Transfer of Ownership Guidelines

PREPARED BY THE MICHIGAN STATE TAX COMMISSION

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Background Information

Why is a transfer of ownership significant with regard to property taxes?

In accordance with the Michigan Constitution as amended by Michigan statutes, a transfer of ownership causes the taxable value of the transferred property to be uncapped in the calendar year following the year of the transfer of ownership.

What is meant by "taxable value"?

Taxable value is the value used to calculate the property taxes for a property. In general, the taxable value multiplied by the appropriate millage rate yields the property taxes for a property.

What is meant by "taxable value uncapping"?

Except for additions and losses to a property, annual increases in the property's taxable value are limited to 1.05 or the inflation rate, whichever is less. In the year following a statutory transfer of ownership, that limitation is eliminated and the property's taxable value is set at 50% of the property's true cash value (i.e., the state equalized value). This is what is meant by "taxable value uncapping". *See Michigan Compiled Laws (MCL) 211.27a(3).*

Note: A property's true cash value is usually not the same as its sale price for a variety of reasons. An assessor must determine the true cash value of a property which has sold in the same manner that the assessor determines the true cash values of properties which have not sold. ***Therefore, an assessor may not automatically set an assessed value or a taxable value at half of a property's selling price.*** *See State Tax Commission Bulletin No. 19 of 1997 and State Tax Commission Memorandum dated October 25, 2005 that describes the illegal and unconstitutional practice of "following sales."*

Can an assessor disregard a statutory transfer of ownership (i.e., can an assessor decide not to uncap a property's taxable value in the year following a transfer of ownership)?

No. By statute an assessor must uncap a property's taxable value in the year following the transfer of ownership of that property. The assessor shall set the property's taxable value for the calendar year following the year of the transfer of ownership as the property's state equalized valuation for the calendar year following the transfer. *See MCL 211.27a(3).*

If two sections of MCL 211.27a(6) or (7) appear to be in conflict, how should that conflict be resolved?

MCL 211.27a(6) includes a non-exhaustive list of conveyances that will constitute a transfer of ownership, and MCL 211.27a(7) lists conveyances that do not constitute such a transfer. When two statutory provisions conflict and one is specific while the other is only generally applicable, the specific provision prevails.

Transfer of Ownership Definitions

What is a transfer of ownership?

Central to the concept of transfer of ownership is a **change in the beneficial use** of the property. Michigan statute defines "transfer of ownership" generally as the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. MCL 211.27a(6)(a)-(j) provides a variety of examples of what constitutes a transfer of ownership for taxable value uncapping purposes. If a transfer of property (or ownership interest) meets one of these definitions and does not fall under one of the exceptions or exemptions noted in the law, that transfer is a transfer of ownership. Transfer of ownership definitions and transfer of ownership exceptions are contained in MCL 211.27a(6)(a)-(j) (*See appendix*). Transfer of ownership exemptions are contained in MCL 211.27a(7)(a)-(x). (*See appendix*)

Deeds and Land Contracts

Is a conveyance of a property by deed a transfer of ownership?

A transfer of property by deed is a transfer of ownership. *See MCL 211.27a(6)(a).*

Is a sale by land contract a transfer of ownership?

A transfer of property by land contract is a transfer of ownership. *See MCL 211.27a(6)(b).*

If a property is sold by land contract, when does the transfer of ownership occur?

The transfer of ownership occurs on the date the land contract is entered into—not the date the land contract is recorded, nor the date the land contract is completed (paid in full) and not the date a deed conveying title to the property is recorded in the office of the register of deeds in the county in which the property is located.

Does a second transfer of ownership occur when a land contract is paid in full and a deed in fulfillment of the land contract is given?

No. The law specifically states that a property's taxable value is not to be uncapped when a deed conveying title to the property is subsequently recorded with the register of deeds.

Is the assignment of a seller's interest in a land contract a transfer of ownership?

No, this is considered a transfer of a security interest and is exempt by law from being a transfer of ownership.

Is the assignment of a buyer's interest in a land contract a transfer of ownership?

Yes, the assignment of a land contract buyer's interest in a property conveys equitable title to the property and a change in the beneficial use of the property occurs resulting in a transfer of ownership.

Trusts

Is a conveyance of property to a trust a transfer of ownership?

Yes, pursuant to MCL 211.27a(6)(c), a conveyance to a trust after December 31, 1994, is a transfer of ownership. However, if the grantor stated on the deed is the settlor (creator) of the trust or the settlor's spouse or both **and** the sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both, the conveyance is not a transfer of ownership. *See MCL 211.27a(6)(c)(i).*

Beginning with conveyances on or after December 31, 2014, if the settlor or the settlor's spouse, or both, conveys residential real property to the trust and the sole present beneficiary or beneficiaries are the settlor's or settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance, the conveyance is not a transfer of ownership. See MCL 211.27a(6)(c)(ii).

What or who is a present beneficiary of a trust?

A present beneficiary of a trust is the person who has the enjoyment and beneficial use of the property during the life of the trust.

What or who is a trustee of a trust?

A trustee of a trust is the person or agent who is appointed to administer the trust. Note that banks are often trustees.

Is the trustee (or successor trustee) of a trust the same as the beneficiary of that trust?

Not necessarily. The trustee (or successor trustee) of a trust can be, and often is, a completely different individual than the trust's beneficiary. The beneficiary of a trust is best determined from an examination of the trust instrument.

Is a transfer of property by a husband and wife to a trust on December 20, 2014, with the husband and wife and their child as present beneficiaries a transfer of ownership?

Yes. The child is a present beneficiary and is not the settlor of the trust or the settlor's spouse. MCL 211.27a(6)(c)(ii) does not apply as the conveyance occurred prior to December 31, 2014, when this exception went into effect.

