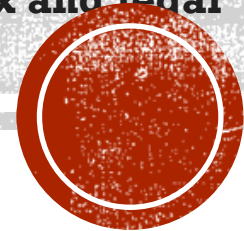


PROPOSITION 19: HOMEOWNER TAX SAVINGS EVERYWHERE IN THE STATE

**ROBERT BLOOM, C.A.R. SENIOR COUNSEL
SEPTEMBER 22, 2021**

The information contained herein is intended to provide general information and is not intended as a substitute for individual legal advice. Specific examples used are only general examples, and the actual amount of property taxes owed for any person will depend on the specific situation of the individual and a wide variety of other factors. Therefore, all persons are directed to seek the advice of an attorney regarding their specific tax and legal situation.



PROP 19 OVERVIEW

Homeowners who are 55 or over, severely disabled, or whose homes were destroyed 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 location
- Regardless of the value of the replacement primary residence — even if it's greater in value (with an upward adjustment if it is greater)
- That is purchased or newly constructed within two years of the sale of the original primary residence
- Up to three times (although there's no limit for those whose houses were destroyed by wildfire or natural disaster)

These rules are in effect on and after April 1, 2021

KEY DIFFERENCES BETWEEN PRIOR LAW (PROPS 60 AND 90) AND PROP 19

Proposition 19 permits transfer of tax basis ...

- Anywhere in the state
 - Previously, tax basis transfer is limited to within the same county (under Prop 60) or to one of 10 counties that accepts intercounty tax basis transfers (under Prop 90)
- Regardless of the value of the replacement primary residence — even if the value is greater than the original property (with an upward adjustment if it is greater)
 - Previously, the tax basis can only be transferred to a replacement property of equal or lesser value
- Up to three times (with no limit for those whose houses were destroyed by wildfire or natural disaster)
 - Previously, the tax basis can only be transferred once

THE TIMING OF THE SALE AND PURCHASE OF THE REPLACEMENT PROPERTY

- Sale and purchase of property closing on or after April 1, 2021, clearly qualifies
- Implementing legislation ~~could~~ **will** allow for such a homeowner to obtain Prop 19 tax savings

Sale of old before April 1 and purchase of replacement on or after April 1, 2021

Or

Purchase of replacement before April 1 and sale of old on or after April 1, 2021

- Sale and purchase of property closing prior to April 1, 2021, will likely not qualify
- If an agent has a client who wishes to obtain the tax benefits of Prop 19 for a transaction that closed prior to April 1, 2021, the client should be encouraged to seek the advice of a California real estate attorney or tax advisor

PURCHASING A NEW HOME OF “EQUAL OR LESSER VALUE” – WHAT DOES IT MEAN?

Previously under Prop 60 and 90, if a qualified homeowner sold their home and purchased a new home then they could transfer the tax basis if the new home is of “equal or lesser value” which was defined as:

- For new properties purchased at 105% the price of the original, if purchased within one year of the sale of the original.
- This applies for new properties purchased at 110% the price of the original, if purchased within the second year of the sale of the original.

What will “equal or lesser value” mean under Prop 19?

▪ **Answer unclear-clear:** ~~It could mean the above definition has been incorporated into the implementing legislation, which attempts to account for inflation. Or it could mean simply any purchase price of the replacement property which is greater than the original~~

- **Implementing legislation has clarified that the above definitions will apply.**

CALCULATING THE TAX BASIS OF THE NEW PROPERTY UNDER PROP 19

How to determine the tax basis of the new property?

Rule 1 for equal or lesser value : If the replacement property is of equal or lesser value to the original primary residence, then the taxable value of the replacement property remains the same as that of the original primary residence.

Rule 2 for greater value: If the replacement property is of greater value than the taxable value of the replacement property will be adjusted by adding the difference in sales price (technically, the “full cash value”) to the taxable value of the original primary residence.

Here is a sample calculation of the tax basis for a replacement property with a **greater** value than the original primary residence.

▪ Original primary residence (OPR) taxable value . . .	\$400,000
▪ OPR sold for	\$900,000
▪ Replacement primary residence (RPP) purchase	\$1,000,000
▪ Difference between sale price of OPR and purchase price of RPP is	\$100,000
▪ Taxable value of RPP is \$400,000 plus \$100,000 ...	\$500,000

FILING WITH THE COUNTY ASSESSOR

A claim must be filed with the assessor of the county in which the replacement property is located:

- Within 3 years of the date a replacement primary residence is purchased or new construction of that replacement primary residence is completed.
- If you file your claim after the 3-year period, relief will be granted beginning with the calendar year in which you file your claim.
- New forms specifically for Prop 19 claims should now be available at all county assessors.
- Clients can be reminded to contact the county assessor to obtain the appropriate form. If a client has a question as to which is the correct form or how to fill it out, they should be directed to speak with their legal or tax advisor.



PROPOSITION 19 BASICS OTHER COMMON QUESTIONS

What if the replacement property has a taxable basis less than the original? Is the homeowner required to transfer my taxable basis?

- No. It's an election.

