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Benson v Marin County: Severing a Joint Tenancy as a Property Tax Change of Ownership

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Severing a Joint Tenancy as a Property Tax Change of Ownership

Benson v Marin County Assessment Appeals Bd. (2013) 219 CA4th 1445

Peter Mikkelsen created a joint tenancy with his brother James. Later, James severed the joint tenancy when he deeded his interest in the property to himself and his brother as tenants in common. The Marin County Tax Assessor determined that the conveyance by James terminated the family joint tenancy, triggering a property value reassessment under [Cal Const art XIII A §1\(a\) \(Proposition 13\)](#). The Assessor calculated the value of the property at \$525,323 (more than five times the previously assessed value of \$100,631) and sent James a tax bill for \$2682. James appealed to the Assessment Appeals Board, arguing that the mere change in the way title was held—from joint tenancy to tenancy in common—did not constitute a change in ownership because the brothers retained the same proportional interest in the property as they held before the conveyance.

The Board reversed the Assessor's decision. The Assessor unsuccessfully petitioned the superior court for a writ of review of the Board's decision. The Assessor appealed.

The court of appeal reversed, holding that the Assessor correctly reassessed the property because the [Rev & T C §62\(a\)\(1\)](#) exception for changes in method of holding title does not apply to the termination of a family joint tenancy. A plain reading of the statutory scheme and legislative history revealed that the *creation* of a family joint tenancy is not treated as a change in ownership triggering reassessment, but its *termination* does result in such a change. The court noted that the brothers received the benefit of this exception when they created the family joint tenancy more than a decade ago.

[Proposition 13](#) sets the maximum ad valorem tax on real property to 1 percent of the full cash value of the property. The "full cash value" is defined as the appraised value of the property when purchased, newly constructed, or a change in ownership occurs. [Revenue and Taxation Code §60](#) defines "change in ownership" as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." [Revenue and Taxation Code §61\(e\)](#) specifically addresses joint tenancies, stating that the "creation, transfer, or termination of any joint tenancy interest, except as provided in [[Rev & T C §§62\(f\) and 65](#)]" constitutes a change in ownership. In addition, [Rev & T C §61\(f\)](#) regards the creation of a tenancy in common as a change in ownership "except as provided in [[§62\(a\)](#)]."

Under [Rev & T C §62\(a\)](#), there is no change in ownership in "[a]ny transfer between [co-owners] that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the [co-owners]." With regard to joint tenancies, [§62\(f\)](#) provides no change occurs on the creation or transfer of a joint tenancy interest "if the transferor, after the creation or transfer, is one of the joint tenants as provided in [[§65\(b\)](#)]."

[Section 65](#) spells out the extent to which the owners' interests would be reassessed on termination of a joint

tenancy.

THE EDITOR'S TAKE: When joint tenant James conveyed his half interest in the property from himself as joint tenant to himself as tenant in common, little did he appreciate all the consequences of his act. That conveyance not only severed the joint tenancy but also, according to this decision, led to a reassessment of his interest in the property—and probably also to a reassessment of his brother Peter's half interest as well. The provisions of [18 Cal Code Regs §462.040](#) are too complex for me to understand—it would probably be easier to figure out how to comply with the REMIC rules of the Internal Revenue Code than to get on top of those state Revenue and Taxation Code intricacies—but the court's opinion looks sufficiently diligently thought through as to justify any amateur in assuming that it is correct.

So if the court's conclusion that this termination of a joint tenancy constitutes a change of ownership (triggering reassessment of the property), that consequence probably attaches to both halves of the former joint estate. Since James is no longer a joint tenant, his brother Peter can no longer be a joint tenant either. Our nontax system of titles does not permit two siblings to share title with one as a joint tenant and the other as a tenant in common; whatever one is, so is the other. Therefore, it appears to me that Peter's joint tenancy interest has "terminated" as much as James's has. Both may now have to pay increased property taxes.

Perhaps James got what was coming to him because he unilaterally elected to convey himself out of his joint tenancy status. But I feel sorry for Peter, who seems to have suffered the same consequence through no act taken by him (or even perhaps known by him). As a result of James's conveyance, Peter now confronts the double consequence of losing his survivorship rights and also his lower property tax bill. Could he claim that James's acts constituted waste to the property or find some other theory to shift the higher tax bill onto James's shoulders?

Reassessing both halves of a former joint tenancy seems unproblematic when both joint tenants shared in the decision to end that estate. But since our law permits either of the joint tenants to convey his or her share without the consent or even the knowledge of the other, that decision does not need to be mutual. (See my column [Secretly Severing Joint Tenancies](#), 19 CEB RPLR 125 (May 1996), available at <http://www.rogerbernhardt.com/index.php/ceb-columns/146-secretly-severing-joint-tenancies>). This decision makes joint tenancy an even riskier way of taking title than it used to be. I hope lawyers can explain this to their clients, who too readily listen to the advice they get from their real estate brokers to take title in joint tenancy to save probate costs.

It didn't happen in this case, but I wonder if the result would have been different had there been three brothers involved, so that a conveyance by James to himself—while it would transfer and sever his one-third interest—would nevertheless have left the other two brothers as joint tenants (over their remaining two-thirds interest in the property)?
—Roger Bernhardt

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