Is a transfer of residential real property by a husband and wife to a trust on January 14, 2015, with their child, John Smith, as the sole present beneficiary a transfer of ownership?

No. Since the child is the settlor's son and the conveyance of residential real property occurs after December 31, 2014, the conveyance to the trust is not a transfer of ownership provided the property is not used for any commercial purpose following the conveyance. This conveyance falls within the exception outlined at MCL 211.27a(6)(c)(ii) and is not a transfer of ownership.

Is a transfer of property by a husband and wife to a trust with the husband and wife as present beneficiaries and their child as a contingent beneficiary a transfer of ownership?

No. The child is not a present beneficiary. The only present beneficiaries are the settlor of the trust and the settlor's spouse. The husband and wife are the sole present beneficiaries and fall within the exception outlined at MCL 211.27a(6)(c)(i).

What or who is a contingent beneficiary of a trust?

A contingent beneficiary of a trust is a person who does not currently have the enjoyment and beneficial use of the property held in trust. The trust document names the contingent event, such as, the beneficiary's attaining a certain age, or death of the settlor. If and when the contingent event occurs, the contingent beneficiary changes status to present beneficiary, and gains *beneficial use* of the property held in trust.

Is a conveyance of property which constitutes a distribution from a trust a transfer of ownership?

Yes. However, there are two exceptions when a distribution from a trust is not a transfer of ownership. A conveyance of property which is a distribution from a trust is not a transfer of ownership if the distributee is also the sole present beneficiary of the trust or the spouse of the sole present beneficiary or both. *See MCL 211.27a(6)(d)(i).*

Beginning December 31, 2014, a distribution of residential real property to a distributee who is the trust's settlor or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance is not a transfer of ownership. *See MCL 211.27a(6)(d)(ii).*

Note: Not all transfers of property from trusts are distributions from the trusts. A transfer of property from a trust to someone other than a beneficiary (or contingent beneficiary) of that trust is **not** a distribution from that trust. It is simply a transfer of property from a legal entity (the trust) to a person and the transfer should be considered in that context.

What happens if the sole present beneficiary of a trust changes?

A change in the sole present beneficiary of a trust is a transfer of ownership, unless the following occur: (i) the change merely adds or substitutes the spouse of the sole present beneficiary (and provided that no other statutory exception or exemption applies); or (ii) the change in the sole present beneficiary or beneficiaries of a trust occurred on or after December 31, 2014, for residential real property, and the change in beneficiaries adds or substitutes the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance *See MCL 211.27a(6)(e)(i) and MCL 211.27a(6)(e)(ii).*

Is a conveyance of property to a trust a transfer of ownership if: The grantor is the settlor (creator) of the trust or the settlor's spouse or both. The sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both.

No. If the grantor stated on the deed is the settlor (creator) of the trust or the settlor's spouse or both **and** the sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both, the conveyance is not a transfer of ownership. *See MCL 211.27a(7)(g).*

If the present beneficiary of a trust changes on March 1, 2015, to the settlor's daughter, Jill, and her neighbor, Sarah, is the change in the present beneficiaries a transfer of ownership?

Yes. A change in beneficiaries of a trust is a transfer of ownership. Beginning December 31, 2014, conveyances would not be a transfer of ownership if the property were residential real property, the property was not used for any commercial purpose following the conveyance, and the change adds or substitutes the settlor's or settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter. The exception under MCL 211.27a(6)(e)(ii) does not apply for the reason that the change adds the neighbor, who does not meet any of the family members qualified for this exception under this subsection. The real property should uncap 100% in the year following the change in the beneficiaries.

What is "residential real property"?

Residential real property as used in this section means real property classified as residential real property under MCL 211.34c. *See MCL 211.27a(11)(h).*

Can the assessor request the sole present beneficiary or the beneficiaries of a trust furnish proof that there has been a conveyance, distribution or change in beneficiaries of a trust that qualifies as an exempt transfer under MCL 211.27a(6)(c)(ii), MCL 211.27a(6)(d)(ii) or MCL 211.27a(6)(e)(ii)?

Yes. The assessor or the Department of Treasury can request the sole present beneficiary or beneficiaries furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements to allow the conveyance to be an exempt transfer of ownership. *See MCL 211.27a(6)(c)(ii), MCL 211.27a(6)(d)(ii) and MCL 211.27a(6)(e)(ii).*

Is there a deadline for the sole present beneficiary or beneficiaries to furnish proof that the conveyance is not a transfer of ownership under MCL 211.27a(6)(c)(ii), MCL 211.27a(6)(d)(ii) or MCL 211.27a(6)(e)(ii)?

Yes. The law requires that the sole present beneficiary or beneficiaries furnish proof that the conveyance is not a transfer of ownership within 30 days of the Department of Treasury or assessor's request.

Is there a fine if the sole present beneficiary or beneficiaries do not furnish proof?

Yes. If a present beneficiary fails to comply with a request by the Department of Treasury or the assessor, that present beneficiary is subject to a fine of $200.00.

Distributions Under Wills or By Courts

Is a conveyance of a deceased person's property as directed by a will or as directed by a court (when there is no will) a transfer of ownership?

Yes. Subject to any probate administration that may occur if real property assets are needed to satisfy debts of the decedent's estate, title to a decedent's real property generally passes at the time of his or her death to any devisees or heirs.

However, the conveyance is not a transfer of ownership if the person receiving the property is the deceased person's spouse, *See MCL 211.27a(6)(f)(i); or beginning December 31, 2014, for residential real property, if the distribute is the decedent's or the decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. See MCL 211.27a(6)(f)(ii).*

Note: An exemption from an uncapping exists for judgments or orders of a court of record (without specific monetary consideration for the transfer) are not a transfer of ownership. However, the transfer of ownership definition regarding distributions under a will or by intestate succession is considered more specific than ***—and therefore overrides—****this transfer of ownership exemption (even though both statutory provisions may apply).*

Can the assessor request the sole present beneficiary or the beneficiaries to furnish proof that the conveyance by distribution by will or by intestate succession is not a transfer of ownership under MCL 211.27a(6)(f)(ii)?