If a homeowner shares title with another person on the replacement principal residence, can they still get the exemption?

- Yes. What matters is if 100% of the original primary residence changed ownership (~~subject to implementing legislation~~) ** [Subject to Rule 462.540](#)

Does the homeowner have to sell their original property? Can they just transfer it to their son?

- Generally, yes, the property must be sold, and no, transferring to the son will not work because the son will be entitled to an exemption. Typically, the original property must undergo a change of ownership that subjects the property to reappraisal at full cash value. (~~subject to implementing legislation~~). ** [Subject to Rule 462.540](#)



SB 539 – IMPLEMENTING LEGISLATION

- ❖ Puts Prop 19 into statutory form which is more precise
- ❖ Addresses many of the Prop 19 loose ends
 - Ex: Timing and equal or lesser value, superseding Prop 60/90 but a prior use doesn't reduce the three times
- ❖ Where Prop 19 is silent, nearly all of the pre-Prop 19 rules remain unchanged
 - SB 539 reiterates many of these rules. Where SB 539 has left issues unaddressed, then the BOE is adopting regulations that will achieve the same result.
- ❖ Apart from Prop 19 changes that we've already discussed, the most significant change is the ADU exception
 - Under SB 539 and ADU is not counted as a multi-unit dwelling. Ordinarily, each unit of a multi-unit dwelling is counted as a single primary residence. So only part of the tax basis is transferrable. But with ADU's the entire tax basis can be transferred as long as either the structures is owner occupied as a primary residence

NEW RULES ON TRANSFER OF PROPERTY TO CHILDREN AND GRANDCHILDREN

New Intergenerational Transfer Rules -- that is, transfers of the property tax basis to children and grandchildren.

Previously, the following property transfers were exempt from reassessment:

- The principal residence, regardless of its value or use.
- All other property up to \$1M in value.

Now under Prop 19, a property is only exempt from reassessment if:

- The property "continues as the family home of the transferee," or if it's a family farm.
- The property is being transferred from a parent to child or grandparent to grandchild.
- The homeowners' exemption (or disabled veterans' exemption) must be filed at time of transfer or within in one year.
- It is still necessary to file a claim for exemption within three years of the date of purchase (or prior to subsequent transferee, or if the child no longer occupies the property, whichever is earlier).

This component of Prop 19 went into effect on **February 16, 2021**.

HOW MUCH WILL THE NEW TAXABLE VALUE BE?

General Rule: when assessed value is within \$1 million dollars of original tax basis:

If a child or grandchild qualifies by continuing to use the home as a primary residence, then the original Taxable Value (TV) of the property for that child/grandchild will remain the same as the TV to the parent, unless the following applies:

Exception: when assessed value is more than \$ 1 million dollars over original tax basis:

If the assessed value of family home is more than \$1m over the original TV, then the new TV will increase.

For example

- Assume the assessed value of the family home is \$3m and the original TV is \$500k.
- Because \$3m is more than \$1m above the original TV, the new TV will increase.

If so, the new TV will be the new assessed value minus \$1 m.

In this case, \$3m minus \$1m equals \$2m, and that is the new TV.

Another way to understand the intergenerational exemption is that the child/grandchild gets \$1 million off the new assessed value of the property (but the new taxable value will not be less than the original taxable value)

CHART FORM

Intergenerational Transfer of Tax Base	<u>Pre Prop. 19</u>	<u>Prop. 19</u>
Eligible person	Parent or grandparent to child or grandchild	Parent or grandparent to child or grandchild
Eligible property	Family home of transferor, without limit on value and other property(ies) collectively valued up to \$1,000,000	Only property used as family home by both transferor and transferee, OR family farm
Eligible transfers	Purchase or transfer	Purchase, or voluntary or court order transfer
Time to claim homeowner exemption	N/A	One year from date of transfer
Effective Date		February 16, 2021



PROPOSITION 19 BASICS – INTERGENERATIONAL TRANSFER OTHER COMMON QUESTIONS

Do all children have to use a primary residence?

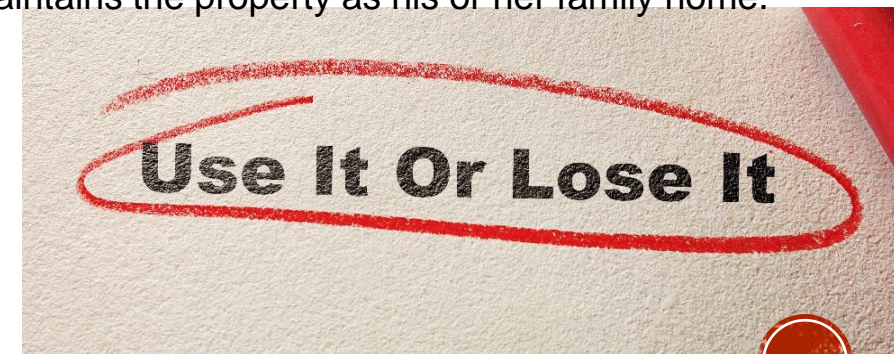
No** Only one transferee needs to maintain the family home as his or her principal residence. **** SB 539 and Rule 462.520**

Does the property lose the favorable tax treatment if the child/grandchild stops using the property as a family home?

