ARTICLE:

NO LIMITATIONS AND NO ESCAPE: THE LONG TAIL OF REAL PROPERTY TAX LIABILITY RESULTING FROM ENTITY INTEREST TRANSFERS IN CALIFORNIA

*By Karl E. Geier**

The general limitations on reassessment of real property without a "change of ownership" under the 1978 voter initiative known as "Proposition 13"[1] deserve renewed attention after the failed effort to enact Proposition 15 in 2020. Under the California Constitution, as amended by Proposition 13, for ad valorem tax purposes, real property ordinarily can only be assessed annual taxes equal to 1 percent of its "base value," which is its full cash value as of the most recent "change of ownership" (or its 1975 value, in the absence of a change of ownership since 1978), plus an increase for inflation that is capped at 2 percent of that base value each year thereafter.[2] The failed Proposition 15 would have excluded most commercial properties from the operation of Proposition 13, meaning they could be assessed based on current fair market value with or without a change of ownership and without regard to the 2 percent annual limit.

But even without the failed effort to exclude most commercial property entirely from its restrictions, Proposition 13 and related implementing legislation already defined "change of ownership" to include various transfers of interests in a business entity even when that entity continues to hold the same property without a change of title to the property.[3] Since these transfers occur without necessarily triggering any change in the real property records, the Legislature has enacted detailed reporting requirements to assure that entity interest transfers are brought to the attention of the local assessor and the State Board of Equalization in order to allow for a determination of whether there has been a "change of ownership" of a partial interest in the underlying real property,[4] or a "change in control" that results in an entire reassessment of the underlying real property.[5] These provisions apply whether the entity involved is a corporation, a partnership, a limited liability company, or another legal entity, as defined.[6]

---

*Karl E. Geier is shareholder emeritus with the firm of Miller Starr Regalia and Editor-in-Chief of the firm's 12-volume treatise, Miller & Starr, California Real Estate 4th, published by Thomson Reuters.

© 2021 Thomson Reuters

The recent decision in *Prang v. Los Angeles County Assessment Appeals Board No. 2,*[7] underscores the importance of strict compliance with the filing and reporting requirements of Rev. & Tax. Code, §§ 480.1 and 480.2, and the potential for escape assessment liability to continue in perpetuity if the statutory reporting requirements are not strictly satisfied. As summarized by the concurrence in *Prang*:

> "[T]his case ultimately stands for one proposition and one proposition only: if you notify your local assessor's office of a change in ownership or control but do not notify the State Board of Equalization, you will be on the hook for unlimited retroactive property tax assessments even if the assessor's office neglects to undertake a timely reassessment."[8]

The *Prang* decision adopts a "strict compliance" standard in lieu of a "substantial compliance" standard for when an ownership entity has satisfied the statutory reporting requirement. At the same time, *Prang* enunciates a rule that no statute of limitations or reachback limitation, including the equitable doctrine of laches, can ever limit the right and power of the local assessor and the State Board of Equalization to look back at unreported past entity transfers, reassess the value of the underlying real property, and impose escape assessments for the years of reduced taxes that should have been increased. In other words, there is no remedy for the failure to make the correct filing at the time of the transfer, other than to invite a reassessment and pay the back taxes with penalties and interest to the extent they can be imposed. The case does not reach the question of whether the lien for escape assessments could attain priority over intervening encumbrances and transfers, but as this article discusses, such lien priority may exist, and the position taken by the local assessor's and tax collector's office may not be relied upon if not consistent with the statutory requirements—a matter that a third party transferee or mortgagee may be in no position to determine. This in turn poses due diligence issues for subsequent encumbrancers and transferees as well as title insurers and others involved in real estate transactions concerning the affected property.

This article begins with an outline of the statutory reporting and filing requirements and the related statutory provisions for reassessment and imposition of ad valorem tax liens and escape assessments for previously unreported transfers of entity interests. It then discusses the *Prang* decision and the unlimited exposure of parties and properties if such reporting and filing requirements were not adhered to. Next, it provides an analysis of the potential lien priority issues arising from the statutory structure addressed in *Prang*, which

 © 2021 Thomson Reuters

were not part of the decision or the court's opinion. Finally, the article concludes with some suggested due diligence and remedial actions that property owners and prospective lenders and transferees might take to address these issues proactively.