Yes. The assessor or the Department of Treasury can request the sole present beneficiary or beneficiaries furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements to allow the conveyance to be an exempt transfer of ownership. *See MCL 211.27a(6)(f)(ii).*

Is there a deadline for the sole present beneficiary or beneficiaries to furnish proof that the conveyance is not a transfer of ownership under MCL 211.27a(6)(f)(ii)?

Yes. The law requires that the sole present beneficiary or beneficiaries furnish proof that the conveyance is not a transfer of ownership within 30 days of the Department of Treasury or assessor's request.

Is there a fine if the sole present beneficiary or beneficiaries do not furnish proof?

Yes. If a present beneficiary fails to comply with a request by the Department of Treasury or the assessor, that present beneficiary is subject to a fine of $200.00.

In the case of a distribution of a property under a will or by a court, when does the transfer of ownership (if any) occur? (Does the transfer of ownership occur upon the death of the individual involved, upon the distribution of the property, or at some other time?)

The transfer of ownership, if any, typically occurs when the property is probated and conveys the decedent's title to real property as of the time of death, whether by will or by intestate succession. However, it is possible for a significant amount of time to pass

between an individual's death and the distribution of that person's property under a will or by a probate court. If the distribution process has not proceeded in a typically timely manner after a person's death but before the distribution of that person's property and the person's heir exercises dominion over the property, a transfer of ownership to the heir is considered to have occurred when dominion was first exercised by the heir. (Provided no statutory exception or exemption applies.)

Dominion in this context means control or beneficial use of a property, including occupancy, receipt of rents, etc. The relevant considerations when there is a delay in distribution of the decedent's estate are whether the distribution process has advanced in a typically timely manner and whether/when the heir had dominion over the property. Additional information regarding the progression of the probate estate may best be obtained by reviewing the probate court files.

Jane Doe dies on January 3, 2015, and her real property, which is classified as industrial real property, is conveyed by distribution under a will to her daughter Sally. Is this conveyance a transfer of ownership?

Yes. This is a conveyance by distribution under a will and is a transfer of ownership. No exception or exemption applies to this conveyance. MCL 211.27a(6)(f)(ii) does not apply because this exception is only applicable to residential real property that is distributed to the decedent's or decedent's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the conveyance. "Residential real property" is defined as real property classified as residential real property under MCL 211.34c. *See MCL 211.27a(6)(f)(ii) and MCL 211.27a(11)(h).* Assessors should review the classification of the real property in the year of the conveyance.

Leases

Can the execution of a lease be a transfer of ownership?

Yes. A lease of real property, entered into after December 31, 1994, is a transfer of ownership if one or both of the following conditions exists:

1. The lease term exceeds 35 years, including all options to renew the lease. OR
2. The lessee has a bargain purchase option. A bargain purchase option is defined by law as the right to purchase the leased property at the end of the lease for 80 percent or less of what the property's projected true cash value at the end of the lease. Even if the lease agreement qualifies as a "transfer of ownership" under MCL 211.27a(6)(g), the lessee is still required to follow the notification requirements under 211.27a(10), which states the transferee must notify the assessing officer on the proscribed form within 45 days of the transfer of ownership, to qualify as a transfer of ownership by the taxing unit. *See Walgreen's Co. v. Macomb Twp, 280 Mich App 58; 760 NW2d 594 (2008)*.

Can the leasing of personal property be considered a transfer of ownership?

Generally, no. However, the leasing of personal property that a leasehold improvement, or a leasehold estate can be a transfer of ownership.

When a lease is initiated covering only a portion of a real property parcel, and the lease is for more than 35 years (or contains a bargain purchase option), does a transfer of ownership occur?

Yes. However, only the taxable value for that part of the property subject to the lease is uncapped in the year following the transfer of ownership. In other words, a partial uncapping of the parcel's taxable value occurs.

If a lessee assigns the lessee's interest in a lease which had an original term of more than 35 years and which has a remaining term of more than 35 years at the time of the lease assignment, does a transfer of ownership occur?

Yes, this is a conveyance by lease of a property with a lease term of more than 35 years and is a transfer of ownership.

If a lessee assigns the lessee's interest in a lease which had an original term of more than 35 years and which has a remaining term of 35 years or less at the time of the lease assignment, does a transfer of ownership occur?

No, since the remaining term of the lease is not more than 35 years.

Ownership Changes of Legal Entities (Corporations, Partnerships, Limited Liability Companies, etc.)

Can the conveyance of an ownership interest of a legal entity (such as a corporation, a partnership, etc.) which owns property be a transfer of ownership—even though title to the property remains unchanged?

Yes, a conveyance of an ownership interest in a legal entity (such as a corporation, a partnership, etc.) which owns property is a transfer of ownership of that property provided that the ownership interest conveyed is more than 50 percent of the total ownership interest. *See MCL 211.27a(6)(h).* However, this is not applicable to cooperative housing corporations (discussed separately).

A limited liability company owns real property and conveys of 25.0 percent of the ownership interest in 2011. In January of 2012, a conveyance of 25.1 percent of the ownership interest of the limited liability company occurred. Did a transfer of ownership of the real property occur? If so, when?

A transfer of ownership of the property owned by the limited liability company occurred in January of 2012 since at that point; more than 50.0 percent of the ownership interest in the limited liability company had been conveyed. The property's taxable value is to be 100% uncapped for 2013.