Yes** The exclusion applies only as long as the transferee or another transferee maintains the property as his or her family home.

**** SB 539**

~~**According to January 8, 2021 Memorandum
from Henry D. Nanjo, Chief Counsel, Legal Department, Board of Equalization~~





PROPOSITION 19 BASICS – INTERGENERATIONAL TRANSFER OTHER COMMON QUESTIONS

What is a family farm?

Real property which is under cultivation or which is being used for pasture or grazing, or that is used to produce any agricultural commodity ...

Does a family farm have to be used as primary residence?

No ****SB 539**

Chief Counsel letter, Question 6.

Is a family farm one large continuous farm or can it be divided up?

It is based on each separate legal parcel

**** SB 539**



PROPOSITION 19 BASICS

TRANSFERS THROUGH A TRUST

Question

My home is held in a trust and I am the present sole beneficiary. Can I qualify for Prop 19 benefits if I sell my home and buy a replacement home that will also be held in a trust?

Yes. You qualify for the benefits if you are the present beneficial owner of the trust, not simply the trustee of the trust. For property tax purposes, the property owner is the person who has the present beneficial interest of a trust. The trustee holds legal title to the trust property but may not necessarily be the present beneficial owner.

Question

Can property be transferred through the medium of a trust and receive the intergenerational tax benefit?

Yes.



Proposition 19 Basics – Intergenerational Transfer

Other Common Questions Disclaimer





C.A.R. Warning to REALTORS®

Estate planning is beyond the scope of real estate licensing activity. Clients needing information on how Proposition 19 affects their distribution of assets, must be advised to consult with their own real estate and tax planning attorney.

RESOURCES:

■ <https://www.caprop19.org/>



[About](#) [FAQs](#) [Get The Facts](#) [C.A.R. Members](#)


Update, March 2: Three new questions about the April 1 deadline added to Property Tax Portability FAQ.


**Prop 19 Frees Up Inventory
While Providing Tax Savings
for Seniors, Homeowners
with Disabilities, and
Wildfire Victims**

[READ MORE](#)

Proposition 19 fully goes into effect on April 1, 2021

What is





RESOURCES:

■ [car.org/marketing/clients/prop19](https://www.car.org/marketing/clients/prop19)

[HOME](#) » [MARKETING TOOLS](#) » [FOR YOUR CLIENTS](#) » [PROP 19](#)

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The Opportunity Is Now

Proposition 19 fully goes into effect on April 1, 2021, protecting millions of older homeowners, homeowners with severe disabilities, and victims of wildfire or natural disaster.

As older homeowners move to senior housing, retirement communities, or condos, or downsize to smaller homes, more homeownership opportunities will open up in communities throughout the state each year for renters, young families, and first-time homebuyers.

Prop 19 allows victims of wildfire or natural disaster to transfer the property tax base of their damaged house to a replacement home anywhere in California.

Please take a moment and **share your or your client's story** how Prop 19 made a difference.

Marketing Materials:

Overview Presentation

Share this PDF packet of high-level information on Prop 19 with your clients to get them up to speed.

[DOWNLOAD](#)

Sample Email Letter

Use this pre-written email to share the news about the many benefits of Prop 19

RESOURCES:

■ C.A.R. Legal Q & A: Proposition 19: Property Tax Exemption from Reassessment

Proposition 19: Property Tax Exemptions from Reassessment

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March 5, 2021 (revised)

For a quick overview on this topic, please see: [Quick Guide, Proposition 19: Property Tax Increase Limits on Primary Residences](#)

Proposition 19: Property Tax Exemptions from Reassessment

Introduction

New Rules on Tax Basis Portability

With the passage of Proposition 19, a homeowner who is over 55 years of age, severely 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 will supersede 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) -- but only if the replacement property was of "equal or lesser value" and only one time.

Purchases and Sales Before April 1, 2021

Although we believe that the tax benefits under Proposition 19 apply to transactions where either the sale or purchase of a primary residence takes place before April 1, 2021, as long as the subsequent sale or purchase takes place within two years and on or after April 1, 2021, this is not yet a complete legal certainty.

As always, our advice to agents is to not give legal or tax advice -- especially on an issue that is so consequential and presently has no definitive answer. If an agent has a client who wishes to obtain the tax benefits of Proposition 19 for a transaction that closes prior to April 1, 2021, whether it is buying or selling a property, the client should be encouraged to seek the advice of a qualified California real estate attorney or tax advisor.

Nonetheless, owners of real property that qualify under Proposition 60 or 90 can still take advantage of those features until April 1, 2021. (If an owner never took advantage of these and were qualified, they might be able to get a refund of taxes already paid. See [question 21 in this BOE FAQ](#)).

Board of Equalization FAQs Offers a Qualified Opinion that Homeowners May Obtain the Proposition 19 Tax Benefit on Purchases or Sales Closing Prior to April 1, 2021

THANK YOU

