



*error* |'erər|

a mistake : | an error of judgment.

the state or condition of being wrong in conduct or judgment

*mistake* |mə'stāk|

an action or judgment that is misguided or wrong: something, esp.

a word, figure, or fact, that is not correct; an inaccuracy

be wrong about

*blunder* |'bləndər|

a stupid or careless mistake; ill-advised

*gaffe* |gaf|

an unintentional act

*flub* |fləb|

botch or bungle; a thing badly or clumsily done;



## **Introduction**

Have you ever done something that you later regretted? Have you ever acted with the belief that what you were doing was correct, only to discover later that you were mistaken as to the consequences of your actions?

Today, your actions would indeed be called an 'error,' a 'mistake,' a 'blunder,' a 'gaffe,' or a 'flub.'

As an appraiser and manager with the Orange County Assessor's Office for almost 25 years, I observed many real estate transactions that had such unintended results.

While many of these transfers were performed with good intentions, had the parties known that the property would be reassessed at substantially higher values, they would never have completed such transfers.

Such errors, mistakes, blunders, gaffes, and flubs can severely affect the financial investment return expected from the property.

Unfortunately, such reassessments are not just a one-time non-recurring cost. Rather, the tax consequences of the reassessment will be felt year after year by owners until they sell the property.

Accordingly, these actions trigger an increased property tax liability that will continue into perpetuity unless some *remedy is found*, or, to put it another way, the property owner is given a *second chance*. If such a remedy were available, wouldn't you be interested in hearing about it and reversing such a detrimental consequence? Wouldn't you or your client like a second chance? The good news is that there is such a remedy that allows a second chance? That remedy is called 'rescission.'

## **What is Rescission?**

In California, rescission is a *legal* remedy. Rescission 'extinguishes a contract *ab initio* [From the beginning]. In other words, a contract becomes a nullity, dissolved as if it never had existed.

One of the ways California law allows transfers of real property to be rescinded is by mutual consent of the parties. Once a transfer is rescinded, the transferred property will be assessed as though the transfer was never made.

Civil Code Section 1688 et seq. provides for rescission of contracts, including contracts for the transfer of real property. Civil Code Section 1688 states that "a contract is extinguished by

its rescission." Civil Code Section 1689 sets forth the grounds for rescission, while Civil Code Section 1691 sets forth the procedures for effecting a valid rescission. Civil Code Section 1691 provides that a party seeking to rescind a contract must give notice of the rescission to the other parties as to whom the rescission is to be effective and restore, or offer to restore, to the other parties...(Civ. Code, §1691(b).)

When a contract for the transfer of real property is rescinded based upon consent of the parties, rescission must be evidenced by a *written notice of rescission signed by the parties to the contract, which should be provided to the Assessor*. At the same time that a rescission occurs, a rescission deed or a re-conveyance of title should also be recorded with the County Recorder's Office. The provisions of the Civil Code do not require court approval or a court order for rescission to be valid when the parties to the contract mutually agree to rescind.

Moreover, since the purpose of a rescission is to return the parties to their original position prior to the reappraisal of the subject property, the *recording a rescission deed is not considered a change in ownership*. Rather, the



rescission deed causes a property to revert back to its previous base year value and it should be enrolled at that value with appropriate inflation factor adjustments.

### ***No Retroactive Relief***

However, under current law, rescission has only *prospective* application; no refund of taxes is available to the parties for the period of time under which a transfer is treated as a change in ownership, since the transfer was effective for that period of time. Property taxes are determined by the facts that exist as of the lien date or the date of change in ownership for the supplemental roll. Therefore, rescission of a transfer of real property will not provide any relief from increases in property taxes already vested that have become liens on a property prior to the date of rescission.