As of January of 2011, 50.1 percent of the ownership interest of a limited liability company was conveyed and the taxable value of the property was uncapped for 2012. If, in March of 2013, 50.0 percent of the ownership interest in the limited liability company is conveyed, does another transfer of ownership occur?

No. The percentage of ownership interest conveyed is cumulative from the date of the last transfer of ownership. Between January of 2011 and March of 2013, not more than 50.0 percent of the ownership interest is conveyed. Therefore, no transfer of ownership occurs as of March of 2013.

Company A owns all the membership interest in a limited liability company. The limited liability company owns a piece of real property. In 2011, Company A sells and conveys its ownership interest in the limited liability company to Company B. Did a transfer of ownership of the property occur?

A transfer occurred when Company A sold and transferred its membership interest in the limited liability company to Company B. Therefore, the property's taxable value shall be uncapped for 2012. *See Signature Villas, LLC v. City of Ann Arbor, 269 Mich App 694; 714 NW2d 392 (2006).*

Tenancies in Common

What is a tenancy in common?

A tenancy in common is a form of property co-ownership in which two or more persons own the property with no right of survivorship between them. When one tenant in common dies, her interest passes to her heirs or devisees. In this type of shared ownership arrangement title does **not** automatically to the surviving tenant(s) in common.

Does a tenancy in common require that the tenants in common have equal ownership shares of the property involved?

No. A tenancy in common does not require equal shares. A different, unequal percentage of ownership interest may be established for each tenant in common under a tenancy in common.

Is a conveyance of an ownership interest of property held as a tenancy in common a transfer of ownership?

Yes. However, the transfer of ownership is only for that portion of the property ownership which is conveyed; meaning a partial uncapping of the property's taxable value in the year following the transfer of ownership is possible with tenancies in common. *See MCL 211.27a(6)(i).*

Example: Individuals A, B, and C owned a property as tenants in common. Individual A had a 50 percent undivided interest in the property and individuals B and C each had a 25 percent undivided interest. In 2012, individual A conveyed his/her interest to individual B (and this conveyance was a transfer of ownership). Under these circumstances, a partial, 50% uncapping of the property's taxable value occurs for 2013.

How is a tenancy in common established?

A tenancy in common is generally established by means of a deed or land contract conveyance. The language relating to the grantees of the deed or land contract establishes the tenancy in common.

Examples: If John Doe conveys property to John Doe and Jim Smith "as tenants in common" a tenancy in common is created and Mr. Doe and Mr. Smith are the tenants in common. Likewise, if John Doe conveys property to John Doe and Jim Smith and no language is provided regarding the nature of their ownership, a tenancy in common is created between Mr. Doe and Mr. Smith.

If a property is conveyed to a man and a woman and no information is provided regarding the nature of their ownership, a tenancy in common is formed, unless the man and the woman are married at that time, in which case a tenancy by the entireties is created.

How can the percentages of undivided ownership interest of the tenants in common be determined?

Often the deed or land contract establishing the tenancy in common will specify the percentages of undivided ownership interest of the tenants in common. In the absence of language on the deed or land contract specifying the percentages of ownership interest of the tenants in common, assessors are advised that it is presumed to be divided equally between the owners unless evidence to the contrary is presented by the grantor.

Cooperative Housing Corporations

What is a cooperative housing corporation?

A cooperative housing corporation is a type of property ownership in which the corporation holds title to a housing complex and individual stock holders in the corporation have the right to occupy an individual dwelling in that housing complex.

Is a conveyance of an ownership interest in a cooperative housing corporation a transfer of ownership?

Yes. However, the taxable value of that portion of the property not subject to the ownership interest conveyed is not uncapped in the year following the conveyance. In other words, a partial taxable value uncapping can occur for a cooperative housing corporation. *See MCL 211.27a(6)(j).*

Note: The law states that a transfer of ownership occurs when more than 50 percent of the ownership interest of a corporation changes. Beginning in 1997, this law was no longer applicable to cooperative housing corporations.

What happens if a cooperative housing corporation, during 2012, conveys 15 out of 100 shares of stock?

A transfer of ownership occurs. Since 15 of 100 shares transferred in 2012, 15 percent of the taxable value of the cooperative housing corporation is to be uncapped for 2013.

Transfer of Ownership Exemptions

What is a transfer of ownership exemption?

Michigan law specifies that certain transfers of property and ownership interests are not transfers of ownership for taxable value uncapping purposes. These types of transfers are known as exempt transfers and the statutes that provide for these exempt transfers are known as transfer of ownership exemptions. Transfer of ownership exemptions are contained in *MCL 211.27a(7)(a)-(x).*

It is a solidly established principal that property tax "exemption statutes are to be **strictly construed** in favor of the taxing unit and against the exemption claimant." *Association of Little Friends, Inc. v City of Escanaba*, 138 Mich App 302; 362 NW2d 602 (1984); *Town & Country Dodge Inc. v Dep't of Treasury*, 420 Mich 226; 362 NW2d 618 (1984); *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219; 668 NW2d 181 (2003).

It is also well established that a person or entity seeking a property tax exemption must demonstrate entitlement to the exemption by a preponderance of the evidence and that a property tax exemption cannot be inferred or implied. *Holland Home v City of Grand Rapids*, 219 Mich App 384, 394; 557 NW2d 118 (1996); *Michigan United Conservation Clubs v Lansing Township*, 129 Mich App 1, 11; 342 NW2d 290 (1983).

Since a transfer of ownership exemption is simply a form of property tax exemption, it is the opinion of the State Tax Commission that the principals which apply to general property tax exemptions also apply to transfer of ownership exemptions. Therefore, transfer of ownership exemption statutes must be strictly interpreted against the person or entity claiming the exemption and in favor of the local taxing unit. Assessors **must not** infer a transfer of ownership exemption or grant a transfer of ownership exemption based on implication.

