

FAQs | Home Downsizing in San Francisco

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This article is provided as a resource for understanding certain laws which affect San Francisco homeowners, and summarizes those laws as they are understood on the publication date. Updated versions of this article may appear on the firm's website at www.g3mb.com.

At some point in their lives, homeowners are likely to consider selling the home they may have occupied for many years, and downsizing to a smaller residence. Normally, a new home purchase means the County Tax Assessor hits the jackpot under California Prop. 13's rules, which re-assess real property and bump up property taxes with each new change in ownership. However, following a 1986 voter initiative passed by a 77% vote, **homeowners over the age of 55 have the privilege of transferring the assessed value of their present home to a replacement home.**

In November of 2018, voters defeated Ballot Proposition 5, which, had it passed, would have allowed California homeowners 55 or older or severely disabled to transfer their tax assessments, with a possible adjustment, from their prior home to their new home, **no matter (a) the new home's market value; (b) the new home's location in the state; or (c) the buyer's number of moves.** Thus, the limited exemptions under Prop. 60, Prop. 90 and Prop. 110 currently offer the only available tax relief for these sellers.

As always, the devil is in the details. This article offers some basic instruction in the rules which apply to Prop 60, and its companions, Prop. 90 and Prop 110, and also discusses two other types of transfers which may be exempt from re-assessment.

What is Prop. 60?

“Proposition 60 is an exemption to property tax re-assessment which allows homeowners 55 or older to transfer the base year value (and therefore, the annual property tax) of their **present principal residence** to a new home if the replacement dwelling:

- Is occupied as their **principal residence**
- Is of equal or **lesser** market value
- Is located within the **same county**

What is a “Principal Residence”?

“Principal Residence” means a dwelling that is **eligible** for a California Homeowners’ Exemption (or a disabled veterans’ exemption) as a result of your owning **and occupying** the dwelling. Prop. 60 does not apply to commercial or investment properties.

Must I be claiming a Homeowners’ Exemption on my Home when it is sold?

No, it is OK if you are not currently claiming the California Homeowners’ exemption (as long as you are not claiming it on some **other** property). The house you are selling must simply be **eligible** for the homeowners’ exemption, because you **own** it and because it was your **principal place of residence**, either:

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- 1) at the time of its sale or
 - 2) within two years of the purchase or new construction of your new home.

If you were not claiming the homeowners' exemption on your property, you may need to provide documents to the assessor that prove it was your principal place of residence. Proof of residency may include voter or vehicle registration, bank accounts, or income tax records.

I'm not 55, but my spouse is.

Prop. 60 applies if either you **or your spouse** is 55 or older; it doesn't matter which of you actually owns the dwelling you are selling. However, if you are not yet 55, but your spouse is, your spouse must be an owner on title to the replacement dwelling.

What does "Equal or Lesser Value" of a Replacement Property mean?

The market value of your new home as of the date of purchase must be equal to or less than the market value of the home you sold on the date of sale. The meaning of "equal or lesser value" depends on when you purchase the replacement property. In general, equal or lesser value means:

- 100% or less of the market value of the home you sell if your new home is purchased or newly constructed **before** the sale of the original property, or
- 105% or less of the market value of the home you sell if your new home is purchased or newly constructed within the **first year after** the sale of the original property, or
- 110% or less of the market value of the home you sell if your new home is purchased or newly constructed within the **second year after** the sale of the original property.

Market value is not necessarily the same as a sale or purchase price. The assessor will determine the market value of each property. If the market value of your new home exceeds the "equal or lesser value" test, no Prop 60 tax relief is available.

Can I buy a New Home in Another County?

It depends on where you are moving. Prop. 90 applies the same rules as Prop. 60 to transfers **between** counties **only if the receiving county** passes an ordinance permitting you to bring your property tax base with you. Currently, there are only eleven counties in California which have passed such laws:

Alameda	Orange	San Diego	Tuolumne
El Dorado	Riverside	San Mateo	Ventura
Los Angeles	San Bernardino	Santa Clara	

California Assembly Bill 1322, proposed in 2017 by legislative committee, would have granted Prop. 60 reciprocity between every county in the state, but it failed to become law in 2018.

