim for refund is an appropriate remedy where the assessment is totally void, referencing *Westinghouse Electric Corp. v. County of Los Angeles* (1974) 42 C.A.3d 32, 38: “[A] claim for refund is an adequate substitute for a request for equalization only in those cases wherein the assessment is totally void **as an attempt to tax property not subject to taxation . . .**” (Emphasis added). However, County contends that Steinhart’s residence is subject to taxation, and therefore, the assessment is not “totally void.” This argument is not persuasive. County deleted the remainder of the above quote, which states in relevant part: “only in cases wherein the assessment is totally void as an attempt to tax property not subject to taxation **rather than merely an inaccurate assessment of the value of the property.**” (Emphasis added). In the instant case as already noted, Steinhart complained about the fact of reassessment, not its amount. The reference in *Westinghouse* to a totally void assessment, as an attempt to tax property not subject to taxation, is merely one **example** of a void assessment. Any governmental act that is unconstitutional is void, such as an assessment on the basis of a Proposition 13 “change in ownership” where no such change has occurred. Thus, pursuant to *Westinghouse*, Steinhart’s claim for refund was proper.<sup>11</sup>

Steinhart relied on the advice given by County in filing her civil action below without first seeking administrative review under the equalization procedure. These circumstances constitute a classic case of equitable estoppel. A valid claim of equitable estoppel consists of the following elements: (a) a representation or concealment of material facts; (b) made with

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<sup>11</sup> In regard to the claim for refund versus request for equalization dichotomy, in *Pacific Southwest Realty Co. v. County of Los Angeles* (1992) 1 C.4th 155, 160, the taxpayer paid the tax bills generated pursuant to a Proposition 13 change in ownership reevaluation, but applied for a reduction of the assessment, which it later amended into a claim for refund; and when the board declined to give the refund, the taxpayer directly sought relief in the court without first seeking administrative review under the equalization procedure. Interestingly, the taxing authority in *Pacific Southwest* was the County of Los Angeles, which did not interpose a failure to exhaust administrative remedies defense.

knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it. *Wood v. Blaney* (1894) 107 C. 291, 295; *Seymour v. Oelrichs* (1909) 156 C.782, 795. Furthermore, an actual fraudulent intent is ordinarily unnecessary to raise an estoppel if the circumstances are such that a fraud would be perpetrated by permitting a denial of the representations. *Seymour, supra* at 796; *Crestline Mobile Homes Mfg. v. Pacific Finance Corp.* (1960) 54 C.2d 773, 778 (“Negligence that is careless and culpable conduct is, as a matter of law, equivalent to an intent to deceive and will satisfy the element of fraud necessary to an estoppel.”).

Subject to the rule that there can be no estoppel against a governmental agency which would defeat operation of a policy protecting the public (see *e.g.*, *Merco Const. Engineers v. Los Angeles Unified School Dist. of Los Angeles* (1969) 274 C.A.2d 154, 162), the estoppel doctrine is now applied freely against the state, its subdivisions, and other governmental agencies. See *United States Fidelity & Guaranty Co v. State Bd. Of Equalization* (1956) 47 C.2d 384, 388; *Shoban v. Board of Trustees of Desert Center Unified School Dist.* (1969) 276 C.A.2d 534, 542; *Crumpler v. Board of Administration Public Employeee’ Retirement System* (1973) 32 C.A.3d 567, 579. In *Long Beach v. Mansell* (1970) 3 C.3d 462, 496, the Supreme Court observed that the doctrine of equitable estoppel may be applied against the government “where justice and right require it”; but it will not be applied where this would nullify a strong rule of public policy adopted for the benefit of the public; and “[t]he tension between these twin principles makes up the doctrinal context in which concrete cases are decided.” (3 C.3d 493). “The Government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of the court of equity, the injustice which would result from a failure to uphold an estoppel is of

sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.” (3 C.3d 496).

If the above circumstances do not constitute grounds of estoppel against County, as one of the characters created by Charles Dickens observed: “If this be the law, then the law is an ass!”

**IV. STEINHART’S LAWSUIT IS NOT BARRED BY SECTION 4807’S PROHIBITION OF ACTIONS TO PREVENT OR ENJOIN THE COLLECTION OF TAXES.**

Section 4807 provides in relevant part:

“No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against any county, municipality, or district, or any officer thereof, to prevent or enjoin the collection of property taxes sought to be collected.”