Spouses

Is a transfer of property from one spouse to the other spouse a transfer of ownership?

No, generally a transfer of property from one spouse to another spouse is not a transfer of ownership. *See MCL 211.27a(7)(a) and MCL 211.27a(7)(t).*

Is a transfer of property from a deceased spouse to a surviving spouse a transfer of ownership? *See MCL 211.27a(7)(a).*

As a general rule, a transfer of property from a deceased spouse to a surviving spouse is not a transfer of ownership.

Is a transfer of property between former (divorced) spouses a transfer of ownership?

Yes. No transfer of ownership exemption exists for property transfers between divorced spouses. However, recently divorced spouses often must convey property to one another as part of the divorce proceedings and these transfers of property may be exempt transfers if the conveyances are solely to terminate a tenancy by the entireties (covered later in this publication).

Is a transfer of property from one spouse to a limited liability company with the other spouse as the only member of the limited liability company a transfer of ownership?

Yes. Even though the second spouse completely controls the limited liability company, the limited liability company is not the second spouse. A limited liability company is a separate and distinct legal entity, different from a person. Therefore, such a situation is not a transfer between spouses and a transfer of ownership applies.

Children and Other Relatives

Is a transfer of property from a parent to a child a transfer of ownership?

No. From December 31, 2013, through December 30, 2014, this would be an exempt conveyance only if the property conveyed was classified residential real and if the use of the real property does not change following the transfer of ownership. *See MCL 211.27a(7)(t)*.

Transfers from a parent to a child occurring on or after December 31, 2014, would also not be a transfer of ownership provided the property is classified residential real property and the residential real property is not used for any commercial purpose following the conveyance. *See MCL 211.27a(7)(u).*

Does this include adopted children for transfers occurring from December 31, 2013 to December 30, 2014?

Yes. P.A. 497 of 2012 indicated that beginning December 31, 2013, a transfer of residential real property is not a transfer of ownership if the transferee is related to the transferor by blood or affinity to the first degree and the use of the property does not change following the transfer of ownership. A transfer of residential real property is not a transfer of ownership if the transferee has one of the following relationships to the transferor: spouse, father or mother, father or mother of the spouse, son or daughter, including adopted children, son or daughter of the spouse and stepchildren, stepmother or stepfather. *See MCL 211.27a(7)(t)*.

Is a transfer of property from a parent to a child and their spouse a transfer of ownership?

Beginning in 2025, the Commission will offer the following guidance for current and future application.

No. When a deed is conveyed to a husband and wife, the property is held as a tenancy by the entirety unless the deed expressly provides otherwise. In a tenancy by the entirety, the husband and wife are considered one person in the law, each would own an undivided share in the subject of the property with a right of survivorship. If the property conveyed was classified as residential real and if the use of the real property does not change following the transfer of ownership, this would be an exempt conveyance under *MCL 211.27a(7)(u)*.

What is the definition of relationship by blood?

The State Tax Commission offers the following definition: a first-degree blood relative is a person who shares approximately 50% of their genes with another member of the family. First degree blood relatives include parents, children or siblings.

Does MCL 211.27a(7)(t) apply to a trust, corporation, limited liability company or to distribution from probate?

No, due to the blood or affinity to the first-degree relationship clause, the State Tax Commission has defined transferee and transferor as both being individuals. The transfer must be a conveyance of a present interest in real property that occurs during the transferor's lifetime.

Is a change in use under MCL 211.27a(7)(t) limited to a change in property classification?

No, there are numerous changes that could be considered a change in use and a change in use is not limited to a change in property classification.

When does MCL 211.27a(7)(t) go into effect?

P.A. 497 of 2012 indicates that this provision is effective beginning December 31, 2013. Therefore, it is in effect only for transfers that occur from December 31, 2013 to December 30, 2014.

Is a transfer of residential real property on January 15, 2015, to the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter a transfer of ownership?

No, provided that the transfer occurred after December 31, 2014, is a transfer of residential real property and the residential real property is not used for any commercial purpose following the conveyance. The transferee must be the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter to qualify for this exemption. *See MCL 211.27a(7)(u).*

When does MCL 211.27a(7)(u) go into effect?

P.A. 310 of 2014 indicates that this provision is effective beginning December 31, 2014. Therefore, it is in effect only for transfers that occur after December 31, 2014.

What is "residential real property"?

Residential real property as used in this section means real property classified as residential real property under MCL 211.34c. This provision is not limited to homestead property, meaning any residential real property regardless of residency, the application of a principal residence exemption or how many residential real parcels the taxpayer owns. *See MCL 211.27a(11)(h).*

What is a "commercial purpose"?

A commercial purpose as used in this section means used in connection with any business or other undertaking intended for profit but does not include the rental of residential real property for a period of less than 15 days in a calendar year. *See MCL 211.27a(11)(c)*.

John and Jane Doe transfer their residential real property to their daughter Judy on December 1, 2013. Is this a transfer of ownership?

Yes, as long as no other exemption provisions apply because the transfer was prior to the effective date of the P.A. 497 of 2012.

John and Jane Doe transfer their residential real property to their daughter Judy on January 15, 2014. Is this a transfer of ownership?

No, as long as Judy maintains the same use of the property. *See MCL 211.27a(7)(t).*

John and Jane Doe transfer their residential real property to their son Jack on March 1, 2014. Jack decides he wants to turn the house into a vacation rental home. Is this a transfer of ownership?

Yes, as long as no other exemption provisions apply because Jack has not maintained the use of the property.

John and Jane Doe transfer their residential real property to their granddaughter Sally on January 15, 2015. Is this a transfer of ownership?

