



Property Tax Exemptions From Reassessment and Prop 19 Implementing Legislation

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I. Introduction

Ordinarily, when the ownership of California real property changes, the property is reassessed at its current

fair market value and the new owner pays property tax based on the reassessed value. However, the law provides certain exemptions from reassessment and, in certain instances, allows a taxpayer to transfer the taxable value of the property to a subsequent property without being reassessed. This article will review some of the basic exemptions from property tax reassessment which are likely to be relevant to a real estate licensee's practice or address likely concerns of clients.

Disclaimer

Readers should consult their own professional tax advisors when making decisions that affect their taxes. This Q&A addresses tax questions generally and is not necessarily applicable to any particular individual and their specific circumstances. As always, our advice to agents is to not give legal or tax advice. Whether buying or selling a property, a client should be encouraged to seek the advice of a qualified California real estate attorney or tax advisor.

New Rules on Tax Basis Portability under Proposition 19

With the passage of Proposition 19, a homeowner who is over 55 years of age, severely and permanently disabled or whose home has been substantially damaged by wildfire or natural disaster may transfer the taxable value of their primary residence to:

- A replacement primary residence
- Anywhere in the state
- Regardless of the value of the replacement primary residence (with adjustments if "greater" in value)
- Within two years of the sale
- Up to three times (but without limitation for those whose houses were destroyed by fire)

Proposition 19 replaces the old rules which limited this exemption to the sale and purchase of a principal residence within the same county (Proposition 60) or between certain counties (Proposition 90). Previously, these rules limited tax basis portability only to those transactions where the purchased property was of "equal or lesser value" to the original property. Under Prop 19, a property that is of greater value is still eligible for partial albeit significant tax relief.

Purchases and Sales Before April 1, 2021, and Senate Bill 539 Implementing Legislation

SB 539 was signed into law on September 29, 2021, clarifying many of the issues surrounded Prop 19 implementation. One key point is that a sale or purchase of a property may qualify for Prop 19 tax savings even if that transaction closed prior to April 1, 2021, as long as the subsequent sale or purchase takes place within two years and on or after April 1, 2021.

SB 539 was codified as Revenue and Tax Code sections 63.2 and 69.5. Any reference in this Q&A to these code sections is a reference to SB 539.

New Rules on Intergenerational Transfers of Family Homes and Family Farms under Proposition 19 - Beginning February 16, 2021

Proposition 19 also changes the rules on exemptions from reassessment for intergenerational transfers by limiting the exemption to the transfer of a primary residence to a child (or grandchild) only when the property continues to be used as a family home by the child (or grandchild), and even then, the tax relief is limited to 1 million dollars over the original tax basis. Proposition 19 also includes provisions that would allow the transfer of a family farm to retain its taxable value. These new rules apply to any purchase or

transfer beginning February 16, 2021.

II. Sale and Replacement of Principal Residence by Taxpayers 55 Years of Age or Older

Q1. Is there a property tax reassessment exemption for taxpayers 55 years of age or older?

A1. Yes. With the passage of Proposition 19, a homeowner who is over 55 years of age, severely and permanently disabled or whose home has been substantially damaged by wildfire or natural disaster may transfer the taxable value of their primary residence to:

- A replacement primary residence
- Anywhere in the state
- Regardless of the value of the replacement primary residence (with adjustments if "greater" in value)
- Within two years of the sale
- Up to three times (but without limitation for those whose houses were destroyed by fire)

The replacement property may purchased or newly constructed. (Cal. Rev. & Tax Code § 69.6(a) and (e)).

Q2. Must the sale of the original property and the purchase of the replacement dwelling happen at the same time?

A2. No. A taxpayer has either two years before the sale of the original dwelling or two years after the sale of the original dwelling to purchase or construct the replacement property. For this purpose, a "sale or purchase" occurs when title to the property is transferred (e.g., date of close of escrow). "Construction" occurs as of the date of completion. The taxpayer must actually own and occupy the new property as his or her principal residence within this period.

(Cal. Rev. & Tax Code §§ 69.6(d)(13) and (e)(1). Property Tax Rule 462.540(a)(1)*).

* Board of Equalization Property Tax Rule 462.540 has yet to be formally adopted,

Q3. Is a property that was purchased or sold prior to April 1, 2021, eligible for Prop 19 tax savings?

A3. Yes. But only if one leg of the transaction closed prior to April 1, 2021. Either the sale of the original primary residence or the purchase or new construction of the replacement primary residence -- but not both -- may occur before April 1, 2021. In that case, the homeowner may transfer their tax basis under the Prop 19 rules where the corresponding sale or purchase closed on or after April 1, 2021, assuming all other conditions are met. (Cal. Rev. & Tax Code § 69.6(b)(5)).

If both the purchase and sale closed prior to April 1, 2021, then the homeowner is NOT eligible under Prop 19. (However, it might still be possible that the homeowner qualifies for tax savings under the Prop 60/90 rules).

Q4. If a home was sold (or purchased) prior to April 1, 2021, how much time does a homeowner have to purchase (or sell) their property on or after April 1, 2021?

A4. Two years from the date of closing of the first transaction. The closing of the purchase and sale can be no more than two years apart. For example, if an original principal residence was sold on January 31, 2020, then the corresponding purchase of the replacement principal residence must close no later than January 30, 2022. It is also possible that the purchase may occur within two years prior to the sale. (Cal. Rev. & Tax Code § 69.6(b)(5)).

Q5. Is it necessary to sell the original principal residence? Can a homeowner simply buy a replacement principal residence and rent out the original principal residence?

A5. No. Prop 19 requires that the original property be sold for consideration. Renting out the original property is not an option for claiming tax benefits under Prop 19.

Q6. Can I give my original replacement property to my son, and then transfer my tax basis to the replacement property?

A6. A property that is given away or acquired by gift or devise will not qualify because nothing of value was exchanged. Proposition 19 requires a "sale" of the original property and a "purchase" of a replacement dwelling. Sale and purchase are statutorily defined as a change in ownership for consideration. This is a two-part test:

- The property must be subject to change in ownership; and
- Something of value must be exchanged for the property.