A. The Statutory Framework

The requirements for filing or reporting changes of ownership are set forth in Sections 480-487 of the Revenue and Taxation Code. Generally, these provisions require the transferee of real property or an interest therein to file a "preliminary change of ownership statement" in the statutory form provided by the local assessor of the county in which the property is located.[9] For transfers of interests in corporations, partnerships, limited liability companies, and other legal entities, however, the requirements are different. When there is a change in control of a legal entity, the person acquiring control is required to file the change of ownership statement with the Board of Equalization in Sacramento within 90 days,[10] and where there is a change in ownership of the legal entity, the legal entity itself is required to file the change of ownership with the State Board within 90 days,[11] in each case listing the counties in which the legal entity owns real property. The State Board then makes an evaluation of the information submitted, and where appropriate, refers the change of ownership or control to the applicable county assessor to reassess the property.[12] There is no provision for the transferee or the legal entity itself to file a change of ownership statement with the local assessor directly.

The penalties for delayed or nonexistent filings of change of ownership statements by transferees and legal entities are addressed in Section 482 of the Revenue and Taxation Code. In addition to the taxes for the value of the property as reassessed for the new base year of ownership, there is a statutory penalty for failure to file. Where the filing was required to be made with the local assessor, i.e, for transfers of interests in the real property, the penalty is the greater of $100 or 10 percent of the taxes applicable to the new base year value (subject to a $5000 limit).[13] Where the filing was required to be made with the State Board, i.e., for transfers of interests in a legal entity, the penalty is 10 percent of the taxes applicable to the new base year value reflecting the change in control or change in ownership, or 10 percent of the current year's taxes if no change of control or change in ownership occurred.[14] In both cases, the penalty may be due even if the assessor or Board, as applicable, ultimately determines that no change of ownership or change of control has occurred;[15] in other words, the

© 2021 Thomson Reuters

failure to make a required informational filing with the appropriate office may result in the assessment of the statutory penalty even if there are no grounds for reassessing the property based on the transfer of ownership or of entity interests involved. In either case, the statutory penalty is added to the secured roll as a special assessment and becomes a lien on the property,[16] or if the property has been transferred to a bona fide purchaser before the penalty is assessed, the penalty is placed on the unsecured roll and may become a lien on the assessee's other property after the assessor has separately filed a notice of delinquency in the local recorder's office.[17]

In addition to the immediate penalty for failure to file a required preliminary change of ownership statement or to respond to further requests for information, property that was not reassessed for any reason, including a failure to file required change of ownership or change of control information, remains subject to retroactive reassessment to its full cash value as of the new base year for which it should have been reassessed. If the failure was due to the assessor's error involving the assessor's judgement as to value, then the reassessment must be completed within four years after the year in which the incorrect base year value was determined, unless the valuation error resulted from the taxpayer's fraud, concealment, misrepresentation, or failure to furnish required information.[18] If the failure was due to any other reason not involving the assessor's exercise of judgement as to value, then there is no limitations period to revise the base year value, and the failure can be corrected through reassessment at any time.[19]

Although the reassessment of base year value can occur at any time, and thus can affect the amount of current taxes going forward, there is still a question of how far back into the past the assessor may reach to reassess property for prior tax years following the new base year. Such retroactive tax assessments are deemed "assessments of property that escaped taxation," i.e., "escape assessments," and are subject to a separate set of statutory limits.[20] As a general rule, the assessor is limited to levying escape assessments for the four years preceding the reassessment,[21] but there are specific exceptions to this rule provided by statute. The most significant of these exceptions that is for an unrecorded change of ownership for which a change of ownership statement was required by Section 480 (applicable to unrecorded deeds of real property or certain leases) or a preliminary change of ownership report was required by Section 480.3 (applicable to property of decedents), the escape assessment must be made within eight years after July 1 of the assessment year in which the property escaped taxation or was under-assessed.[22]

 © 2021 Thomson Reuters

However, this eight-year limitation expressly, by statute, does not apply where the property escaped taxation, in whole or in part, following a change in control or change of ownership and either a "Section 503 penalty" must be added ***or*** a change of ownership statement, as required by Section 480.1 or 480.2, was not filed with respect to the event giving rise to the escape assessment or underassessment.[23]Under Section 503, an additional penalty equal to 75 percent of the increase in assessed valuation must be added when the escape assessment is due to "fraudulent acts or omissions" by the taxpayer,[24] but there is no "fraud" requirement for the exception to the eight-year limitation period in the case of a mere failure to file the required change of ownership or control reports under Sections 480.1 and 480.2.[25] In other words, as the taxpayer in *Prang* eventually learned, there is no limit on the number of years that may elapse before an escape assessment can be assessed for years following a failure to file the required change of ownership or control information with the State Board following an entity interest transfer.

