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TO COUNTY ASSESSORS:

### **CALIFORNIA DOMESTIC PARTNER RIGHTS AND RESPONSIBILITIES ACT**

The California Domestic Partner Rights and Responsibilities Act of 2003 ("the Act") defines rights and responsibilities of registered domestic partners. This letter outlines relevant legislative history leading up to the Act, summarizes the Act's provisions, and, in particular, discusses the interplay of the Act and California property tax law.

#### **HISTORY**

On January 1, 2000, Assembly Bill 26 (Chapter 588, Statutes of 1999) established a statewide domestic partner registry, granted hospital visitation rights to registered domestic partners, and provided for health benefit coverage for the registered domestic partners of state employees. On January 1, 2002, Assembly Bill 25 (Chapter 893, Statutes of 2001) granted additional rights to registered domestic partners, including the rights to make medical decisions for a partner, to use statutory will forms, to be appointed as conservator for an incapacitated partner, and to act as administrator of a deceased partner's estate.

In 2003, Assembly Bill 205 (Chapter 421, Statutes of 2003) was enacted as the California Domestic Partner Rights and Responsibilities Act of 2003. AB 205 provides that registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses. However, AB 205 also provides that it "does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative."

Some provisions of AB 205 became operative on January 1, 2004, and others took effect on January 1, 2005. In 2004, Assembly Bill 2580 (Chapter 947, Statutes of 2004) was enacted to clarify that the provisions of the Act apply only to registered domestic partners and make other technical amendments.

#### **DEFINITION OF REGISTERED DOMESTIC PARTNERSHIP**

Family Code section 297 provides that two natural persons over the age of 18 years may enter into a registered domestic partnership when both persons file a Declaration of Domestic Partnership with the Secretary of State and all of the following requirements are met:

- Both persons have a common residence.
- Neither person is married nor is a member of another registered domestic partnership that has not been terminated, dissolved, or annulled.
- The two persons are not related by blood in a way that would prevent them from being married to each other.
- Both persons are over the age of 18 and are capable of consenting to the partnership.
- Either of the following:
  - Both persons are members of the same sex, or
  - Both persons are members of the opposite sex and at least one of the persons is over the age of 62 and meets the federal requirements for either old-age insurance benefits<sup>1</sup> or for aged individuals.<sup>2</sup>

The term "registered domestic partner" does not apply to legal entities, including a single-member limited liability company. Thus, even though a single-member limited liability company is disregarded for federal tax reporting purposes, it is still treated as a separate legal entity under California domestic partnership law.

#### **TERMINATION OF REGISTERED DOMESTIC PARTNERSHIP**

As of January 1, 2005, a registered domestic partnership may be terminated only through a court dissolution proceeding, unless specified conditions exist. Among those conditions, neither party may own an interest in real property, there may be no children resulting from the relationship of the parties, the duration of the registered domestic partnership may not be more than 5 years, and joint assets must be minimal. If all the specified conditions exist, the registered domestic partnership may be terminated by both partners signing and filing a Notice of Termination of Domestic Partnership with the Secretary of State.

#### **RECOGNITION OF SAME SEX UNIONS SANCTIONED BY OTHER STATES**

Pursuant to Family Code section 299.2, California will recognize a same sex legal union, other than a marriage, which is validly formed in another jurisdiction outside California and is substantially equivalent to a California registered domestic partnership, regardless of whether it bears the name "domestic partnership."

#### **RIGHTS, RESPONSIBILITIES, AND LIMITATIONS**

Family Code section 297.5 provides that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. However, subdivision (m) of section 297.5 qualifies the general provisions by providing that the section "does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative." Thus, domestic partners are not eligible for any property tax exclusion or exemption based on an aspect of a spousal or marital relationship for which the terms "spouse" and "marriage" are defined or implemented by constitutional provision or by statute adopted by initiative. Therefore, the Act

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<sup>1</sup> Title II of the Social Security Act as defined in 42 U.S.C. section 402(a).

<sup>2</sup> Title XVI of the Social Security Act as defined in 42 U.S.C. section 1381.

does not amend or modify the definition of "marriage" set forth in Family Code section 308.5,<sup>3</sup> which was approved by the voters as Proposition 22 on March 8, 2000, and, more specifically with respect to California property tax law, a registered domestic partner is not entitled to the same treatment as a "spouse" within the meaning of the provisions of articles XIII and XIII A of the California Constitution

Section 297.5 extends community property rights to registered domestic partners, with the exception that earned income is not treated as community property for state income tax purposes. Section 297.5 further provides that (1) former registered domestic partners have the same rights and responsibilities as former spouses; (2) a surviving registered domestic partner, following the death of the other partner, has the same rights and responsibilities as a widow or widower; (3) registered domestic partners have the same rights and responsibilities as spouses with respect to a child of either partner; (4) to the extent California law adopts, refers to, or relies upon federal law, registered domestic partners shall be treated as if federal law recognizes California registered domestic partnerships, although registered domestic partners must use the same filing status for state income tax purposes as used for federal income tax purposes; and (5) registered domestic partners have the same nondiscrimination rights as spouses.