Can I Use the Prop 60 Exemption More than Once?

The Prop 60 exemption is available only **once in a lifetime**; once you or your spouse claim it, neither of you can use it again. (This applies to a claim used by a **spouse**, but not by a **registered domestic partner**; a registered domestic partner of a claimant is not a spouse and is not considered to have used his/her one-time-only exemption). An exception to the one-time-only rule applies if you first claim Prop 60 relief for age, but later have to move again because of a severe and permanent disability (see Prop. 110 below). And, following a July 2017 amendment, the reverse now works as well - if you claim the exemption due to disability under Prop. 110, you can **again** claim relief for age under Prop 60 once you turn 55.

Can I claim a Prop. 60 Exemption if I turn 55 after the sale of my Home, but before I buy my New Home?

No, you must be at least 55 *when your original property sells*.

I am over 55, but my Spouse isn't. Does he/she "use up" his/her Prop. 60 rights?

Any person claiming property tax relief is considered a "claimant" if they are an owner *or co-owner* of the original property as a joint tenant, a tenant in common, or a community property owner. A spouse of a claimant is also considered a claimant if the spouse becomes an owner on title to the replacement dwelling.

What about other Co-Owners?

An owner on title to the replacement property who is *not* the claimant's spouse is *not* considered a claimant, and doesn't use his/her one-time-only exemption, even though she/he may benefit from the property tax relief.

Can I sell first and buy later? Can I buy first and sell later?

Yes. Your new home must be purchased or constructed *within 2 years*, before or after the sale of your existing home.

Can I use Prop. 60 for a Home I inherited from a Parent?

Yes, as long as you move into the inherited residence and live in it as your *primary place of residence*. Once you are over age 55, you may sell your home, buy another residence, and transfer the base year value as long as all the other requirements (timing, value, residency, and timely filed claim) are met. It does not matter how you acquired your original property.

What if my Home is Held in a Trust?

You qualify for the Prop 60 exemption if you are the *present beneficial owner* of your trust, not simply the trustee. Most Revocable Trusts ("Living Trusts") meet this requirement. You may also take title to your new home under your trust.

What if my Property includes more than just my Home?

If the home you are selling is part of a larger building with a commercial space, and/or with other residential dwelling units, you may claim the Prop. 60 exemption, but *only* with respect to the share of the sales price allocated to the portion of the property *you have actually occupied* as your principal residence. The market value of the separate commercial or living unit(s) (land and improvements) will be deducted from the market value of the total property. However, if a separate living unit is used *solely as a guest house*, it may be considered part of the principal residence and the full cash value of the *entire* property may be transferred to the replacement property, even if the new property does not have a separate living unit.

Can I buy into a Tenancy-In-Common?

No. The Prop. 60 exemption usually is *not* available when buying a share of a larger property, such as a TIC interest. The "equal or lesser" test is applied to the value of the *entire replacement property*, even if you purchase only a partial interest in the that property.

Do Mobile Homes qualify?

Yes, a mobile home may qualify if it is on the assessment roll as real property.

Are Gift Transfers eligible under Prop. 60?

No. Prop. 60 requires a "sale" of your original home and a "purchase" of a new home. A property that is *given away* or *acquired by gift* will *not* qualify.

Can I combine Prop 60 with Other Exemptions?

No – double-dipping isn't allowed. The home you are selling must qualify for re-assessment at the time of sale. This would **exclude** a sale to your children where an exemption will be claimed for a parent-child transfer.

What is Prop. 110?

Prop. 110 applies rules similar to Prop. 60 allowing for a transfer of the base year of a present principal residence to a new home if the seller is severely and permanently disabled. Prop 110 also allows you to **modify** your current home and yet escape re-assessment as long as the modifications directly satisfy disability requirements of a **current permanent resident** – **not** necessarily the owner. In addition to rules which largely follow those of Prop. 60, the disabled person, spouse or legal guardian, must submit a Physician's Certificate of Disability (Form OWN-107) with the claim.

Are these Exemptions Automatic? How do I file for a Prop. 60/90/110 Tax Exemption?