Despite the limitations (or lack of limitations) for escape assessments due to failure to file change of ownership statements, there are some statutory protections for subsequent purchasers or subsequent encumbrancers. These protections, not addressed in the *Prang* opinion, are of significant concern in the context of transactional due diligence by purchasers or lenders to entities that hold real property, and are discussed in greater detail later in this article. In *Prang,* the same legal entity continued to hold the property, for all intents, so the issue of a bona fide purchaser or encumbrancer did not arise.

B. The Case of *Prang v. Los Angeles County Assessment Appeals Board No. 2*

The *Prang* case arose from a change in the form of ownership of a shopping center located in Downey, California, that occurred in 2006, when the entity that held title to the shopping center, Downey Landing, LLC, merged into Downey Landing SPE, LLC. The circumstances of the merger are not described, but all parties in the litigation evidently agreed that it was a "change of control" within meaning of Rev. & Tax. Code, § 64(c)(1), which in turn triggers the recording with the State Board of Equalization under Rev. & Tax. Code, § 480.1(b)(3). Rather than file a Form BOE-100-B with the State Board, however, the surviving entity, Downey SPE, merely filed a certificate of merger with the Los Angeles County Assessor's office a few days after the merger, in May, 2006. The Assessor did not evaluate the merger as a change of ownership or reassess the property even after some later lease transactions that were reported in 2009 that led someone in the Assessor's office to note the ownership entity had changed.

Much later, after apparently realizing that it had failed to comply with the filing mandate of Section 480.1, Downey SPE belatedly filed a Form BOE-100-B with the State Board in 2013. This triggered a series of notices from the County Assessor in 2015, reassessing the base value of multiple parcels in the shopping center as of 2006 and demanding payment of escape assessments for all subsequent tax years, in the total sum of $16,014,000. Downey SPE filed an appeal with the Assessment Appeals Board, asserting that except for the escape assessments for the four most recent fiscal years (2011-2012, 2012-2013, 2013-2014 and 2014-2015), the escape assessments for the earlier years were barred by the four-year statute of limitations of Section 532(a). The Assessment Appeals Board agreed, limiting the escape assessments to the most recent four fiscal years, and reduced the total escape assessment to $8,606,147.

The ensuing litigation began when the Los Angeles County Assessor, Jeffrey Prang, filed for a writ of administrative mandate under Code of Civil Procedure Section 1094.5, asserting the Assessment Appeals Board decision constituted a prejudicial abuse of discretion because the Board had failed to properly determine whether Downey SPE properly met the filing requirements of Section 480.1 and whether the four-year limitations period of Section 532(a) could properly apply in such a case. The superior court reversed the Assessment Appeals Board ruling, reinstating the full series of escape assessments going back nine years before 2015, aggregating $16,014,000. The court did so on two grounds: (1) that Section 480.1 requires "strict compliance," and a filing with the local assessor could not satisfy the required filing with the State Board; and (2) even if a local filing could sometimes be considered "substantial compliance," the certificate of merger Downey SPE had filed in 2006 could not meet this standard, because it did not advise the Assessor whether and to what extent the merging entities owned real property in the State of California or that the change of organization embodied in the merger might trigger reassessment under the applicable statutes. Downey SPE then appealed to the Second District Court of Appeal, which ultimately affirmed the lower court decision.