Thus, transactions which are excluded from the definition of "change of ownership" will not qualify. (Rule 462.540(a)(3)(B)*). The only exceptions are transactions in which the original property was transferred to a purchaser claiming an exemption under Prop 19 or in which the purchaser was claiming an exemption based on destruction of their own original property.

The list of transactions that do not count as changes of ownership is long, a summary of which can be viewed in [this BOE Frequently Asked Question. See the third question, "What constitutes a change in ownership? Are there any exclusions from reassessment?"](https://www.boe.ca.gov/proptaxes/faqs/changeinownership.htm)

<https://www.boe.ca.gov/proptaxes/faqs/changeinownership.htm>

* Board of Equalization Property Tax Rule 462.540 has yet to be formally adopted.

Q7. If the replacement dwelling is purchased or constructed before the original property is sold, can the base-year value be transferred at the time of the purchase or construction?

A7. No. The base-year value of the original property cannot be transferred to the replacement dwelling until the original property is sold. In this case, the taxpayer would pay taxes on the new residence based on its purchase price until the old residence is sold. (Cal. Rev. & Tax Code § 69.6(b)(5).)

Q8. What sort of property is eligible for this reassessment exemption?

A8. This exemption is available for any dwelling owned and occupied by a taxpayer as his or her principal residence. The dwelling may be a single-family home, a unit in a common interest development (e.g., co-op, condo, townhouse) or a mobilehome, and properties with ADUs or junior ADUs where any of the units is occupied as a primary residence. (Cal. Rev. & Tax Code §§ 69.6(d)(3)(4)(5) and (9)). Even multiunit property is eligible. But the tax advantage is based on the ownership interest of the homeowner since each unit of a multiunit dwelling is considered as a separate replacement dwelling. (RTC § 69.6(d)(3)).

Q9. If there is an "accessory dwelling unit" (ADU) on the property, does that count as a multiunit dwelling?

A9. No. C.A.R. was able to include a provision in SB 539 that benefits owners of property with an ADU or Junior ADU by allowing such owners to transfer the entire tax basis of the property regardless of the additional units. But only if they meet the criteria as follows:

An original dwelling or replacement dwelling is not treated as a multiunit dwelling if:

- (A) there is a dwelling unit on the property,

(B) the only other units on the real property are accessory dwelling units or junior accessory dwelling units,

(C) any accessory dwelling units and junior accessory dwelling units are not separately alienable from the title of any other dwelling unit on the property, and

(D) the claimant occupies one of the structures as their primary residence.

(Cal. Rev. & Tax Code § 69.6(b)(5)).

Q10. Under what circumstances can a mobilehome owner qualify for this reassessment exemption?

A10. As long as the mobilehome is subject to property taxation and the other requirements stated above are met, the taxpayer is eligible whether he or she owns the mobilehome only, or both a mobilehome and the land beneath it. If either the mobilehome or combination of mobilehome and land on which it is situated constitutes a taxpayer's original property, the assessor will transfer to the taxpayer's replacement dwelling the base-year value of the mobilehome or the base-year value of the mobilehome and the land, whichever is appropriate. Land owned by the claimant includes a pro-rata interest in a resident-owned mobilehome park. (Cal. Rev. & Tax Code § 69.6(d)(3) and (4).).

Similarly, if either the mobilehome or mobilehome and land constitutes a taxpayer's replacement dwelling, the assessor will transfer the base-year value of the original property either to the mobilehome or to the mobilehome and land, as is appropriate. However, land constituting a part of the replacement dwelling includes only an "area of reasonable size which is used as a site for a residence." (Cal. Rev. & Tax Code §§ 69.6(d)(3) and (4).).

Q11. May any firm, partnership, association, corporation or other legal entity transfer base-year value pursuant to this legislation?

A11. This exemption is limited to individual taxpayers but includes those individuals who are present beneficiaries of a trust. (Cal. Rev. & Tax Code §§ 69.6(d)(11).).

Q12. Must a taxpayer actually live in the original property or the replacement property in order to be eligible for this exemption?

A12. In order to claim this exemption, a taxpayer must be both an owner and resident of the original property either at the time of the sale of that property, or within two years of the purchase or new construction of the replacement dwelling. Moreover, a taxpayer is not eligible for the tax relief until he or she actually owns and occupies the replacement dwelling as his or her principal place of residence. (Cal. Rev. & Tax Code §§ 69.6(b)(2) and (4)).

Q13. In order to be eligible for the Prop 19 tax savings is it also necessary to claim the homeowners' exemption?

A13. Yes. Either claim the homeowners' exemption or otherwise be eligible for the homeowners' exemption (unless the property is already receiving the exemption because of an exemption claim filed by the previous owner). Eligibility for the disabled veterans' exemption also qualifies. (Cal. Rev. & Tax Code § 69.6(b)(4) and (e)(11)).

Q14. Can I have a co-owner on title and still qualify to transfer my base year value under Proposition 19?

A14. Yes, there is no requirement that the homeowner who is over 55, or severely and permanently disabled, or a victim of a wildfire be the sole owner of either the original primary residence or the replacement primary residence. (Letter from Deputy Director, David Yeung, May 11, 2021. <https://www.boe.ca.gov/proptaxes/pdf/lta21019.pdf>).

Q15. Is this exemption also available to taxpayers who are co-owners of the original property, such as

joint tenants, tenants-in-common, or joint owners of community property?

A15. Yes. If a replacement dwelling is purchased or constructed by all of the co-owners and each co-owner retains an interest in the replacement dwelling, only one co-owner needs to be at least 55 and use the property as a principal residence in order for the property to qualify for the reassessment exemption. (Rule 462.540(f)(1)*).

* Board of Equalization Property Tax Rule 462.540 has yet to be formally adopted,

Q16. If each of the two or more co-owners of the original property purchases or constructs a separate replacement dwelling, is each of them eligible for the exemption?

A16. No. Only one of the co-owners can take advantage of this reassessment exemption. They must determine by mutual agreement which one it will be. (Rule 462.540(f)(2)*).