No, as long as Sally does not use the residential real property for any commercial purpose following the conveyance. *See MCL 211.27a(7)(u).*

John and Jane Doe transfer their residential real property to their grandson Sam on January 15, 2015, and Sam subsequently decides to rent the property to a friend for 20 days in 2015. Is this a transfer of ownership?

Yes. Sam renting the property for 20 days is using the property for a commercial purpose and would result in a transfer of ownership that would uncap the taxable value for the 2016 tax year.

John and Jane Doe transfer their commercial real property to their granddaughter Sally on January 15, 2015. Is this a transfer of ownership?

Yes, this conveyance is a transfer of ownership. MCL 211.27a(7)(u) does not apply as the property is classified commercial real property and this exemption only applies to residential real property.

Can the assessor request the transferee to furnish proof that the conveyance is not a transfer of ownership under MCL 211.27a(7)(u)?

Yes. The assessor or the Department of Treasury can request the transferee to furnish proof within 30 days that the transferee meets the requirements of this provision to be an exempt transfer of ownership. *See MCL 211.27a(7)(u).*

Is there a deadline for the transferee to furnish proof that the conveyance is an exempt transfer of ownership under MCL 211.27a(7)(u)?

Yes. The law requires that the transferee is required to furnish proof that the conveyance is not a transfer of ownership within 30 days of the Department of Treasury or assessor's request.

Is there a fine if the transferee does not furnish proof?

Yes. If the transferee fails to comply with a request by the Department of Treasury or the assessor, that transferee is subject to a fine of $200.00.

Tenancies by the Entireties

What is a tenancy by the entireties and how are they established?

A tenancy by the entireties is a form of concurrent ownership that can be created only between a husband and wife, holding as one person. When the husband or wife dies, the surviving spouse automatically becomes the sole owner of the property. In a tenancy by the entireties, neither the husband nor the wife may sell the property unless the other consents to the sale. Tenancies by entireties enjoy the same rights of survivorship as joint tenancy.

A tenancy by the entireties is established by means of a deed or land contract conveyance. The language relating to the grantees on the deed or land contract establishes the tenancy by the entireties.

Example: If John Doe conveys property to John Doe and Jane Doe "his wife", a tenancy by the entireties is created. Likewise, if Jane Doe conveys property to John Doe and Jane Doe "husband and wife" or "as tenants by the entireties", a tenancy by the entireties is created. Similarly, if John Doe conveys property to John Doe and Jane Doe and no language is provided regarding the nature of their ownership, a tenancy by the entireties is formed—provided that John Doe and Jane Doe are, in fact, husband and wife.

Is a property conveyance completed solely to create or end a tenancy by the entireties a transfer of ownership?

No. A transfer from a husband, a wife, or both whose sole purpose is to create or disjoin (terminate) a tenancy by the entireties is not a transfer of ownership. *See MCL 211.27a(7)(b)*.

John Doe and Jane Doe are married. They acquire property from a third party, creating a tenancy by the entireties. Is this acquisition of property a transfer of ownership?

Yes. Although a tenancy by the entireties is created by the Does when they acquire the property, the creation of the tenancy by the entireties is not the sole purpose of the transaction (the main purpose of the transaction is for the Does to acquire the property) and a transfer of ownership occurs.

John Doe and Jane Doe were married and owned property as husband and wife. They divorce and (directly associated with the divorce) they deed the property from themselves as husband and wife to Jane Doe, a single woman. Is this conveyance a transfer of ownership?

No, since its purpose was solely to terminate the tenancy by the entireties.

John Doe owns a parcel and then marries Jane Smith who decides to take the surname "Doe". John Doe then conveys the parcel to John Doe and Jane Doe, as husband and wife. Is this conveyance a transfer of ownership?

No, since its purpose is solely to create a tenancy by the entireties in the Does.

John Doe and Jane Doe are married and own a property as husband and wife. They sell the property to a third party. Is this sale a transfer of ownership?

Yes, the purpose of the conveyance is to sell the property and not solely to end the tenancy by the entireties.

If a divorce occurs in a tenancy by the entireties situation, does the form of ownership change?

Yes. If two people own property as husband and wife, become divorced, and continue to own the property, the form of ownership is converted to a tenancy in common. A conveyance from a former spouse to a former spouse is considered a transfer of ownership.

Example: John Doe and Jane Doe owned a lakefront cottage property as husband and wife. They divorce, but both John Doe and Jane Doe continued to own the lakefront cottage property for several years. The nature of their ownership was changed from a tenancy by the entireties to a tenancy in common by the fact of their divorce. Under these circumstances, a transfer of John Doe's undivided (tenant in common) interest to Jane Doe would be a transfer of ownership and a partial uncapping of the lakefront cottage property's taxable value would result.

If a man and woman who are not married own property and subsequently become married, is the nature of their ownership of the property automatically converted to a tenancy by the entireties?

No. Based on court decisions and the Michigan Land Title Standard, a tenancy by the entireties cannot be created by a conveyance to two people who later marry. *See William v Dean, 365 Mich 426; 97 NW2d 42 (1959).*

Life Leases/Life Estates

What is a life lease?

A life lease generally occurs when an owner transfers ownership of his/her property to someone else but keeps the right to use, occupy, and control the property during his/her lifetime. A life lease must be in writing.

What is a life estate?

A life estate is an estate that has the potential duration of one or more human lives. The usual life estate is measured by the grantee's life. Where the estate is measured by the life of someone other than the owner of the life estate, it is classified as a life estate pur autre vie. For taxable value uncapping purposes, a life estate is treated the same as a life lease. A life estate must also be in writing.

Is a conveyance of a property with the grantor retaining a life lease a transfer of ownership?