The court of appeal's analysis began with a brief history of Proposition 13 and the implementing legislation that followed its passage in 1978. Of note, the court observed, the administration of Proposition 13's limitations on increasing

 © 2021 Thomson Reuters

the assessed value of property beyond the annual two percent inflation limit necessitates that the assessor be in a position to reassess the property after a change of ownership or other event (such as a "purchase" or "new construction") that allows for reassessment based on current market value.[26] In the case of a delayed reassessment leading to "escape assessments" for property that could have been, but was not, reassessed at the time a triggering event occurred, the issues are (1) has there been a qualifying triggering event, and (2) is the assessment timely? In this case, apparently, there was no dispute that the 2006 merger was a "triggering event" under Section 64 and would qualify for reassessment, so the only issue in dispute was whether the reassessment and levy of escape assessments were timely under Section 532.[27] This in turn led the court to analyze the legislative background of Section 532(b)(3), which was enacted in 1994 specifically to address the problem of unreported off-record changes in corporate organizations.[28]

As outlined by the court, the statutory language of Section 532(b)(3) is clear, and there is an "*unlimited reachback period"* when a person or entity acquiring a legal entity has not filed the required "change in ownership statements" with the State Board, and "this unlimited period trumps *any and all* shorter limitations periods, including the eight-year limitation period set forth in subdivisions (b)(1) and (b)(2)."[29] In other words, if there was a basis for reassessment in 2006 when the merger occurred, and if the filing with the State Board required by section 480.1 was not made in strict compliance with that statute, then section 532(b)(3) specifically and intentionally allows the reassessment and imposition of escape assessments to be made at any time and for an unlimited period of time after the change of control occurred. Also, although the case specifically involved section 480.1, the court repeatedly noted that the same exception from the eight-year lookback period of subdivisions (b)(1) and (b)(2) of section 532 applies for noncompliance with section 480.2 (which requires partial changes of ownership of business entities to be filed with the State Board).

Downey SPE raised several additional arguments that the court rejected. Of particular significance was the argument that an earlier case, *Dreyer's Grand Ice Cream, Inc. v. County of Alameda*,[30] had "declared the notion of giving an assessor an open-ended opportunity to impose escape assessments without any time limitation" to be "an illogical," "absurd," and "unfair result" because "it could call upon a taxpayer to challenge escape assessments levied 20 years later."[31] To the contrary, said the *Prang* court, the Legislature's enactment of the unambigu-

© 2021 Thomson Reuters

ous and unlimited language of Section 532(b)(3) in 1994 that made the eight-year limitations period inapplicable to failures of filing change of ownership statements for entity interest transfers under Sections 480.1 and 480.2, was with full knowledge of the statements in *Dreyer's* made some eight years earlier. If anything, said the court, the Legislature had implicitly rejected any suggestion that *Dreyer's* would control and limit the reachback period for escape assessments in this context.[32] Likewise, while noting that the issue was a factual question and that "Downey SPE does not have clean hands" due to failure to file the required informational documents, the also court rejected an amicus' suggestion that a levy of escape assessments in these circumstances could be barred by the equitable doctrine of laches:

> "Applying laches here would nullify the 'constitutional duty [of assessors] to levy retroactive assessments' as a means of fulfilling the constitutional mandate of 'equal and uniform' taxation of 'all' property because it would place new limits on assessors' ability to fulfill that duty over and above the time limits created by our Legislature in section 532."[33]

Lastly, the court of appeal went on to discuss the purpose of the filing with the State Board in Section 480.1, and concluded that it required "strict compliance"; a failure to file with the State Board could not be "cured" or obviated by a filing with the local assessor's office, because strict compliance is necessary to comply with the Legislature's intent in adopting sections 80.1 and 532(b)(3).[34] Among other things, the State Board has "specialized expertise at parsing complex transactions" and circumventing the state filing (or excusing it based on filing with the local assessor) would "override our broader analysis of legislative intent."[35]

The majority opinion in *Prang* leaves no doubt that strict compliance is required and noncompliance triggers an unlimited reachback period for escape assessments if requisite filings for changes of ownership or control of entity interests (corporate, partnership, or limited liability companies included) are not made with the State Board in strict compliance with the timing and filing standards of Section 480.1 or 480.2. There was a concurring opinion in which Justice Baker agreed that "the statute allows retroactive reassessment of property taxes due without limit . . . when ownership or control of the property changes" and the required changes in ownership statements are not filed as required by Sections 480.1 and 480.2. However, Justice Baker would not have given the Assessor free reign to ignore filings that should have triggered some inquiry even if non-compliant, and would not in all cases "give the Assessor

 © 2021 Thomson Reuters

license to deploy today's opinion to excuse derelict performance by his office so long as the taxpayer in question—no matter her, his or its good-faith—does not perfectly jump through all bureaucratic hoops erected pursuant to the statutory scheme. . ..."[36] As he was observing, however, the current court of appeal opinion appears to do just that—leaving property owners exposed to escape assessments for an unlimited period of time irrespective of actual knowledge and nonfeasance by the assessor, based on failure to strictly comply with an increasingly complicated and, to some, obscure statutory scheme.