Family Code section 297.5 further provides that the Act does not amend or modify federal laws or preclude any state or local agency from exercising its regulatory authority to implement statutes providing rights to, or imposing responsibilities upon, domestic partners. Thus, AB 205 does not invalidate or supersede Property Tax Rule 462.240, subsection (k), which provides that change in ownership does not include any transfers of real property that result from the death of one of the registered domestic partners if the date of death occurred on or after July 1, 2003.

### **APPLICATION TO PROPERTY TAXES**

#### **INTERSPOUSAL EXCLUSION**

Subdivision (g) of section 2 of article XIII A of the California Constitution provides that the terms "purchase" and "change in ownership" do not include the purchase or transfer of real property between "spouses." As stated above, the Act does not amend or modify any constitutional provision and, thus, a "spouse" within the meaning of subdivision (g) of section 2 of article XIII A does not include a registered domestic partner. Accordingly, transfers of real property between registered domestic partners are not eligible for the interspousal exclusion.

#### **COMMUNITY PROPERTY**

On or after January 1, 2005, registered domestic partners may take title to real property as community property<sup>4</sup> and community property with right of survivorship.<sup>5</sup> As with married couples, real property, including property acquired between December 31, 1999, and January 1,

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<sup>3</sup> "Only marriage between a man and a woman is valid or recognized in California." (Family Code section 308.5.)

<sup>4</sup> Family Code section 760 defines community property as follows: "Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property."

<sup>5</sup> Civil Code section 682.1 provides that "[c]ommunity property of a husband and wife, when expressly declared in the transfer document to be community property with right of survivorship, . . . , shall upon the death of one of the spouses, pass to the survivor, without administration, . . . , subject to the same procedures, as property held in joint tenancy."

2005, acquired by either or both partners during the registered domestic partnership is presumed to be community property. Application of the community property presumption is not a transfer, however, and thus no change in ownership occurs upon its application. Both community property methods of holding title in property are created by statutes enacted by the Legislature and, thus, pursuant to the Act are now available to registered domestic partners. Subdivision (m) of section 297.5 of the Family Code provides, in relevant part, that with respect to community property "any reference to the date of a marriage shall be deemed to refer to the date of registration of a domestic partnership with the state."

Because community property rights for registered domestic partners are based on registration of the domestic partnership with the Secretary of State pursuant to section 297.5 and not on a marriage relationship, a transfer of real property from one partner to himself/herself and his/her registered domestic partner as "community property" is not excluded from change in ownership under the interspousal exclusion. Therefore, a deed that transfers real property from A to A and B, registered domestic partners as community property (or community property with right of survivorship), will result in a 50 percent change in ownership.

#### **TERMINATION OF DOMESTIC PARTNERSHIP**

Even though registered domestic partners who terminate their partnership may be granted a dissolution, a transfer of real property as a result of the dissolution is not eligible for the interspousal exclusion. Other exclusions (e.g., joint tenancy), however, may be available. For example, if two registered domestic partners acquire property and take title as community property, a deed that transfers real property from the two partners as community property to one partner upon the dissolution of the partnership will result in a 50 percent change in ownership.

#### **LEGAL ENTITIES**

The transfer of legal entity interests between registered domestic partners is not subject to the interspousal exclusion. Unless another exclusion applies, the transfer of legal entity interests between registered domestic partners may result in a change in ownership or change in control of the legal entity, resulting in either (1) reassessment of all real property of the legal entity if one person obtains more than 50 percent of the total interests or, (2) a reassessment of property previously excluded from change in ownership pursuant to Revenue and Taxation Code section 62, subdivision (a)(2), if more than 50 percent of the original co-owners' interests are transferred.

#### **JOINT TENANCY**

As with any other individuals, registered domestic partners may hold title to property as joint tenants as provided in Civil Code section 683. The application of change in ownership law to domestic partners who hold title to property in joint tenancy is thoroughly discussed in Letters To Assessors No. 2003/077 and No. 2004/042. AB 205 does not invalidate or supersede Property Tax Rule 462.040, the administrative rule governing the change in ownership treatment of joint tenancy interests.

#### **VETERANS' EXEMPTION**

Subdivision (o) of section 3 of article XIII of the California Constitution exempts from taxation \$1,000 (increased effectively to \$4,000 by section 205.1 of the Revenue and Taxation Code) of property of a veteran of the United States military who was discharged under honorable

conditions. An unmarried person who owns property valued at \$5,000 or more, or a married person, who, together with the spouse, owns property valued at \$10,000 or more, is ineligible for this exemption. Subdivision (o) also provides that the unmarried spouse or a parent of a deceased veteran is eligible for the exemption.

Property of a veteran who is a registered domestic partner must not exceed the \$5,000 value limit to be eligible for the veterans' exemption. The \$10,000 spousal value limit is not applicable to registered domestic partners. The surviving registered domestic partner of a deceased veteran is not eligible for the exemption as a spouse.

