

FAQs | Home Downsizing/ Upsizing under Prop 13

12/1/20 Edition by
David R. Gellman &
Arthur Meirson

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 relocating to a new California 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, augmented by Prop 19 passed in 2020, **homeowners over the age of 55 have the privilege of transferring the assessed value of their present home to a replacement home.**

Effective February 16, 2021, Prop 19 now allows California homeowners who are 55+, wildfire victims, or older or severely disabled to transfer the tax assessments 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; and (c) up to three times.** However, if the new home is of greater value than the prior home, a relatively modest upward adjustment will be applied.

Prop 19 also narrowed the Prop 13 re-assessment exemption previously available for parent/child property transfers: i) by limiting reassessment exclusions for parent-child transfers exclusively to **parent-occupied homes** (or farms) **only**, and not to any second homes or investment properties; ii) by requiring that the children must **themselves occupy the property**; and (iii) and by capping the value shielded from re-assessment at only \$1 million (adjusted for inflation every two years).

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. 19 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 (or farm) which they will use as their new **principal residence**.”

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:

- 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 are the Rules if I Buy a New Home of Equal or Lesser Value?

If the market value of your new home as of the date of purchase is *equal to or less than* the market value of the home you sold on the date of sale, you can transfer your assessed value to your new home *without* adjustment. 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.

What are the Rules if I Buy a New Home of Greater Value?

If the market value of your new home as of the date of purchase is *greater* than the market value of the home you sold on the date of sale (after applying the first and second year 5% allowances shown above), you can still transfer your assessed value to your new home, but *with* an upward adjustment.

- Difference in Fair Market Value between the old and new homes is added to the original assessed value of the home you sold.
- Sum of your old assessed value plus that difference will equal your new assessed value.

Can I buy a New Home in Another County?

Yes. While previously restricted to transfers between counties *only if the receiving county* passed an ordinance permitting same, Prop 19 now allows transfers within and between *any county in California*.

Can I Use the Prop 60 Exemption More than Once?

Following the 2020 passage of Prop 19, the Prop 60 exemption is now available *three times in a lifetime*; after you or your spouse claims it three times, 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 their three-time-only exemption).

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 my Spouse "use up" their 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 their three-time-only exemption, even though they 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?

Probably not. The Prop. 60 exemption usually is *not* helpful when buying a share of a larger property, such as a TIC interest, because 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. 60/110 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 a limited 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:

- The first \$1 million (to be inflation-adjusted biannually) of the base year value of the transferring parent's **principal residence** is exempt from re-assessment.
- The property must thereafter be used by the child as his or her **principal residence**. (Prop 19 itself is silent about transfers to more than one child, nor does Prop 19 specify how long the child(ren) must continue to occupy the home).
- The parent/child exemption from Prop 13 reassessment no longer applies to investment homes or commercial properties.
- 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.

About the Authors:

David R. Gellman, retired partner of G3MH, has extensive experience in real property transfers, Tenancy-In-Common (TIC) formation, condominium conversion, landlord/tenant (rent control), real estate litigation, commercial leasing, like-kind exchanges, multifamily housing finance, and estate planning. He has written a companion article to this one, entitled “Holding Title to Your San Francisco Home” which can be found on the firm’s website at www.g3mh.com.

Partner **Arthur Meirson’s** practice focuses on real estate and business transactional and litigation matters. Arthur received his J.D., cum laude, from the University of California, Hastings College of the Law in 2009, where he was Senior Notes Editor of the Hastings Law Journal. Upon graduation, Arthur was inducted into the U.C. Hastings Pro Bono Society for his dedication to providing services to underrepresented communities and nonprofit organizations. He received his B.A., summa cum laude and Phi Beta Kappa, in history, political science, and Jewish studies from Rutgers University in 2005. Arthur served as an Assistant District Attorney with the San Francisco District Attorney’s Office. Arthur can be reached at 415/ 673-5600 ext. 237, or via e-mail at AMEirson@g3mh.com.

This article is for informational purposes only, and should not be relied on as legal advice about specific situations. Readers should consult an attorney if they need help with legal matters. We invite readers seeking legal assistance to contact one of our attorneys to discuss their needs.