C. The Statutory Limits on Escape Assessments and Implications for Subsequent Purchasers and Encumbrancers

The penalties for failure to provide required informational filings under Rev. & Tax. Code, § 482 cannot be imposed as a lien or special assessment following transfer of the property to a bona fide purchaser for value.[37] A bona fide purchaser for value or a bona fide encumbrancer for value also has protection under Rev. & Tax. Code, § 532 against escape assessments after transfer or encumbrance, where the property should have been reassessed but was not due to a prior failure to make required change of ownership or change of control filings with the assessor or State Board, as applicable.[38] As with penalties, the escape assessment in that event is entered in the unsecured roll and may become a lien against the taxpayer entity's other property, but does not become a lien against the real property for which the escape assessment is imposed.[39] Also, interest may be added to the escape assessment,[40] but also would not be assessed against a successor who is a bona fide purchaser or encumbrancer for value. (In some cases by local option, where the escape assessment may be imposed for a year in which the transfer occurred, the statute provides for proration of the escape assessment against the taxpayer and the successor owner, but this provision generally would not apply to a bona fide purchaser or encumbrancer for value).[41]

A potentially troublesome question that is not addressed directly by the statute or the case law is what constitutes a "bona fide purchaser or encumbrancer for value" in the specific instance where the transferor is a legal entity and the transferee knows, or should know, that there may have been one or more transfers of ownership interests and/or transfers of control at some point in the past. Ordinarily, a bona fide purchaser is one who lacks actual or constructive notice of a particular thing, and notice may be imparted either by facts that should lead a reasonable person to inquire or by existence of a public record that is within the chain of title of the property.[42] In the context of a transfer of ownership or control of a legal entity, in most cases there will be no written instrument of record in the real estate records that would impart constructive notice, which is the usual measure of whether a purchaser or encumbrancer is in good faith without notice. If the recording laws cannot be relied upon, then the mere fact the property has been owned by a legal entity might arguably impose at least a duty to inquire as to the possibility of previous transfers of entity interests during the period of ownership.

To summarize, if knowledge of the entity status of the grantor or mortgagor gives rise to a duty of inquiry regarding prior transfers of interests or control of the entity, there is a potential for the grantee or mortgagee to lose bona fide purchaser or encumbrancer status if he or she failed to reasonably inquire about such facts. There is presently a dearth of authority regarding the concept of "bona fide purchaser" or the amount of knowledge or "willful ignorance" that might deprive a transferee or encumbrancer of bona fide purchaser status under Rev. & Tax. Code, § 532. But if a particular transferee or encumbrancer is deemed not to be "bona fide," the implication of the statutory language is that the lien for escape assessments is binding on the property and effectively must be paid in order to avoid foreclosure by the taxing authorities. At a minimum, this would suggest the need to review and determine whether any prior off-record transfer of ownership or control on the part of the entity transferring an ownership interest or granting a lien on the property may have occurred, and whether there was an actual reassessment by reason of that transfer.

Even less clear is the level of knowledge or inquiry that a remote transferee or encumbrancer may be required to possess in order to maintain bona fide status with regard to entity interest transfers that may have occurred further up in the chain of title. In most cases, the transferee or encumbrancer will have constructive notice from documents in the chain of title that a legal entity (corporation, partnership, limited liability company, or other entity) has owned the property at some point in the past, and the question will be whether that constructive knowledge deprives the transferee or encumbrancer of bona fide purchaser or encumbrancer status with regard to possible off-record transfers of ownership or control that occurred without compliance with the filing requirements of Sections 480.1 and 480.2 and that might have triggered a basis for reassessment but have not yet resulted in escape assessments under Section 532. Without a statute of limitations, the theoretical exposure of property to liens for escape assessments may continue indefinitely. And while this may seem like a "parade of

 © 2021 Thomson Reuters

horribles" raising a fictional spectre of unlimited exposure to "long tail" escape assessments, there is nothing in the analysis of *Prang* that would give anyone comfort that this parade will come to an end at any definite point in time.