* Board of Equalization Property Tax Rule 462.540 has yet to be formally adopted,

Q17. If each of the two or more co-owners of a multiunit building live in separate units of the building and each of them purchases or constructs a separate replacement dwelling, is each of them now eligible for the exemption?

A17. Yes. Each unit of a multiunit dwelling shall be considered a separate original property or separate replacement property. (Cal. Rev. & Tax Code § 69.6(d)(3) and (4)).

Q18. May a taxpayer transfer the base-year value to a replacement property multiple times?

A18. Yes. A taxpayer may take advantage of this law three times. However, this limitation shall not apply to claimants who are victims of wildfire or natural disaster.(Cal. Rev. & Tax Code § 69.6(b)(6)).

Q19. If a taxpayer has already transferred their tax basis one time under the prior law Prop 60/90, does that count toward the three times?

A19. No. The three times is applicable to transfers based on Prop 19. ((Cal. Rev. & Tax Code § 69.6(b)(6)).

Q20. In the case of married taxpayers, must both spouses be at least 55 years old in order to qualify for this exemption?

A20. No. As long as the spouse who is at least age 55 is on title to both the original primary residence on its date of sale and the replacement primary residence on its date of purchase, then the spouse who is at least age 55 will qualify to transfer the base year value, assuming all other requirements have been met. It does not matter if the other spouse is not 55 or older.

Q21. What happens if two replacement dwellings are separately purchased or constructed by current or former spouses who held the original property as community property? Can each spouse take the taxable basis with them to their new replacement property?

A21. No. If two or more replacement primary residences are separately purchased or newly constructed by two co-owners who held the primary residence as community property, and both spouses would otherwise be an eligible claimant, only one spouse shall be eligible under this section. They shall determine by mutual agreement which one of them is eligible. (Rule 462.540*).

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Q22. At what point in the transaction must the taxpayer be 55 years old in order to qualify for the exemption?

A22. The taxpayer on title must be 55 years old at the time of the *sale* of the original property (Cal. Rev. & Tax Code § 69.6(b)(3)). It does not matter how old the taxpayer was when the replacement was purchased. A taxpayer who purchases a replacement property at 54 years of age but then sells the original property at 55

will qualify.

Q23. Must a "claimant"-- that is, person claiming the property tax exemption-- prove that the age requirement has been satisfied?

A23. Yes. The Board of Equalization form requires that you provide "valid identification with date of birth" and certification under penalty of perjury that the age requirement is satisfied. See their form for claiming the tax portability tax savings. <https://www.boe.ca.gov/proptaxes/pdf/sample-boe19b.pdf>

Q24. If any portion of the replacement dwelling, or any portion of the land on which it is situated, is located in a county other than the one in which the original property is located, is the taxpayer still eligible for this exemption?

A24. Yes. Under Proposition 19, a taxpayer who is 55 years of age or older may transfer their principal residence anywhere in the state -- regardless of whether a county has approved such transfers -- and still retain their original tax basis (with adjustments if the purchase price of the replacement property is of greater value).

Q25. Does a taxpayer get any property tax relief if the replacement dwelling is not of "equal or lesser value"?

A25. Yes. Under Proposition 19, a taxpayer who is 55 years of age or older may transfer their principal residence anywhere in the state -- even if the property is of "greater" value -- and still obtain a tax savings. However, if the replacement property is greater in value than the tax basis would be adjusted upward. The adjustment to taxable value of the replacement primary residence is calculated by adding the difference between the full cash value of the original primary residence and the full cash value of the replacement primary residence to the taxable value of the original primary residence.

Q26. What is the definition of "equal or lesser value"?

A26. If the replacement dwelling is purchased or newly constructed prior to the sale of the original property, then "equal or lesser value" means the full cash value (i.e., sales price) of the replacement dwelling up to 100% of the full cash value (sales price) of the original property.

If the replacement property is purchased or newly constructed during the first year after the sale of the original property, then "equal or lesser value" means the full cash value of the replacement property up to 105% of the full cash value of the original property.

If the replacement property is purchased or constructed during the second year after the sale of the original property, then "equal or lesser value" means the full cash value of the replacement property up to 110% of the full cash value of the original property.

For example, let's say the original property closed on January 1, 2022, for \$500,000. A replacement property is of equal or lesser value if it is purchased within two years prior to that date at no more than \$500,000. If it is purchased or constructed on or before January 1, 2023, then its full cash value should be no more than \$525,000. And if it is purchased or constructed on or before January 1, 2024, then its full cash value should be no more than \$550,000. In all of these examples, the replacement dwelling is of "equal or lesser" value and the tax basis may transfer without adjustment. (Cal. Rev. & Tax Code § 69.6(d)(13) and (e)(1)).

Q27. Is the "full cash value" the sales price?

A27. "Full cash value" is presumed to be the purchase price unless it is established by evidence that the real property would not have transferred for that purchase price in an open market transaction. (Revenue and Taxation Code section 110(b)).

Q28. Can the buyer agree to pay all of the commissions and in exchange obtain a reduction in purchase price for the purpose of lowering the full cash value on the purchase of the replacement property?

A28. The Preliminary Change of Ownership form specifically requires the buyer to disclose any commissions not included in the purchase price. So, unless the buyer is intending to commit perjury in writing directly to an agency of government, then this scheme for reducing property taxes will not work.

Q29. What does "taxable value" mean?

A29. Under SB 539 "Taxable value of the original property" means its base year value. It is determined in accordance with Revenue and Taxation Code Section 110.1, increased annually by the Proposition 13 inflation factor (2 percent maximum), determined as of the date immediately prior to the date that the original property is sold by the taxpayer. (Cal. Rev. & Tax Code § 69.6(d)(2)).

Q30. What is the "taxable value" that is transferred to the replacement dwelling, assuming the replacement dwelling is of equal or lesser value?

A30. If the replacement property is of equal or lesser value to the original property, then the taxable value of the replacement property is deemed to be the taxable value of the original. (Cal. Rev. & Tax Code § 69.6(d)(2) and (e)(2)).

