

**Memorandum**

To : Earl Lucas, Chief  
Division of Local Government Fiscal Affairs  
Office of the State Controller  
Room 509, 1227 O Street  
Sacramento, California

Date : February 1, 1973

File No.:

Attention: Thomas H. French

From : Office of the Attorney General

Subject: Life Estates

This is in response to your memorandum of January 23, 1973, requesting our informal comments on several questions relating to the treatment of tax delinquent real property subject to a life estate. The questions raised have been the subject of prior oral advice on this subject which you now wish to have set forth in writing. Specifically, you have asked whether property subject to a life estate is to be treated like other property because of the delinquency in the following circumstances:

1. At the end of the first year of delinquency, should the property be sold to the state?
2. If the taxes continue delinquent for five years, should the property be deeded to the state and, if so, what effect does the tax deed have on life estates?
3. May the state sell at public auction the fee title to real property subject to a life estate; if so, what effect will the sale have on the life estates?

Our conclusions are

Real property subject to a life estate is to be assessed on the secured roll in the same manner as the fee and, if the taxes thereon become delinquent, the property should be (1) sold to the state at the end of the first year of delinquency; (2) tax deeded to the state if the taxes remain delinquent for five years, and (3) sold at public auction, if not redeemed prior to such sale. The tax deed to the property covers the entire fee interest which may be sold to the purchaser at the tax sale. Either the life tenant or the remainderman may redeem prior to the termination of the right of redemption.

ANALYSIS

Article XIII, section 1, of the Constitution of California provides that: "All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided." Section 405, Revenue and Taxation Code, requires the assessor to assess annually all the property in his county, except state-assessed property, "to the persons owning, claiming, possessing or controlling it on the lien date." Section 840, Civil Code, makes it the duty of the owner of a life estate to pay the taxes and other annual charges against the property.

It has been held that real property subject to a life estate may be assessed to the life tenant, and the fact that the assessment was not made in the name of the remainderman as well as in the name of the holder of the life estate did not render it invalid or irregular. Clayton v. Schultz, 4 Cal.2d 425, 429 (1939). The court cited former section 3628, Political Code, the pertinent provisions of which are now contained in section 405, Revenue and Taxation Code, and section 840, Civil Code, which has remained intact to this date. The court reversed a judgment in favor of persons claiming under the life tenant and ordered that the case be retried. Implicit in the decision is the concept that the assessment to the life tenant of real property subject to a life estate is the assessment of the entire fee and a tax sale of the property for delinquent taxes will result in the conveyance of the fee to the purchaser at the tax sale. This conclusion is buttressed by decisions in later cases, such as Sears v. County of Calaveras, 45 Cal.2d 518 (1955), where, at page 522, the Supreme Court stated that the tax deed transfers the title by operation of law from the owner of the property to the state the same in effect as a voluntary grant. The assessment giving rise to the tax sale and tax deed causes a new chain of title to arise independent of and contrary to the original chain of title upon which the life tenant and the remaindermen rely. People v. Maxfield, 30 Cal.2d 485, 487 (1947). The title is free of mortgage liens created prior to the tax lien. California Loan & Trust Co. v. Weis, 118 Cal. 489 (1897); Elbert, Ltd. v. Aleinick, 102 Cal.App.2d 169 (1951), §§ 3520, 3721, Rev. & Tax. Code.

There is no reason why real property subject to a life estate should not be assessed in full. The fact that the life tenant is named as the assessee does not mean that only his interest is being assessed. To assess only the possessory interest of the life tenant would result in the unwarranted exemption of the remainder. We are of the opinion that such real property should be tax sold to the state at the end of the first year of delinquency, as provided for in section 3351, et seq., Revenue and Taxation Code. If the taxes remain delinquent for five years, the property should be tax deeded to the state as provided in section 3510, et seq., Revenue and Taxation Code. The entire fee in the property will thus pass to the state and may be sold by the state in one of the several ways provided for in the code, including sale at public auction under section 3691, et seq., Revenue and Taxation Code.

The effect of the deed to the state on the life estate is the same as it is on real property not subject to a life estate. The apparent confusion that has arisen seems to be based on the provisions of law governing the rights of remaindermen where the life tenant permits his interest to be destroyed by forfeiture, surrender, merger, or otherwise. In this regard, section 741, Civil Code, provides that: "No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof." Section 741 has not, to our knowledge, been applied to a situation where the life tenant, through his failure to pay taxes, has lost the property by sale at public auction, resulting in the termination of the right of redemption. The remainderman has the right to pay taxes which the life tenant has failed to pay and can recover them from the life tenant's estate on the latter's death (Parkinson v. Caldwell, 126 Cal. App.2d 548, 553 (1954); see also Riley v. Turpin, 47 Cal.2d 152, 156 (1956)). If the property is tax sold and later tax deeded to the state, either the life tenant or the remainderman can redeem. But once the right of redemption is terminated by one of the several statutory methods provided for in the Revenue and Taxation Code (see §§ 3552.16, 3614.5, 3635, 3707, 3807, Rev. & Tax. Code), we are of the opinion that both the life tenant and the remainderman forfeit their interests in the property. Such forfeiture is provided for by the exemption set forth in section 741, Civil Code, supra.

Earl Lucas

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February 1, 1973

We trust that this informal reply serves your purposes in this matter. If, however, anything further is desired, please do not hesitate to communicate with us.

EDWARD P. HOLLINGSHEAD  
Deputy Attorney General

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