D. Possible Due Diligence Precautions for a Prudent Purchaser or Encumbrancer

The potential for loss of bona fide purchaser or encumbrancer status regarding unreported off-record transfers based on actual or constructive knowledge of previous entity ownerships of the real property suggests a need for caution. Rather than assume that "ignorance is bliss," a more prudent course of action in most cases will be for the transferee (whether a purchaser or an encumbrancer) to obtain, at minimum, direct representations and warranties that there have been no such prior off-record transfers of ownership or control of entity interests in the entities that currently holds title or ownership of the real property, or that if any such transfers occurred, the proper filings with the local recorder and the State Board have been made and no reassessment was warranted as a result of the transfer. This may be increasingly difficult to accomplish as time goes on, at least with respect to transfers to which the current management of the entity or its current shareholders, partners, or members were not privy at the time they occurred. One might argue that the need for inquiry should go all the way back to 1978, when Proposition 13 was first enacted, but it should be sufficient to look back only to the early 1990's, which is when the Legislature eliminated time limits for escape assessments to be imposed under Section 532(b)(3) specifically in connection with noncompliance with the reporting requirements of Sections 480 and 480.1.[43]

Even then, if a purchaser or encumbrancer has actual notice of an off-record transfer, but is advised that the proper filings were made, the duty of inquiry may extend beyond the receipt of a mere representation and warranty, to include verification that the filings in fact occurred. In this regard, however, the procedure for obtaining such information by inquiring of the applicable authorities (the assessor and the State Board) is unclear, and there is no safe harbor for a party who inquires and obtains no response or inaccurate information. Arguably, a transferor or mortgagor should be asked to provide copies of the filings and a representation of when and where they were filed, as well as a reassessment history to show that there is no longer a basis for an escape assessment. A review of the assessment history should establish whether a contemporaneous reassessment occurred, making the likelihood of a future escape assessment unlikely.

But what if the investigation turns up a probable failure to report in compliance with the statute by the current legal entity that is the transferor or mortgagor in a pending transaction—what can the parties do at that point? Once an actual failure to make a required filing for an off-record transfer is ascertained, any "bona fide purchaser" or "bona fide encumbrancer" defense to a long-delayed escape assessment becoming a lien on the property will be gone. Moreover, as reflected in the *Prang* decision, any effort to file required reports with the local assessor or the State Board outside the timeframe established by the statute will have no effect on the reachback period if there is a basis for reassessment. A late filing will presumably flag the issue for the State Board as well as local assessors' offices, as seems to have occurred in *Prang,* and may be an appropriate means of bringing closure and quantifying the tax liability once the retroactive reassessment takes place. Usually this will not happen in time for a pending transaction.

Whether or not a delayed filing of the appropriate change of ownership statement for a past entity interest transfer is made, the parties may be able to estimate and provide reserves for the potential escape tax liability. There is no safe harbor and no fool-proof way to establish a value or to quantify the probable escape assessment that the parties and the assessor all would agree upon—assuming they agree that a basis for reassessment exists in the first place, which also may not always be the case. The parties in such cases will need to make a judgement whether to invite a reassessment or instead to provide other transactional remedies, such as indemnity agreements, holdbacks, or reserves, against the possibility of an escape assessment for prior years, while recognizing that the current transfer of record ownership will result in a current and prospective reassessment of the property in any case.