Q31. What is the "taxable value" that is transferred to the replacement dwelling, assuming the replacement dwelling is of greater value?

A31. If the replacement property is of greater value to the original property, then the taxable value of the replacement property is be calculated by adding the difference between the full cash value of the original property and the full cash value of the replacement property to the taxable value of the original property. (Cal. Rev. & Tax Code § 69.6(d)(2) and (e)(3)).

For example,

- Suppose the original property has a taxable value of \$500,000, and
- Suppose the original property sells for \$900,000.
- But the replacement property is purchased for \$1,000,000.
- So, the taxable value of the replacement would be:
- The taxable value of the original property -- \$500,000

Plus

- The difference between \$1,000,000 and \$900,000 -- that is, \$100,000.
- Therefore, the total taxable value of the replacement property would be \$600,000 (\$500,000 + \$100,000).

Q32. When does this adjustment of the taxable value of the replacement dwelling take place?

A32. It is the latter of the date the original property is sold, the date the replacement dwelling is purchased, or the date construction of the replacement dwelling is completed. (Cal. Rev. & Tax Code § 69.6(e)(1)).

Q33. What if the taxpayer purchases a replacement property, is granted a transfer of base-year value from his or her original residence, and then performs new construction on the replacement property, will the transfer apply to the replacement property, as improved, or will the new construction trigger a reassessment?

A33. There will be no reassessment on the improved property so long as:

- The new construction is completed within two years of the date of sale of the original property and the owner provides a notice of completion to the assessor in writing within 6 months after completion; and

- The fair market value of the additional construction on the date of completion plus the full cash value of the replacement dwelling on the date of acquisition is not more than the full cash value of the original property.

(Cal. Rev. & Tax Code § 69.6(e)(7)).

Q34. What if a taxpayer does not want to transfer his or her tax basis to the new home? Is the original tax basis automatically transferred?

A34. No. The exemption applies only if the taxpayer decides to take the exemption and completes the required form from the local county assessor's office (Cal. Rev. & Tax Code § 69.6(e)).

Q35. What is the time limit for filing an exemption claim?

A35. A claim for exemption from reassessment pursuant to Proposition 19 must be filed within three years of the date the replacement dwelling is purchased or the construction of the replacement dwelling is completed. (Cal. Rev. & Tax Code § 69.6(c)(1)).

Q36. Is it possible for a taxpayer to rescind a claim for transfer of base-year value after having filed it with the county assessor's office?

A36. Unclear. The law pertaining to Prop 60/90 specifically permits a rescission of a claim. But SB 539 identifies no such right or procedure.

III. Sale and Replacement and Modifications of Principal Residence by a "Severely and Permanently Disabled" Person

Q37. What is the basic rule on transfer of base-year value to a replacement dwelling when the taxpayer is severely and permanently disabled?

A37. The law allows severely and permanently disabled persons to transfer the base-year value of their permanent residence to a replacement dwelling following the same rules that apply to persons 55 or older. A severely disabled taxpayer may transfer their principal residence anywhere in the state -- regardless of whether a county has approved such transfers -- and still retain their original tax basis (with adjustments if the purchase price of the replacement property is of greater value). (Cal. Rev. & Tax Code § 69.6(a).)

Q38. What does "severely and permanently disabled" mean?

A38. Although SB 539 does not reference any particular definition of severely and permanently disabled, the existing definition contained within the Revenue and Tax Code will most likely be used. Under this definition, a "severely and permanently disabled" person is any person who has a physical disability or impairment, whether from birth or by reason of accident or disease, that results in a functional limitation as to employment or substantially limits one or more major life activities of that person, and that has been diagnosed as permanently affecting the person's ability to function, including, but not limited to, any disability or impairment that affects sight, speech, hearing, or the use of any limbs." (Cal. Rev. & Tax Code § 74.3(b)).

Q39. Is there an exemption from reassessment for new construction added to an existing dwelling (i.e., remodeling) to accommodate a severely and permanently disabled person?

A39. Presently no. Previously, to provide relief to severely and permanently disabled persons, the law simply removed from the definition of "newly constructed property" any construction, installation or modification of an existing single or multifamily dwelling, if the purpose of the construction is to make the dwelling more accessible to a severely and permanently disabled person who is a permanent resident of the dwelling. (Cal. Rev. & Tax Code § 74.3(a).)

However, SB 539 makes no mention of whether any such modifications of an existing dwelling is excluded from reassessment if done for purpose of creating more accessibility for a severely and permanently disabled person.

Q40. Is any proof required to claim the transfer of base-year value exemption (or remodeling

exemption if permitted) for severely and permanently disabled persons?

A40. Yes. Proof of severe and permanent disability must be submitted to the assessor in the form of a certification signed by a licensed physician, including either a statement of the reasons why the disability necessitates the move or substantiation of the fact that the primary purpose for the move is to alleviate financial burdens caused by the disability.

Assuming the remodeling exemption is permitted and the taxpayer is claiming the exclusion for new construction to an existing dwelling, he or she must provide both a statement by a licensed physician concerning the disability and a statement that identifies the construction, installation, or modification that was necessary to make the structure more accessible. (Cal. Rev. & Tax Code § 74.3(f).)

IV. Transfers Between Parents and Children and Between Grandparents and Grandchildren of Family Homes and Family Farms

Q41. What is the basic rule regarding transfers between parents and children and between grandparents and grandchildren?

A41. Subject to certain restrictions, the law provides that if a parent or parents transfer a family home to his/her/their children, the transfer does not constitute a change in ownership that would trigger a reassessment of the property for property tax purposes, but only if the property continues as the family home of the transferee. The same is true for transfers between grandparents and their grandchildren. (Cal. Rev. & Tax Code § 63.2.). Prop 19 also exempts intergenerational transfers of "family farms." (Cal. Rev. & Tax Code § 63.2(a)(2)).

Reading Note: The intergenerational exemption applies to transfers between parents/grandparents and children/grandchildren. However, in the following questions I will often just refer to transfers from a parent to a child.

Q42. When does this law come into effect?

A42. It applies to transfers on or after February 16, 2021.