What does this mean? Let's take an example. Suppose an elderly woman is

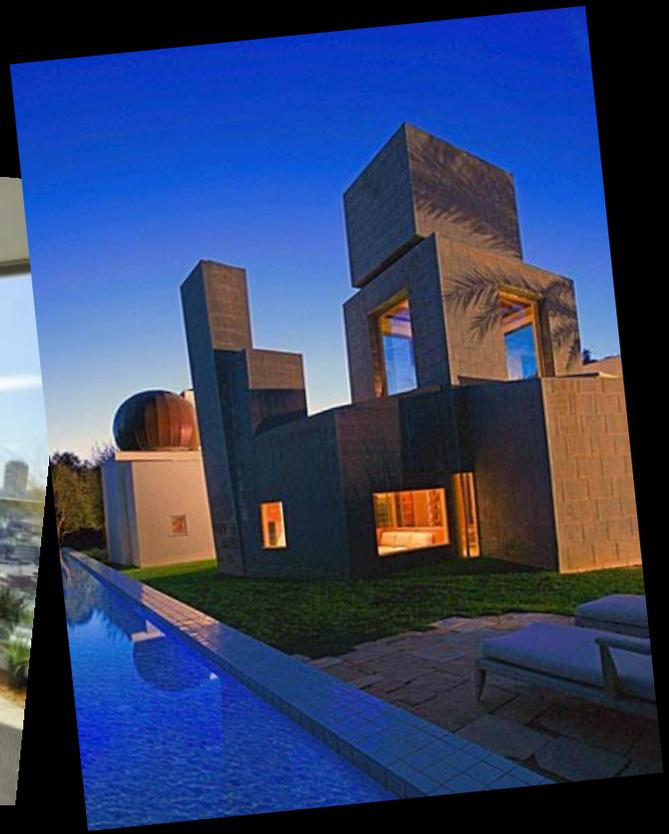
suffering from the economic tsunami that hit California beginning in 2008. In December 2009, she turns to her sister and brother-in-law for help. Amongst themselves, they decide the elderly woman will transfer the property to her sister and brother-in-law to lessen her financial burden. A Quitclaim Deed is prepared and recorded transferring property to them. Subsequently, the Assessor rightfully and legitimately reassesses the property. A Supplemental Bill for the period of December 2009 through June 30, 2010 is issued. Additionally, the 2010/2011 and 2011/2012 Joint Secured Property Tax Bills reflect the new, and substantially higher assessed value. But, the parties don't react or contact the Assessor's Office until March 2011, wondering why their assessed value has increased.

Because the facts relied upon at the time of the original 2009 transfer were

correct, the Assessor, relying on those facts, properly reassessed the change in ownership. Accordingly, there would be no refunds available to the parties for the 2009/2010 Supplemental Bill, nor for either the 2010/2011, or the 2011/2012 annual property tax bills.

### ***Rescission Procedure***

Using the facts from this example, a rescission of the December 2009 could be accomplished in the following way: First, the parties would draft and sign a Rescission Agreement. Second, the sister and brother-in-law would prepare, notarize and record a Quitclaim Rescission Deed, transferring the property back to their elderly relative. Finally, the elderly sister would submit the written Rescission Agreement, along with the Preliminary Change in Ownership Report (PCOR) to the Assessor's Office. Once the Assessor's Office reviews all the



documentation, they will re-establish the former base year value, including any inflation factor adjustments. This re-established value would be enrolled for the upcoming lien date, January 1st, 2012, for the 2012/2013 fiscal year, beginning July 1, 2012.

### ***Time Irrelevant***

One question that often arises regarding rescission is whether the length of time between the original transfer and the recording of the rescission deed is a requirement the Assessor must consider. The answer is, 'No!' According to an State Board of Equalization (SBE) [annotation](#), "if property vests in a purchaser, a reappraisable event occurs at the time the property changes ownership. If the transfer is later rescinded, such rescission has no effect on the property taxes determined due on the date of the change in ownership. A change in ownership occurs on the date the present beneficial interest in property

transfers. *The length of that ownership is irrelevant.*"

Once again, using the facts from the example above, it makes no difference whether the Assessor was notified of the rescission in 2011. The almost two-year delay does not defeat the parties right to rescind the transfer. The Assessor is precluded from arguing that too much time has elapsed. If the Quitclaim Rescission Deed and the written Rescission Agreement are valid, the Assessor's Office must, by operation of law, re-establish the former factored base year value for the upcoming Roll being prepared.

### ***Conclusion***

Owners often want to transfer their interests in the property, without first considering the future consequences such transfers may cause.

For the unwary owner and practitioner, such actions may cause unintended property tax reassessment consequences. If the property has increased significantly in value since

the time of its acquisition, the reassessment will most often generate a substantial increase in property taxes.

But, if owners commit errors, mistakes, blunders, gaffes, or flubs, they do not have to suffer the adverse consequences forever.

Rescission is a remedy that is available to them. In light of the real estate meltdown that has gripped California since 2008, rescission of reassessable transfers is a *significant benefit available* to property owners. Under this remedy, owners will pay property taxes at an approximate amount equal to what they was paying before the reassessable change in ownership. This will ultimately result in *enormous monetary savings for owners over time.*

**Now, that's what I call a second chance!!!!!!**