Even more problematic is the question of how much to investigate the possibility of unreported off-record transfers of ownership or control of interests in entities that appear further back in the chain of title to the real property. As a general rule, when the legal title to the property has changed hands (or there has been an equivalent change of ownership of the real property through a long term lease that has been properly reported to the local assessor's office), the property will have been reassessed to its current cash value immediately after the transaction. Theoretically, an escape assessment conceivably could still be imposed for earlier off-record and unreported transfers of ownership interests in previous entity owners that preceded reported or off-record transfers to the current owner, but the probabilities are reduced that prior off-record transfers

 © 2021 Thomson Reuters

entirely escaped the attention of the assessor at that point or that there would have been materially different valuations for the period preceding the actual reassessment. Neither *Prang* nor the statutory framework provide a bright-line defense or cutoff of additional escape assessments at that point, but a fair argument should exist that a much later transferee or mortgagee can claim bona fide purchaser or bona fide encumbrancer status as to those earlier and remote entity interest transfers involving legal entities that are no longer in title to the property, when the property clearly has been the subject of reassessment as a result of a transaction in which the current owner acquired its ownership interest in the property.

E. Conclusion

Although, as this article points out, the protection of "bona fide purchasers" against the lien for escape assessments arising from previous ownership's changes of control or changes of ownership, may extend to some innocent purchasers, such protection never exists for the ownership entity that suffered or incurred the change of control or change of ownership. In light of the court's decision in *Prang v. Los Angeles County Board of Assessment Appeals No. 2*, business entities that have owned real property for many years should review their records and filings for possible changes of ownership or changes of control, and consider whether any unrecognized or unreported changes have occurred since the 1994 amendments to Rev. & Tax. Code, § 532(b)(3). If so, there is at least a potential for escape assessment liability that should be evaluated against the assessment history of the property and quantified, if possible. For other parties dealing with real property that has a history of entity ownership, the possibility that knowledge of the entity status of the predecessor owner may give rise to a duty of inquiry in order to maintain good faith purchaser defenses against escape assessment liens arising out of past transactions suggests a need for precautions. One could wish for legislative action or further judicial decisions to resolve the uncertainties arising from the vague "bona fide purchaser for value" language of Section 531.2, but the likelihood of that happening anytime soon seems remote.

ENDNOTES:

[1]Cal. Const. art. XIII A, enacted by the voters in 1978 as Proposition 13.

[2]Cal. Const. art. XIII A, § 2. See also Rev. & Tax. Code, §§ 50-53, 60-63.1.

[3]Rev. & Tax. Code, § 64.

[4]Rev. & Tax. Code, § 480.2.

[5]Rev. & Tax. Code, § 480.1.

[6]Rev. & Tax. Code, §§ 480.1, subd. (a), 480.2, subd. (a), each referencing Rev. & Tax. Code, § 64, subd. (c) for the definition of "legal entity," which is a term used but not further defined in Section 64, subd. (c).

[7]*Prang v. Los Angeles County Assessment Appeals Board No. 2*, 54 Cal. App. 5th 1, 268 Cal. Rptr. 3d 376 (2d Dist. 2020).

[8]*Prang*, supra, 54 Cal. App. 5th at 24 (concurring opinion).

[9]Rev. & Tax. Code, §§ 480, 480.3, 480.4.

[10]Rev. & Tax. Code, § 480.1.

[11]Rev. & Tax. Code, § 480.2.

[12]*Title Ins. & Trust Co. v. County of Riverside*, 48 Cal. 3d 84, 90, 255 Cal. Rptr. 670, 767 P.2d 1148 (1989).

[13]Rev. & Tax. Code, § 482, subd.(a).

[14]Rev. & Tax. Code, § 482, subd. (b).

[15]Rev. & Tax. Code, § 482, subds. (a), (b).

[16]Rev. & Tax. Code, § 482, subds. (d)(1), (d)(2).

[17]Rev. & Tax. Code, §§ 482, subds. (d)(3),(e), 2191.3, subd. (b).

[18]Rev. & Tax. Code, § 51.5, subds. (b), (c); *Montgomery Ward & Co. v. County of Santa Clara*, 47 Cal. App. 4th 1122, 1130, 55 Cal. Rptr. 2d 261 (6th Dist. 1996).

[19]*Kuperman v. San Diego County Assessment Appeals Bd. No. 1*, 137 Cal. App. 4th 918, 926, 40 Cal. Rptr. 3d 703 (4th Dist. 2006).

[20]Rev. & Tax. Code, §§ 51.5, 532. See discussion in *Prang,* supra, 54 Cal. App. 5th at 14-15, and see *American Airlines, Inc. v. County of San Mateo*, 12 Cal. 4th 1110, 1127, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996).