Steinhart’s Complaint is entitled: “Complaint for Recovery of Real Estate Taxes Paid *and* Declaratory Relief.” (Emphasis supplied). AA 1. The prayer seeks two substantive items of relief: 1) a declaration that pursuant to the terms of the Trust, no change in ownership occurred as of the date of decedent’s death, and hence, County was not legally authorized to tax the residence based on a reevaluation of the property as of the date of death; and 2) for plaintiff’s recovery as against County of the excess real property taxes she paid on the residence for the subject fiscal years.

Steinhart respectfully submits that her request for a judicial declaration does not fall within the prohibition of Section 4807. The Section prohibits types of court orders, not types of civil actions. Section 4807 merely prohibits the issuance of an *order* that would prevent or enjoin the collection of property taxes sought to be collected. Steinhart did not seek declaratory relief for that purpose. Rather, she sought a judicial declaration only in aid of obtaining a refund, i.e.,

an order of court stating that no change in ownership had occurred and therefore the reassessment of the residence on the basis that a change in ownership had occurred was improper; and by reason of her payment of taxes on the reassessed residence valuation, she was entitled to a refund of the excess taxes so paid.

There is no vice in requesting a judicial declaration when the taxpayer is not pursuing a prepayment of tax remedy that would in effect enjoin collection of taxes; but the taxpayer previously paid the tax, and is seeking a refund of the improper excess portion of the tax so paid (and a judicial declaration in aid of her refund claim).

Steinhart agrees with conclusion of the *Steinhart* court:

“Here, Steinhart is not suing to enjoin the collection of taxes; she already has paid the real property taxes for the years in issue and is suing for a *refund* of taxes paid.

Steinhart sought a judicial declaration only in aid of obtaining a refund, i.e., a ruling from the court to the effect that no change in ownership occurred and therefore the County was not authorized to reassess the subject real property.” Slip op., p. 7.

### **CONCLUSION**

Neither of the two procedural issues bar Steinhart’s entitlement to a refund of the excess real property taxes that she paid to County, because the vesting of her equitable life estate on the death of her sister did not constitute a change in ownership under Proposition 13, because the value of a life estate is never substantially equal to the value of the fee interest, or in the alternative, the value of Steinhart’s particular life estate was not substantially equal to the value of the fee interest in the residence.

In its Opinion, the Court should disapprove the contrary holdings in *Leckie* and *Reilly*, and should hold that 18 Cal. Code of Regs. § 462.060(a) is without effect and unenforceable

because it exceeds the Legislature's grant of authority as expressed in Section 60, and is inconsistent with the Constitution.

Finally, at a minimum, the Court should emphasize that upon critical analysis, certain of the specific examples in Sections 61 and 62 appear to be inconsistent with the general definition in Section 60, and that unless and until these inconsistencies are remedied, interested parties should be mindful that the general definition in Section 60 controls all transfers, and supersedes any examples in Sections 61 and 62 which are inconsistent with the general definition. At a maximum, Sections 61 and 62 should be held unconstitutional as not providing a rational set of examples that are consistent with Section 60, and therefore are inconsistent with the "change in ownership" requirement of Proposition 13 itself.

Respectfully submitted,

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Terran T. Steinhart  
Attorney for Plaintiff and Appellant

**ATTORNEY'S CERTIFICATE OF COMPLIANCE WITH CRC § 14(c)**

Counsel for plaintiff and appellant hereby certifies that the number of words in  
**ANSWER BRIEF ON THE MERITS** is 13,667 words.

Date: February 1, 2008

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Terran T. Steinhart  
Attorney for Plaintiff and Appellant

**EXCERPTS FROM TASK FORCE REPORT**

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 4311 Wilshire Boulevard, Suite 415, Los Angeles, California 90010-3713, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On the date set forth below, at the aforesaid place of business, one copy each of the document described as **ANSWER BRIEF ON THE MERITS** was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully pre-paid, addressed as set forth in the attached Service List; and that envelope was placed for collection and mailing on said date following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 1, 2008 at Los Angeles, California.

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Terran T. Steinhart

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