

# 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, others have taken the position that both the sale and purchase must occur on or after April 1st, 2021. C.A.R. will seek official clarification of this issue.

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).

## **New Rules on Intergenerational Family Transfers and Family Farms**

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, if the divergence between the taxable value and the actual value is too great, a partial increase in the new taxable value will be imposed. 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.

## **Transfer of the Tax Basis in the Sale and Purchase of a Principal Residence**

Q1. What are the most significant changes made by Proposition 19 regarding the transfer of the taxable value of a principal residence?

A1. Proposition 19 makes three significant changes to the portability of one's tax basis from the sale of a principal residence to a replacement principal residence.

First, it allows a seller of a principal residence to transfer the tax basis of that principal residence to the purchase of a replacement principal residence anywhere in the State of California. Under prior law, the seller was limited to transfers either within the same county (under Proposition 60) or between a limited number of counties that specifically permitted such taxable value transfers (under Proposition 90).

Second, it allows the transfer of the tax basis of the sold principal residence to the replacement principal residence regardless of value with certain adjustments to the tax basis if the replacement principal property is of "greater value" than the sold principal residence. Under prior law, only transfers of "equal or lesser value" were eligible for the exemption.

And third, Proposition 19 permits such transfers up to three times (but unlimited for those whose homes were destroyed or substantially damaged by fire). Prior law allowed such transfers only one time.

Q2. So, under Proposition 19 a seller of a principal residence can transfer the tax basis of the sold principal residence to the purchase of a principal residence anywhere in the State?

A2. Yes.

Q3. Can the replacement property can be of greater value?

A3. Yes, subject to implementing legislation\*. Proposition 19 has two provisions regarding the value of a replacement principal residence.

(1) Equal or Lesser Value: The replacement primary residence is of equal or lesser value, subject to an inflation index of 105% if purchased within one year of sale, and 110% if purchased within the second year of sale of the original property. The tax basis of the original principal residence may transfer to the replacement principal residence.

(2) Greater Value: The replacement residence is of greater value. The 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.

Ex: 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

\*Proposition 19 allows the transfer of the existing taxable value of a primary residence to any primary residence “of equal or lesser value.” This phrase “of equal or lesser value” has a defined meaning under current law as explained above and will likely be interpreted in exactly the same manner under Proposition 19. Implementing legislation should clarify the issue completely.

Q4. Who does Proposition 19 apply to?

A4. Proposition 19 applies to a seller of a principal residence who is over 55, severely disabled, or whose home has been substantially damaged by wildfires or other natural disasters.

While Proposition 19 states that it applies to persons who are over 55 years of age, Revenue and Taxation Code Sec. 69.5 defines this to include those who are 55 years of age or older. It is this definition that will likely determine eligibility.

Q5. Who qualifies as “severely disabled?”

A5. 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, per California Revenue and Tax Code Sec. 74.3. While there is no definition within Proposition 19, the meaning of this phrase is likely the same as contained in the California Revenue and Tax Code.

Q6. How many times can a qualified homeowner take advantage of this tax basis transfer?

A6. Proposition 19 allows both those over 55 and the severely disabled to use this exemption up to three times.

Q7. How often can homeowners who are victims of wildfires or other natural disasters use this exemption?

A7. Proposition 19 does not limit the number of times homeowners, who have had their principal residence substantially damaged due to a qualifying wildfire or other natural disaster, may transfer their tax basis whenever such event occurs.

Q8. When does this portion of Proposition 19 go into effect?

A8. Beginning April 1, 2021, Proposition 19 applies to the transfer of one’s tax basis anywhere in the State of California regardless of value.

Q9. I'm over the age of 55 and want to sell my home now. Under Proposition 19 do I need to wait until April 1, 2021, to purchase another home? How long can I wait?

A9: Current law prior to Proposition 19 states that the purchase of a new home must be made within two years of the sale of the old one. If you have already transferred your property tax base once, you will be ineligible to do so again until after April 1, 2021. While this question is ultimately an issue that will have to be worked out in the implementation process we believe that as long as either the sale of an existing home or the purchase of a new one occurs after April 1, 2021 that the transaction will be eligible for the tax benefits under Proposition 19 as long as both transactions were completed within two years.

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, they should be encouraged to seek the advice of a qualified California real estate attorney or tax advisor.

Q10. Can a replacement property be purchased prior to the original primary residence being sold?

A10. Yes. This is how the current rule under Proposition 60 operates, and Proposition 19 uses nearly identical language.

## Revenue Changes

Q11. Generally, how are increased tax revenues generated by Proposition 19 to be allocated?

A11. Proposition 19 created the California Fire Response Fund (CFRF) and County Revenue Protection Fund (CRPF). It requires the California Director of Finance to calculate additional revenues and net savings resulting from the measure. The California State Controller is required to deposit 75 percent of the calculated revenue to the Fire Response Fund and 15 percent to the County Revenue Protection Fund. The County Revenue Protection Fund is set to reimburse counties for revenue losses related to the measure's property tax changes. The Fire Response Fund is set to fund fire suppression staffing and full-time station-based personnel.

## Intergenerational Family Transfers

NOTE: No real estate licensee should provide advice relating to estate planning or other transfers. All questions from the client, and all questions regarding a licensee's own properties, should be referred to a qualified estate planning or real estate attorney.

Q12. If I pass my principal residence on to my children or grandchildren, will the property be reassessed?

A12. So long as the property continues to be used as a Family Home (primary residence), and the transferee claims the homeowner exemption, the property tax basis will remain the same, subject to some upward adjustments if the property value, at the time of transfer, is more than \$1M over the original tax basis.

Q13. If the property is transferred to a child or grandchild and used as a Family Home, what will the new tax basis be if at the time of transfer the property value is less than \$1M over the original tax basis?

A13. The new tax basis will remain the same as the original tax basis.

For example, if the original tax basis was, let's say, \$500,000, and at the time of transfer the property is valued at \$1.2 M, then the tax basis will remain at \$500,000. This is because \$1.2M is not more than \$1M over the original taxable basis.

Q14. If the property is transferred to a child or grandchild and used as a Family Home, what will the new tax basis be if the at the time of transfer the property value is more than \$1M over the original tax basis?

A14. If the property at the time of transfer is more than \$1M over the original tax basis then the new tax basis will be the value of the property at the time of transfer minus \$1M.

For example, if the original tax basis was, let's say, \$500,000, and at the time of transfer the property is valued at \$2M then the new taxable value will be \$1,000,000 (\$2M minus \$1M). You use this formula because the value of the property at time of transfer was more than \$1M over the taxable basis.

Q15. Are Family Farms included in Proposition 19?

A15. Yes, Family Farms have the same exemptions as Family Homes (principal residences). "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. It does not require the transferee to live in the property as a principal residence.

Q16. When do these family transfer rules take effect?

A16. The family transfer rules take effect February 16, 2021. The transferee would have to claim the homeowner's or disabled veteran's exemption within one year of the transfer to obtain the benefit of the family transfer tax exemption.

Q17. Intergenerational transfers previously exempted not only the transfer of the tax basis of a primary residence but also up to \$1 million dollars of all other real property. Is that exemption still available under Prop 19?

A17. No. Prop 19 allows only the intergenerational transfer exemption only for the primary residence and only if it continues to be used as a primary residence.

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