[21]Rev. & Tax. Code, § 532, subd. (a); *Blackwell Homes v. County of Santa Clara*, 226 Cal. App. 3d 1009, 1014, 1017, 277 Cal. Rptr. 251 (6th Dist. 1991).

[22]Rev. & Tax. Code, § 532, subd. (b)(2).

[23]Rev. & Tax. Code, § 532, subd. (b)(3).

[24]Rev. & Tax. Code, § 503.

[25]See text of Rev. & Tax. Code, § 532, subd. (b)(3).

[26]*Prang*, supra, 54 Cal. App. 5th at 11-12.

[27]*Prang*, supra, 54 Cal. App. 5th at 15.

[28]*Prang*, supra, 54 Cal. App. 5th at 16-17.

[29]*Prang*, supra, 54 Cal. App. 5th at 16.

[30]*Dreyer's Grand Ice Cream, Inc. v. County of Alameda*, 178 Cal. App. 3d

 © 2021 Thomson Reuters

1174, 224 Cal. Rptr. 285 (1st Dist. 1986).

[31]*Prang*, supra, 54 Cal. App. 5th at 16, quoting *Dreyer's*, supra, 178 Cal. App. 3d at 1180 (internal quotation marks, ellipses, and brackets of some words omitted).

[32]*Prang*, supra, 54 Cal. App. 5th at 16-17.

[33] *Prang*, supra, 54 Cal. App. 5th at 18, quoting *American Airlines, Inc. v. County of San Mateo*, 12 Cal. 4th 1110, 1127, 51 Cal. Rptr. 2d 251, 912 P.2d 1198 (1996).

[34]*Prang,* supra, 54 Cal. App. 5th at 20-21.

[35]*Prang,* supra, 54 Cal. App. 5th at 22.

[36]Prang, supra, 54 Cal. App. 5th at 24 (concurring opinion).

[37]Rev. & Tax. Code, § 482, subd. (c). See discussion in text accompanying notes 20 to 22, above.

[38]Rev. & Tax. Code, § 531.2, subd. (b).

[39]Rev. & Tax. Code, § 531.2, subd. (b), provides in relevant part: "If the real property escaped assessment as a result of an unrecorded change in ownership or change in control for which a change in ownership statement required by Section 480, 480.1, or 480.2, or a preliminary change in ownership report, pursuant to Section 480.3, is not filed, the assessor shall appraise the property as of the date of transfer and enroll the difference in taxable value for each of the subsequent years on the secured roll, with the date of entry specified thereon. However, if prior to the date of the assessment the property has (1) been transferred or conveyed to a bona fide purchaser for value, or (2) become subject to a lien of a bona fide encumbrance for value, the escape assessment pursuant to this paragraph shall not create or impose a lien or charge on that real property, but shall be entered on the unsecured roll in the name of the person who would have been the assessee in the year in which it escaped assessment and shall thereafter be treated and collected like other taxes on that roll. The tax rate applicable shall be the secured rate of the year in which the property escaped assessment." "Assessment year" means the period defined in Section 118.

[40]Rev. & Tax. Code, § 531.2, subd. (b) goes on to provide: "In the event of a failure to file a change in ownership statement required by Section 480, 480.1, or 480.2, or a preliminary change in ownership report, pursuant to Section 480.3, the interest provided in Section 506 may, by the order of the board of supervisors, be added."

[41]See Rev. & Tax. Code, § 531.2, subd. (c) (requires local board of supervisors to adopt by resolution in order to be effective in a given county).

[42]See generally 4 Miller & Starr, California Real Estate 4th, §§ 10:50 et seq.

[43]See discussion in *Prang,* supra, 54 Cal. App. 5th at 16-17, pointing out that the current language of Section 532(b)(3) was enacted in 1994 in partial response to *Dreyer's Grand Ice Cream, Inc. v. County of Alameda*, 178 Cal. App. 3d 1174, 224 Cal. Rptr. 285 (1st Dist. 1986), which previously had "declared

the notion of 'giv[ing] [an] assessor an open-ended opportunity to impose escape assessments without any time limitation' to be 'an illogical,' 'absurd' and 'unfair result' because it could call upon a taxpayer 'to challenge escape assessments levied 20 years later.' "

© 2021 Thomson Reuters