Q43. If a property was previously exempt under the Prop 58/193 intergenerational transfer rules before February 16, 2021, does that property continue to be exempt?

A43. Yes. (Cal. Rev. & Tax Code § 63.2(a)).

Q44. What is a family home?

A44. "Family home" or "principal place of residence" means a dwelling that is eligible for a homeowners' exemption or a disabled veterans' exemption as a result of the transferor's ownership and occupation of the dwelling.

(Cal. Rev. & Tax Code § 63.2(e)(4)).

Q45. Does the family home have to be the parent's principal place of residence?

A45. Yes.

Q46. Must the child then use the family home as their own principal place of residence?

A46. Yes.

Q47. Within how long after transfer of the property must the child establish the family home as their principal place of residence?

A47. One year. The family home is required to become the child's principal place of residence within one

year of the transfer.

Q48. Does the child have to file for the homeowners' or disabled veteran's exemption within one year, too?

A48. Yes. The child must file for a homeowners' exemption or a disabled veterans' exemption within a year of the transfer.

Q49. How long must the child have to live in the property in order to maintain the exemption?

A49. They must live in it continuously. The exclusion is lost on the date the child is no longer eligible for either the homeowners' or disabled veterans' exemption.

Q50. What if there is more than one child to whom the property is transferred? Do all of the children have to live in the family home together?

A50. No. Only one needs to live in the property to qualify. If that child later moves out, then another child may move into the property assuming that child is eligible for the homeowners' or disabled veterans' exemption on the basis of their ownership and occupation of the family home. (Cal. Rev. & Tax Code § 63.2(a)(1) and. Rule 462.520(a)(1)*).

* Board of Equalization Property Tax Rule 462.520 has yet to be formally adopted.

Q51. Is it necessary to file a claim for exemption with the county assessor in addition to filing for the homeowners' or disabled veterans' exemption?

A51. Yes.

Q52. When must the claim with the county assessor be filed?

A52. Within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to the transfer of the real property to a third party, or when an eligible transferee no longer occupies the residence, whichever is earlier. Regardless of the previous sentence, a claim is considered timely filed if it is filed within 6 months after the date of mailing of a notice of supplemental or escape assessment issued as a result of the purchase or transfer of real property for which the claim is filed. (Cal. Rev. & Tax Code § 63.2(f)(1)).

Q53. Does this exemption between parents and children apply to an unlimited number or dollar value of transfers of real property?

A53. No. This exemption applies only to a transfer of a principal residence and then no more than \$1 million dollars of the fair market value of the family home (but not less than its original taxable value). The previous exemption under Prop 58/193 for the first one million dollars of "full cash value" (cumulative value per transfer) of all other real property has been eliminated. (See prior law Cal. Rev. & Tax Code § 63.1(A)(1) and (2)). Beyond the transfer of a family home, the only other exempt category of property is a "family farm."

Q54. How do you calculate the intergenerational exemption for transfer of a family home?

A54. The exemption allows for \$1,000,000 of the fair market value of the family home immediately prior to transfer but not less than the property's original taxable value. If the fair market value of the family home immediately prior to transfer is within \$1,000,000 of the original taxable value, then that original taxable value will transfer to the child.

On the other hand, if the fair market value of the family home is more than \$1,000,000 over the original taxable value then the new taxable value will simply be its fair market value less \$1,000,000.

For example, let's say that a parent's principal residence is transferred to a child who will also use it as their own principal residence. Suppose the original taxable value is \$3,000,000, but the family home immediately prior to transfer has a fair market value of \$10,000,000. Since the fair market value (\$10,000,000) is more than \$1,000,000 over the original taxable value (\$3,000,000), then the new taxable value will be \$9,000,000. This new taxable value can be understood as a \$1,000,000 discount on what would otherwise be its taxable value if based on its full market value.

Q55. For purposes of this law, who is included in the category of "children"?

A55. A "child" of the transferor includes:

- any natural child of the transferor, except a child who has been adopted by other persons;
- an adoptee if adopted before age 18;
- a daughter-in-law or a son-in-law while the relationship of parent and son-in-law or daughter-in-law exists. The relationship is 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;
- stepchildren, or a spouse of a stepchild, while the relationship exists. The relationship is 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.

(Cal. Rev. & Tax Code § 63.2(c)(3).).

Q56. Is a transfer between siblings (between brothers and sisters, between sisters, between brothers) exempt from property tax reassessment as well?

A56. No. (Cal. Rev. & Tax Code § 63.2).

Q57. Are there any restrictions on transfers between grandparents and grandchildren?

A57. Yes. This exemption applies to transfers between grandparents and grandchildren provided that all the parents of the grandchild or grandchildren (that is the children of the grandparents) are deceased. (Cal. Rev. & Tax Code § 63.1(a)(3)(A)).

Q58. Does Prop 19 apply to transfers in the reverse direction, that is, children to parents or grandchildren to grandparents?

A58. Yes. Transfers from children or grandchildren to parents or grandparents may also qualify. This represents a change from prior law under Prop 58 and 193 which did not exempt transfers from grandchildren to grandparents. (Cal. Rev. & Tax Code § 63.2(e)(2)).

Q59. Is the entire property on which the family home sits eligible for the exemption?

A59. Not necessarily. The exemption applies only to that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence. In other words, if the house is built on 56 acres of land, most likely not all of the 56 acres would be considered exempt as a principal residence. Reasonable size would depend on the size of typical residential lots in that particular part of the county. (Cal. Rev. & Tax Code § 63.2(e)(4)).

Q60. For purposes of this law, does "real property" include interests in corporations or other legal entities that own real property?

A60. No.

Real property does not include any interest in a legal entity, but does also include any of the following:

- (A) An interest in a unit or lot within a cooperative housing corporation
- (B) A pro rata ownership interest in a mobilehome park

(C) A pro rata ownership in a floating home marina, as defined in subdivision (c) of Section 62.5.

(Cal. Rev. & Tax Code § 63.2(c)(8)).

Q61. If the property is held in trust, is it still eligible?