#### **DISABLED VETERANS' EXEMPTION**

Section 4 of article XIII provides that the home of a person or a person's spouse, including an unmarried surviving spouse, may be exempt from property taxes if the person is permanently disabled because of injury incurred in military service. This provision is implemented by Revenue and Taxation Code section 205.5. Because the Constitution limits application of this exemption to disabled veterans and their unmarried surviving spouses, the surviving registered domestic partner of a deceased disabled veteran is not eligible for the exemption.

#### **OVER 55/DISABLED BASE YEAR VALUE TRANSFER (PROPOSITIONS 60/90/110)**

Subdivision (a) of section 2 of article XIII A provides that, under specified conditions, any person over the age of 55 or severely and permanently disabled may transfer the base year value from one home to another. This subdivision further states that "any person over the age of 55" includes a married couple one member of which is over the age of 55. This provision is implemented by Revenue and Taxation Code section 69.5. Section 69.5 provides, with one exception,<sup>6</sup> that this exclusion may be used only one time. For purposes of using this one-time only exclusion, the spouse of a claimant who is a record owner of the replacement property is also considered a claimant.

Since a registered domestic partner is not a spouse, the registered domestic partner of a claimant is not considered to have used his/her one-time-only exclusion under section 69.5. For example, if A and B (registered domestic partners) sell their principal place of residence (property 1) and purchase another residence (property 2) and A files to transfer the base year value under section 69.5, only A is considered the claimant. Later, A and B can sell property 2 and buy property 3 and B may file a claim for transfer of the base year value of property 2 under section 69.5.

#### **PARENT-CHILD EXCLUSION (PROPOSITIONS 58/193)**

Subdivision (h) of section 2 of article XIII A of the California Constitution provides that certain transfers of real property between parents and children and, under certain circumstances, from grandparents to grandchildren, may be excluded from change in ownership as defined by the Legislature. Subdivision (h) of section 2 of article XIII A, however, also delegated to the Legislature the task of defining the term "children." The Legislature implemented the parent-child exclusion in Revenue and Taxation Code section 63.1 and defined "children" in subdivision (c)(3) as:

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<sup>6</sup> A person who transfers the base year value once for age may transfer the base year value a second time if that person becomes disabled subsequent to the base year value transfer for age and must move as a result of the disability.

- (A) Any child born of the parent or parents, except a child, as defined in subparagraph (D), who has been adopted by another person or persons.
- (B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.
- (C) Any son-in-law or daughter-in-law of the parent or parents. For purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.
- (D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

Because section 63.1 was enacted by the Legislature and not by ballot initiative, AB 205 controls the interpretation of the definition of "children" in terms of the rights of registered domestic partners. Thus, any relationship between parents and children established by a registered domestic partnership is accorded the same treatment as if established by marriage.

**Child Born to Registered Domestic Partners after December 31, 2004.** A transfer of real property from a registered domestic partner or partners to a child born to one of the partners during the registered domestic partnership is eligible for the parent-child exclusion both before and after December 31, 2004, for property transferred by the birth parent or by the parent who legally adopted the child. Because Family Code section 297.5, subdivision (d),<sup>7</sup> recognizes that registered domestic partners have the same rights and obligations as spouses with respect to a child of either of them, the parent-child exclusion should also apply to transfers from *either* registered domestic partner to a child born to one of the partners during the registered domestic partnership *after December 31, 2004*.

A transfer of real property from partners in a registered domestic partnership to a child formally adopted by both partners is eligible for the parent-child exclusion as long as the child was less than 18 years old when adopted.

**Stepparent Relationship.** The California Supreme Court has granted review to decide the issue of the legal relationship of a child born *before* January 1, 2005, to the registered domestic partner who is not the birth parent and who has not formally adopted the child. Until the court renders a decision, it is our view that the child would not qualify as a stepchild within the meaning of section 63.1, subdivision (c)(3)(B), because the only basis for the stepparent and stepchild relationship prior to January 1, 2005, is marriage. As previously discussed, Family Code section 297.5 extends to registered domestic partners the rights and obligations of spouses, and thus the stepparent and stepchild relationship would be created only after December 31, 2004.

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<sup>7</sup> Family Code section 297.5, subdivision states: "The rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them shall be the same as those of former or surviving spouses."

**In-Law Relationship.** A transfer of real property from parents to their child and that child's registered domestic partner *after* December 31, 2004, is eligible for the parent-child exclusion. The child's registered domestic partner is accorded treatment as a son-in-law or daughter-in-law of the parents because section 63.1 is not a statute adopted by initiative and, therefore, Family Code section 297.5 extends the benefit to registered domestic partners. Prior to January 1, 2005, the in-law relationship could be created only by marriage, and thus the parent-child exclusion is not available to registered domestic partners before that date.

The text of AB 205 and AB 2580 may be viewed on the Legislative Counsel's web site at [www.leginfo.ca.gov/bilinfo.html](http://www.leginfo.ca.gov/bilinfo.html). Existing code sections may be viewed on the Legislative Counsel's web site at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html). The referenced Letters To Assessors may be viewed on the Board's web site at [www.boe.ca.gov/proptaxes/ltacont.htm](http://www.boe.ca.gov/proptaxes/ltacont.htm).

If you have any questions regarding property tax assessment issues, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ David J. Gau

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