
ALERT – California Court of Appeal: Documentary Transfer Tax Applies to Legal Entity Changes in Ownership

In *926 North Ardmore Avenue, LLC v. County of Los Angeles*,¹ the Second District Court of Appeal (the “Court”) held that Proposition 13 changes in ownership prompted by transfers of legal entity interests should also be characterized as “realty sold.” The result was an imposition of realty transfer taxes under the California Documentary Transfer Tax Act (the “Act”) in cases where no real property interests were transferred at all.

926 North Ardmore Avenue, LLC v. County of Los Angeles

In this case, a family trust held an apartment building in Los Angeles in a single-member LLC known as 926 North Ardmore Avenue, LLC (the “LLC”). The family trust then transferred all of its LLC membership interests to BA Realty, a limited liability limited partnership (“BA Realty”), which was also owned by the family trust. In 2008, the owners of BA Realty sold 90 percent of their partnership interests in BA Realty to two irrevocable trusts (45 percent each). No deed or other document of conveyance was recorded in connection with the sale of the BA Realty partnership interests. However, the Los Angeles County Assessor determined the transfers of the partnership interests resulted in a change of ownership of the apartment building; and thus, reassessed the apartment building for property tax purposes under Revenue and Taxation Code (“R&T”) Section 64(d).²

¹ C.A. 2d B248536 (September 22, 2014).

² R&T Section 64(d): whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in an entity are transferred by any of the original co-owners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded

After learning of the change of ownership, the Los Angeles County Recorder (the “County”) imposed a documentary transfer tax (hereinafter, the “transfer tax”) under the Act that applies only to “realty sold.” The County claimed that a change in ownership was sufficient evidence of “realty sold” and the transfer was subject to transfer taxes.

A long standing issue surrounding legal entity change of ownership revolved around whether a transfer tax may be imposed when the only transfer is of interests in the legal entity, and not transfers where a deed or other instrument of transfer is recorded. Because the Act did not specifically provide for the imposition of a transfer tax in relation to such legal entity interest transfers, certain local governments view the transfer of legal entities that own real property as a circumvention of the transfer tax. Many counties have amended their ordinances in order to impose the transfer tax upon transfers of legal entity interest transfers that exceed the 50 percent threshold provided in R&T Section 64(d).

The key wrinkle in the *926 North Ardmore* case was that Los Angeles County had not amended its ordinance in order to impose transfer taxes on legal entity interest transfers. Nevertheless, in 2010, the County began imposing transfer taxes on transfers of legal entity interests that resulted in a change of ownership of 50 percent or more. The LLC challenged the imposition of the transfer tax, arguing that the County had not amended its ordinance and thus was without authority to impose the transfer tax.

from reassessment under R&T Section 62(a)(2) shall be reappraised.

Ultimately, the Court held that a transfer of legal entity interests resulting in a change of ownership under either R&T 64(c)(1) or 64(d) comes within the definition of “realty sold” within the meaning of the Act.

The Court rejected the taxpayer’s arguments that the court should look to the decisions interpreting the federal tax stamp act since the Act was based on the tax stamp act. The Court, instead, based its decision on the Legislature’s current views on the documentary transfer tax. Interestingly, the Court apparently chose not to address the fact that the Legislature had failed to pass legislation specifically amending the Act in order to add legal entity changes in ownership.

Implications of the Decision

If this case is not overturned, it is likely that all California counties will impose transfer taxes where some had never before done so. While the *926 North Ardmore* case is certified for publication, the California Supreme Court granted review of the case and a decision is expected this summer.

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