A61. Yes. “Transfer” includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(Cal. Rev. & Tax Code § 63.2(c)(9)).

Q62. Does this reassessment exemption apply to voluntary transfers and also transfers resulting from a court order or judicial decree?

A62. Yes (Cal. Rev. & Tax Code § 63.1(g)).

Q63. What is a family farm?

A63. “Family farm” means any real property under cultivation or which is being used for pasture or grazing, or that is used to produce any agricultural commodity.

(Cal. Rev. & Tax Code § 63.2(e)(4)).

Q64. What if the family farm is composed of separate legal interests that together are used as a single farm?

A64. This exclusion shall apply *separately* to the transfer of each legal parcel that makes up a family farm. (Cal. Rev. & Tax Code § 63.2(a)(2)(A)).

Q65. What if there is a family home on the same property as the family farm?

A65. A legal parcel containing a family home may qualify separately for the family home exclusion.

Q66. What is a legal parcel?

A66. Legal parcels are defined by the following criteria. Only one of these criteria need be satisfied:

1. A lot shown on a Final Map. (Major Subdivision Map)
2. A lot or parcel shown on a Record of Survey approved by the Board of Supervisors or Planning Commission.
3. A parcel shown on a Parcel Map or Certificate of Compliance recorded in lieu of a Parcel Map.
4. A recorded Certificate of Compliance.
5. A parcel shown on an approved Division of Land Plat.
6. A parcel shown on a Lot legalization Plat used as evidence of legal parcel prior to a Certificate of Compliance.
7. A parcel shown on an approved Boundary Adjustment Plat.
8. A parcel described in a Grant Deed or other bona fide conveyance document recorded prior to February 1, 1972. The deed/document does not have to be in the name of the present owner. However, it must describe the perimeter boundaries only of the subject property and no other contiguous property

Based on article by Lauren Houston <https://www.globest.com/2017/04/21/what-constitutes-a-legal-parcel-in-california/>.

V. Interspousal Transfers

Q67. Are all transfers of real property between spouses exempt from property tax reassessment?

A67. Yes. (Cal. Rev. & Tax Code § 63).

Q68. Are all transfers of real property between ex-spouses exempt from property tax reassessment?

A68. Such transfers are exempt from reassessment only in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation. (Cal. Rev. & Tax Code § 63(c)).

VI. Transfers to and from a Revocable Trust

Q69. Is a transfer by a person alone, or with his or her spouse, of any real property into a revocable trust exempt from property tax reassessment?

A69. Yes (Cal. Rev. & Tax Code § 62(d)).

Q70. Is the transfer back from the revocable trust to the person who created the trust (called the trustor) exempt from property tax reassessment?

A70. Yes (Cal. Rev. & Tax Code § 62(d)).

VII. Replacement of Property Damaged or Destroyed by Disaster

Revenue and Tax Code	Property Type	Location of Replacement Property	Type of Relief Available	Substantially Damaged or Destroyed Test	Type of Disaster	Time
Section 69	All property types	Within same county	Base year value transfer	Either land or improvements	Governor-proclaimed	Within 5 years (Extension up to 2 years under SB 303)
Section 69.3	Principal place of residence	In another county	Same	Same	Same	Within 3 years
Section 69.5 (superseded by Section 69.6 below)	Principal place of residence -- 55 or older or disabled	Within same county or if approved in another county	Same	Same	Any disaster or calamity	Within 2 years
Prop 19 -- Section 69.6 (replacing	Same	In any county	Same	Same	Either wildfire or for all other natural	Within 2 years

section 69.5 above)					disasters, Governor-proclaimed	
Section 70.5	All property types	Reconstruction on site	Base year value retained on site of reconstruction	Same	Governor-proclaimed	Within 5 years
Section 170	All property types	Same	Same		Governor-proclaimed; any disaster or calamity	12 months or more

Q71. There are already many laws pertaining to tax relief for victims of natural disaster. Does Prop 19 supersede them?

A71. In general no. Most of these existing laws are unaffected by Prop 19 and continue to offer benefits and tax savings to those whose property was destroyed or damaged by natural disaster. The Legislature has declared that Prop 19 creates additional options for taxpayers to transfer the base year values of their principal residences substantially damaged or destroyed in a disaster, as declared by the Governor, and has in no way affected or repealed, impliedly or otherwise, options for these taxpayers authorized by Section 2 of Article XIII A of the California Constitution implemented by Sections 69, 69.3, and 70.5 of the Revenue and Taxation Code.

However, to the extent that Prop 60/90, as implemented by Revenue and Tax Code 69.5, granted tax relief to homeowners 55 or over or who are severely disabled and whose property was substantially damaged or destroyed by misfortune or calamity, Prop 19 has replaced these existing provisions. In almost every respect Prop 19 offers greater advantages than under the previous law.

(SB 539 Section 1).

Q72. Can you summarize the various laws that grant tax relief to persons whose property was destroyed or damaged by natural disaster?

A72. The chart below gives a brief outline of these laws. To understand their advantages and when they apply, the requirements of each law must be reviewed separately and in detail.

Q73. What are the requirements of Revenue and Tax Code 69?

A73. Section 69 allow an owner of real property, whose property had been substantially damaged or destroyed in a disaster, to transfer the base year value of the damaged property to a replacement property acquired or newly constructed *in the same county*. Base year value transfers are available for all types of real property with the limitation that the damaged property and the replacement property must be of the same property type: residential, commercial, agricultural, or industrial.

Additionally, the specific requirements of section 69 include:

- The disaster must result in a Governor-proclaimed state of emergency.
- The replacement property must be located in the same county as the original property.
- The replacement property must be acquired or newly constructed within five years after the disaster.

- The replacement property must be comparable to the destroyed property.
- Only the owner(s) of substantially damaged or destroyed property is eligible for relief.
- If the base year value is transferred under section 69, the new construction exclusion under sections 70, 70.5 or 170 is not available.