Generally, a conveyance of a property subject to a life lease retained by the grantor is not a transfer of ownership. However, this transfer of ownership exemption only applies to that portion of the property conveyed that is subject to the life lease. Any portion of the property conveyed that is not subject to the life lease does experience a transfer of ownership upon the conveyance of the property. A partial uncapping can, therefore, occur with conveyances involving life leases. *See MCL 211.27a(7)(c).*

Does the termination of a life lease or life estate result in a transfer of ownership?

Generally, the termination of a life lease or life estate results in a transfer of ownership. *See MCL 211.27a(7)(c)*. However, for life estates or life leases on residential real property occurring after December 31, 2014, the termination of a life lease or life estate does not result in a transfer of ownership if the transferee is the transferor's or the transferor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter and the residential real property is not used for any commercial purpose following the transfer. *See MCL 211.27a(7)(d)*.

What is "residential real property"?

Residential real property as used in this section means real property classified as residential real property under MCL 211.34c. This provision is not limited to homestead property, meaning any residential real property regardless of residency, the application of a principal residence exemption or how many residential real parcels the taxpayer owns. *See MCL 211.27a(11)(h)*.

What is a "commercial purpose"?

As used in MCL 211.27a, commercial purpose means used in connection with any business or other undertaking intended for profit but does not include the rental of residential real property for a period of less than 15 days in a calendar year. *See MCL 211.27a(11)(c)*.

In 2011 Jane Doe conveys her residential property to her neighbor, John Smith, retaining a life estate on the entire parcel. In 2015, Jane Doe dies. Does the death of Jane Doe result in a transfer of ownership?

Yes. A transfer of ownership occurs upon the death of Jane Doe since her death terminated the life estate. The taxable value of the property must be uncapped for the 2015 tax year.

In 1983 Jane Doe conveyed her residential property to her neighbor, John Smith, retaining a life estate on the entire parcel. In 2015 Jane Doe dies. Does the death of Jane Doe result in a transfer of ownership?

Yes. A transfer of ownership occurs upon the death of Jane Doe since her death terminated the life estate. The fact that the life estate was established prior to Proposal A is not relevant. Beneficial use and full ownership of the property changed to Jane Doe's neighbor upon her death. The taxable value of the property must be uncapped for the 2016 tax year.

In 2011 Jane Doe conveys 80 acres to her neighbor, John Smith, retaining a life estate on 2 of the 80 acres and a house located on the 2 acres. Is this conveyance a transfer of ownership?

Yes and no. A transfer of ownership occurs with regard to the 78 acres which are not subject to the life estate. No transfer of ownership occurs, however, with regard to the 2 acres and the house, which are subject to the life estate (until termination of the life estate). Therefore, a partial transfer of ownership occurs and a partial uncapping must occur for tax year 2012.

John and Sandy Smith own property and grant John Smith's best friend, Sam Doe, a life estate for this property. Is the conveyance of the life estate to John Smith's best friend a transfer of ownership?

Yes. In this case, the life estate was not retained by the grantors as required by the law. Beneficial use of the property changed from John and Sandy Smith to John Smith's best friend and a transfer of ownership occurred.

In 2013 Jane Doe conveyed her residential property to her son, Noah, retaining a life estate over the entire parcel. Jane Doe dies in November 2014. Does the death of Jane Doe result in a transfer of ownership?

Yes. Although Noah is Jane Doe's son, the life estate terminated prior to December 31, 2014. Therefore, the taxable value of the property must be uncapped for the 2015 tax year.

In 2013 Jane Doe conveyed her residential real property to her son, Noah, retaining a life estate over the entire parcel. In 2015 Jane Doe dies and Noah maintains the residential use of the property. Does the death of Jane Doe result in a transfer of ownership?

No. A transfer of ownership does not occur upon the death of Jane Doe since the life estate terminated after December 31, 2014, Noah was her son and the subject property is classified as residential real property. This conveyance falls within the exception to the general rule that the termination of a life estate results in a transfer of ownership. The taxable value of the property remains capped for the 2016 tax year. *See MCL 211.27a(7)(d).*

In 2013 Jane Doe conveyed her commercial real property to her son, Noah, retaining a life estate over the entire parcel. In 2015 Jane Doe dies. Does the death of Jane Doe result in a transfer of ownership?

Yes. Jane Doe's death terminated the life estate and, because the property was commercial real property rather than residential real property, the exception set forth in MCL 211.27a(7)(d) is inapplicable. The taxable value of the property must be uncapped for the 2016 tax year.

Can an individual who has retained a life estate convey that life estate to someone else?

Yes. All privileges granted by the life estate will transfer to the new holder of the life estate. **This is not a transfer of ownership.** The life estate remains in effect until mutually terminated by the owner of the property and the new life estate holder or until the death of the individual who had originally retained the life estate—**not** the death of the new life estate holder. The life estate would come to an end when the measuring life ends.

Can a life estate be retained for other than residential purposes? If so, does a life estate retained by the grantor for other than residential purposes result in a taxable value uncapping?

A life estate can be retained for a specific purpose other than a residential purpose. The types of specific purposes (other than residential purposes) are almost limitless. A life estate retained by the grantor for other than residential purposes does not result in a taxable value uncapping for the portion of the property covered by the life estate, until termination of the life estate—or until use of the property for the stated purpose of the life estate is not possible. Any portion of the property not covered by the life estate is subject to taxable value uncapping.

If circumstances preclude the possible use of a property for the purpose of a life estate (whatever that may be), the life estate is to be disregarded by a local assessor when considering transfer of ownership issues—even though the life estate may legally be in effect.