No. You must file an exemption claim form within **three years** of the sale of your home. After **both** transactions are complete, an application must be filed with the county assessor where the **replacement property** is located. The claim form for Prop. 60 and Prop. 90 exemptions is *BOE-60-AH, Claim of Person(s) at Least 55 Years of Age for Transfer of Base Year Value to Replacement Dwelling*.

The claim form for a Prop. 110 base year value transfer to a new home is BOE-62, The Disabled Persons Claim for Transfer of Base-Year Value to Replacement Dwelling. The claim form for a Prop. 110 new construction exclusion on homes which are eligible for the California homeowners' exemption is BOE-63, Disabled Persons Claim for Exclusion of New Construction, however, if the structure is not eligible for the homeowners' exemption, the form is BOE-63-A, Claim for Disabled Accessibility Construction Exclusion from Assessment. These forms may be obtained from your assessor's office; some counties offer downloadable forms from their internet websites.

What Parent-Child Transfers are excluded from Prop. 13 Re-assessment?

California grants an exemption to property tax re-assessment allowing parents to transfer the base year value (and therefore, the annual property tax) of real property to their children under the following rules:

- 100% of the base year value of the transferor's **principal residence** is exempt from re-assessment
- First \$1 million of **all other real property** transferred is also exempt from re-assessment
- The exemption is not automatic – it requires a filing of a BOE-58-AH (Parent/Child) claim form **within three years of the transfer**. This can easily be overlooked when property held in a trust is not distributed immediately following the grantor's death; the transfer is deemed to have taken place **upon death**, not upon the later distribution of the property by the trust.

The exemption can also apply to transfers between grandparents and grandchildren, skipping the parents, but it only works if **both** intermediate parents are deceased; a different claim form (BOE-58-AH - Grandparent/Grandchild) is required. And while the exemption does apply to reverse transfers from **child to parent**, it **doesn't** work for **grandchild to grandparent** transfers.

Transfers between *other* family members (siblings, aunts, uncles, cousins, etc.) are *not* exempt from re-assessment. Transfers via legal entities (corporations, LLCs, family limited partnerships, etc.) require special care; for example, parent/child and grandparent/grandchild exemptions are *not* applicable to transfers of interests held in legal entities.

Death Transfers by Co Tenants

In 2013, the California legislature adopted a law to benefit *unmarried* couples who own a home together, and who cannot claim a spousal exemption from property tax re-assessment on the death of either of them. The rules for death transfers by unmarried co-tenants appear in Revenue and Taxation Code §62.3, and grant an exemption to re-assessment when:

- Any two individuals who together own **100%** of the real property (i.e., not a TIC share) in joint tenancy or as tenants-in-common with each other, and,
- Who, for the one-year period immediately preceding the death of one of them, were both *owners of record* and *lived in the property* as their principal residence, and,
- As a result of the death of one, the survivor holds **100%** ownership immediately after the transfer.

The survivor must sign an affidavit (BOE-58-H), affirming that he or she continuously resided with the transferor at the residence for the one-year period immediately preceding the transfer.

How do I Choose a Lawyer to Assist Me?

A Law Firm Specializing in Residential Real Estate Matters Should Offer You:

- Experienced attorneys knowledgeable in all aspects of real property transfers;
- Substantial experience in estate planning and trusts;
- Expertise in co-tenancy matters, including TICs and Partition sales;
- Ability to assist in “brokerless” sales.

What Sets Goldstein, Gellman, Melbostad, Harris & McSparran, LLP (“G3MH”) Apart?

EXPERIENCE:

G3MH has been a respected member of San Francisco’s real estate community for over thirty-five years. Our attorneys and paralegals are available to offer guidance in landlord/tenant issues, TIC formation, condominium conversion, title transfer and vesting, trust and estate matters, easements, property tax issues, and all other matters related to residential and commercial real estate. Our litigation team deals with all aspects of dispute resolution between property owners, including HOA disagreements, encroachments and boundary disputes, and property development clashes.

SERVICE:

Timing means everything in real estate; your San Francisco Realtor® can confirm that G3MH maintains the staffing and resources to offer response times which other firms cannot match. We are available to meet with you to discuss your concerns, and to offer you guidance and counsel at reasonable rates.

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