The replacement property is considered comparable if it is similar in size, utility, and function to the damaged or destroyed property. Property is similar in size and utility if the market value of the acquired property does not exceed 120 percent of the fair market value of the damaged or destroyed property in its pre-damaged condition. If the market value of the replacement property exceeds 120 percent, the excess above 120 percent is subject to reassessment to current market value, either at time of acquisition or upon completion of construction, as applicable.

See the Assessor's Letter of February 13, 2012, for other requirements.

<https://www.boe.ca.gov/proptaxes/pdf/lta12012.pdf>

Q74. Are there special emergency extensions if you need more time to buy or sell?

A74. Yes. Senate Bill 303* will likely be signed into law which grants a two-year extension -- but only for transfers as described in the previous question under Revenue & Tax Code 69 and only if it meets the criteria as described below.

SB 303 grants the following rights:

Extends by two years the time period for a taxpayer affected by a disaster declared by the Governor to transfer their base year value to a new residence if the property meets either of the following conditions:

- a) The last day to transfer their base year value was on or after March 4, 2020, but on or before the COVID-19 emergency termination date, or March 4, 2022, whichever is earlier.
- b) The property was substantially damaged or destroyed on or after March 4, 2020, but on or before the COVID-19 emergency termination date, or March 4, 2022, whichever is earlier.

It applies the determination of base year values retroactive to the 2015-16 fiscal year.

* SB 303 was presented to the Governor on September 7, 2021, but has yet to be signed into law.

Q75. What are the requirements of Revenue and Tax Code 69.3?

A75. Section 69.3 allows a homeowner whose principal place of residence is damaged or destroyed in a disaster to transfer the base year value of the pre-damaged residence to a replacement home acquired or constructed *in another county*.

Specific requirements of section 69.3 include:

- The disaster must result in a Governor-proclaimed state of emergency.
- The county where the replacement property is located must have enacted an ordinance implementing section 69.3.7.
- Both the damaged or destroyed property and the replacement property must be the principal place of residence of the person claiming the relief.
- Either the land or improvements must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage.
- The replacement property must be acquired or newly constructed within three years after the damage to the original property.
- In general, the current market value of the replacement property must be equal to or less than the market value of the damaged property immediately prior to the damage. "Equal to or less" can mean

up to 105% of the value of the original property if the replacement property is purchased or newly constructed within the first year after the date of the damage; up to 110% if within the second year; and up to 115% if within the third year.

- A claim for relief must be filed with the county assessor of the county in which the replacement property is located.

See the Assessor's Letter of February 13, 2012, for other requirements.

<https://www.boe.ca.gov/proptaxes/pdf/lta12012.pdf>

Q76. What are the requirements of Prop 19 as implemented by Revenue and Tax Code 69.6?

A76. In general, the requirements are mostly the same as discussed in the first section of this Q&A except the homeowner need not be 55 years of age. A person who is a victim of wildfire or natural disaster can transfer the taxable value of their home to:

- A replacement primary residence
- Anywhere in the state
- Regardless of the value of the replacement primary residence (with adjustments if "greater" in value)
- Within two years of the sale
- But any number of times for those whose houses were destroyed by fire or natural disaster even if it's more than three

Specific requirements of section 69.6 include:

- The disaster must either be from wildfire or if caused by natural disaster must result in a Governor-proclaimed state of emergency.
- Both the damaged or destroyed property and the replacement property must be the principal place of residence of the person claiming the relief.
- The improvement value of the primary residence must have sustained physical damage amounting to more than 50 percent of its current market value immediately prior to the damage. This will include either the land or the improvements (RTC 69.6(d)(14)).
- The replacement property must be acquired or newly constructed within two years after the damage to the original property.
- To fully transfer the tax basis, the replacement property must be equal to or less than the market value of the damaged property immediately prior to the damage. "Equal to or less" can mean up to 105% of the value of the original property if the replacement property is purchased or newly constructed within the first year after the date of the damage; or up to 110% if purchased or newly constructed within the second year.
- If the replacement property is of greater value than the original property, then only partial relief is available.
- A claim for relief must be filed with the county assessor of the county in which the replacement property is located.

Q77. What are the requirements of Prop 19 as implemented by Revenue and Tax Code 70.5?

A77. Section 70.5 does not apply to the purchase of a replacement property. It allows a homeowner to rebuild substantially damaged or destroyed real property on site. It applies when there is a Governor-declared disaster on or after January 1, 2017. The rebuild must be comparable property that is reconstructed on the site of the damaged or destroyed property.

Specific requirements of section 69.6 include:

- **Disaster.** Property must be substantially damaged or destroyed by a disaster, misfortune, or calamity,

as declared by the Governor. RTC section 70.5(a) and (c)(3).

- **Substantially Damaged or Destroyed.** Property is substantially damaged or destroyed if the improvements sustain physical damage amounting to more than 50 percent of the improvements' full cash value immediately prior to the disaster. RTC section 70.5(c)(1).
- **Comparable Reconstruction.** Reconstructed property is comparable if it is similar in function, size, and utility. RTC section 70.5(c)(2).
 - **Function.** Property is similar in function if it is subject to similar governmental restrictions, such as zoning. RTC section 70.5(c)(2)(A).
 - **Size and Utility.** Size and utility are interrelated and associated with value. Property is similar in size and utility if it is used or intended to be used in the same manner and its full cash value does not exceed 120 percent of the full cash value of the damaged original property, determined just prior to the date of damage/destruction. RTC section 70.5(c)(2)(B)(i).
 - **Partial Relief.** If the full cash value of the reconstructed property exceeds the 120 percent threshold, the amount above 120 percent will be added to the transferred base year value. RTC section 70.5(b)(2)(B)
- **Ownership.** Only the owner(s) of the property substantially damaged or destroyed is eligible to receive relief under this section. RTC section 70.5(d).
- **Timing.** Construction must be completed within five years of the date of the damage or destruction. RTC section 70.5(a). This bill provides that these provisions apply to real property damaged or destroyed by misfortune or calamity on or after January 1, 2017. RTC section 70.5(e).

Q78. Under Prop 19 as implemented by Revenue and Tax Code 69.6, how is "victim of wildfire or natural disaster" defined?

A78. For purposes of obtaining tax relief under Prop 19 and SB 593 a victim of wildfire or natural disaster means a person whose original principal residence was substantially damaged or destroyed by wildfire or natural disaster, meaning, if either the land or the improvements sustain physical damage amounting to more than 50 percent of either the land's or the improvement's full cash value immediately before the wildfire or natural disaster. Damage includes a diminution in the value of the original property as a result of restricted access caused by the wildfire or natural disaster. (Cal. Rev. & Tax Code § 69.6(e)(14).

Q79. What is the definition of "substantially damaged or destroyed"?

A79. Property is substantially damaged or destroyed if either the land or improvements sustain physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. (Cal. Rev. & Tax Code § 69 (same county); 69.3 (different county)) and 69.6(d)(14)).

Q80. Does this law apply only to a person's principal residence?

A80. It depends on which law the homeowner is using to obtain tax relief. Under Section 69 for replacement property located within the same county and Section 70.5 for rebuilds, all property types are eligible and need not be a primary residence.

However, under both Section 69.3 and Section 69.6 (Prop 19), the property must be the principal residence.

VIII. Exclusions from Reassessment for Seismic Retrofitting Improvements

Q81. Does the law provide a property tax reassessment exemption for seismic retrofitting improvements to the property?

A81. Yes. (Cal. Rev. & Tax Code § 74.5).

Q82. What is the definition of "Seismic Retrofitting Improvements"?

A82. Seismic retrofitting improvements means retrofitting or reconstruction of an existing building or structure, to abate falling hazards from structural or nonstructural components of any building or structure including, but not limited to, parapets, appendages, cornices, hanging objects, and building cladding that pose a serious danger. (Cal. Rev.& Tax Code § 74.5(b)(1)).

Seismic retrofitting improvements also means either structural strengthening or providing the means necessary to resist seismic force levels that would otherwise be experienced by an existing building or structure during an earthquake, so as to significantly reduce hazards to life and safety while also providing for the substantially safe ingress and egress of building occupants during and immediately after an earthquake. (Cal. Rev. & Tax Code § 74.5(b)(1)).

Seismic retrofitting improvements do not include alterations, such as new plumbing, electrical or other added finishing materials, made in addition to seismic-related work. (Cal. Rev. & Tax Code § 74.5(b)(1)).

Q83. What must the property owner do to apply for this exclusion from reassessment?

A83. The property owner must notify the county tax assessor prior to, or within 30 days of, completion of the seismic retrofitting improvement project that he or she intends to claim the exclusion. (Cal. Rev. & Tax Code § 74.5(d)).

All documentation necessary to support the exclusion must be filed with the assessor's office no later than 6 months after the completion of the project. (Cal. Rev. & Tax Code § 74.5(d)).

Q84. What "documentation" must be filed with the assessor's office?

A84. The property owner, primary contractor, civil or structural engineer, or architect must certify to the building department those portions of the project that are seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies. Upon completion of the project, the building department reports the value of those portions of the project that are seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies to the county assessor. (Cal. Rev. & Tax Code § 74.5(c).)

In addition, the claimant (property owner) must complete the required forms prescribed by the State Board of Equalization (Cal. Rev. & Tax Code § 74.5(d)).

Click here for a list of all the California county property tax assessors' offices: www.boe.ca.gov/proptaxes/assessors.htm

Some of them contain links to the actual forms to request this reassessment exemption.

Q85. What is the definition of "improvements utilizing earthquake hazard mitigation technologies" as used in Question 60?

A85. Improvements utilizing earthquake hazard mitigation technologies means improvements to existing buildings identified by a local government as being hazardous to life in the event of an earthquake. (Cal. Rev. & Tax Code § 74.5(b)(2)). [See Title 24 of the California Building Code Section 101 *et seq.*]

IX. Transfer from One Cotenant to the Other Cotenant that Occurs Upon the Death of One Cotenant

This exemption becomes effective after January 1, 2023, and will only apply to transfers occurring on or after that date.

Q86. In what situation does the exemption for transfers from one cotenant to the other cotenant that occurs upon the death of one cotenant apply?

A86. Subject to certain requirements and conditions outlined in the next question, this exemption applies only to situations where there are two individual owners of a property who hold the property in joint tenancy or as tenants in common and one cotenant dies and upon death the interest of the deceased cotenant is transferred to the other cotenant. (Cal. Rev. Tax Code 62.3).

Q87. How is transfer defined in the statute?

A87. The statute defines a transfer between the deceased and surviving cotenant as a transfer occurring in any of the following situations listed below.

- The transfer occurs upon the death of the cotenant pursuant to the cotenant's will or trust.
- Through intestate succession.
- By operation of law.

(Cal. Rev. and Tax section 62.3 (b).)

Q88. What are the requirements to allow the exemption to apply in the above situation?

A88. The exemption will only apply to the transfer between the cotenants if all of the requirements listed below are met:

- The transfer is between two individual cotenants who between them own 100% of the property as joint tenants or tenants in common.
- Upon the death of the cotenant, the deceased cotenant's interest in the property is transferred to the surviving cotenant which results in the surviving cotenant having complete ownership of the property and therefore ends either the tenancy in common or joint tenancy.
- Both the surviving cotenant and the deceased cotenant were cotenants and owners of record for at least one year immediately prior to the transfer that occurs upon the death of the cotenant.
- Both owners must have occupied the property as their principal residence continuously for one year prior to the transfer and immediately prior to the transfer.
- The surviving cotenant signs an affidavit, under penalty of perjury, affirming that he or she lived in the property with the now deceased cotenant for at least the one year period prior to the transfer.

(Cal. Rev. and Tax section 62.3(a).)

Q89. How is principal residence defined for purposes of the statute?

A89. Principal residence in the law means a dwelling eligible for either the homeowners' exemption for tax purposes or the disabled veterans' exemption. (Cal. Rev and Tax section 62.3 (d).).

Q90. Where can I get more information?

A90. This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org/legal.

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CALIFORNIA ASSOCIATION OF REALTORS®

Member Legal Services
525 South Virgil Avenue
Los Angeles, CA 90020

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