Example: John Doe conveys an unimproved 80-acre parcel in the northern Lower Peninsula to his son, Joe and retains a life estate over half of the parcel for the stated purpose of grazing cattle. Under these circumstances, a partial transfer of ownership occurs upon the conveyance, with the taxable value of the portion of the property covered by the life estate remaining capped and the taxable value of the portion of the property not subject to the life estate being uncapped (provided no statutory exception or exemption applies). This is the same treatment the property would receive if the life estate were for residential purposes. If two years later the son, Joe Doe, constructs a convenience store on 2 acres of the 40 acres covered by the life estate, a transfer of ownership occurs for those 2 acres (provided no statutory exception or exemption applies). The reason for this is that the construction of the convenience store precludes the use of that portion of the property by the father, John Doe, for grazing cattle (the specified purpose of the life estate). Therefore, the life estate no longer applies to this portion of the property with regard to transfer of ownership issues (even though it may still legally be in effect) and another partial transfer of ownership occurs.

Foreclosures and Forfeitures

Is a transfer of property due to a foreclosure or forfeiture a transfer of ownership?

Generally, no. It is not a transfer of ownership when a financial institution or a land contract seller takes a property back through foreclosure or forfeiture of a recorded mortgage or land contract. *See MCL 211.27a(7)(e).* This response applies to foreclosures of mortgages and land contracts through circuit court proceedings, the foreclosure of mortgages by advertisement, and the forfeiture of property by summary proceedings.

A Sheriff's Deed is utilized in foreclosure by advertisement and will be recorded with the register of deeds. A redemption affidavit will also be recorded with the register of deeds and will contain information regarding the redemption period and rights should the homeowner redeem and recover his/her rights to the property. During the redemption period, the purchaser holds equitable title to the property but the original homeowner continues to have legal title and possession. Consequently, should the homeowner redeem the property during the redemption period this would not be considered a transfer of ownership.

Is a transfer of property through a deed or a conveyance in lieu of foreclosure or forfeiture a transfer of ownership?

No. Such transfers and conveyances are to be treated in the same way as a foreclosure or forfeiture.

When the entity or person (bank, land contract seller, etc.) that has taken a property back through foreclosure or forfeiture later transfers the property, is that transfer a transfer of ownership?

Yes.

Is there a time limit that a mortgagee (usually a bank) can hold a property, after acquiring it through foreclosure, without a transfer ownership occurring?

Yes. If a mortgagee which has received a property through foreclosure does not transfer or convey the property within one year of the expiration of the redemption period, the taxable value of the property must be uncapped for the following assessment year.

The redemption period is the period during which the former owner may pay the debt due and reclaim the property and is established by statute. The redemption period varies in length and can range from one month to one year but is usually six months.

The one-year time limit discussed does not apply to a land contract seller who has reacquired property due to a foreclosure or forfeiture. A land contract seller who has reacquired property through foreclosure or forfeiture may hold the property indefinitely without a transfer of ownership occurring.

A property was sold on land contract in 2010. This sale was a transfer of ownership and the property's taxable value was uncapped for tax year 2011. In 2012 the land contract seller takes the property back through foreclosure or forfeiture, because the land contract buyer defaulted on the land contract payments. Should the taxable value for 2011 and subsequent years be recapped as if the 2010 transfer of ownership never occurred?

No. The 2010 transfer of property was a transfer of ownership. At that point, beneficial use of the property transferred to the land contract buyer and the land contract buyer acquired equitable title to the property. It should also be noted that the equitable title held by the land contract buyer could have been mortgaged or conveyed to someone else (subject to valid terms of the land contract). This transfer of ownership is not undone when the land contract seller takes the property back. No statutory authority exists to allow the recapping to be performed. The uncapped taxable value must remain in place for 2011 and the 2011 taxable value must be used as the base for subsequent taxable value determinations.

Redemptions of Tax-Reverted Properties

Public Act 123 of 1999 significantly altered the property tax reversion process and establishes a three-year tax-reversion process. Annual tax-lien sales were eliminated in favor of an annual forfeiture and judicial foreclosure process. Due process and notification procedures were significantly strengthened and changes were made to expedite the handling of abandoned tax-reverted properties.

What are tax-reverted properties?

Tax-reverted properties are properties with property taxes which have not been timely paid and therefore the property owner no longer has clear title to the property.

What is meant by "redemption"?

Redemption occurs when the owner of a tax-reverted property buys back (redeems) the tax-reverted property by paying appropriate delinquent taxes and related fees.

If the original owner redeems the tax-reverted property, has a transfer of ownership occurred?

No. *See MCL 211.27a(7)(f).*

Example: Taxes have not been paid on a property for two years, delinquent tax notices have been sent to taxpayer, and a judicial foreclosure hearing for delinquent taxes is schedule to be held on the last day of March. Prior to the last day in March, the owner then redeems (pays the needed sum to clear the tax lien) within the redemption period. The lien is removed from the property. Transfer by redemption by the owner is not a transfer of ownership.

Trusts

Is a conveyance of property to a trust a transfer of ownership when:

(1) The grantor is the settlor (creator) of the trust or the settlor's spouse or both.
(2) The sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both.

No. If the grantor stated on the deed is the settlor (creator) of the trust or the settlor's spouse or both **and** the sole present beneficiary of the trust is the settlor of the trust or the settlor's spouse or both, the conveyance is not a transfer of ownership. *See MCL 211.27a(7)(g)(i).*

Is a conveyance of property to a trust a transfer of ownership when the following conditions are satisfied:

(1) The conveyance of property to a trust occurs on or after December 31, 2014.
(2) The property transferred is residential real property.
(3) The sole present beneficiary of the trust to whom the residential real

property conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter.

(4) The residential real property is not used for any commercial purpose following the conveyance.

No. Beginning December 31, 2014, conveyances to a trust if the sole present beneficiary of the trust to whom the residential real property is conveyed is the settlor's or settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the property is not used for any commercial purpose following the conveyance. *See MCL 211.27a(7)(g)(ii).*

Is a conveyance of property from a trust a transfer of ownership when:

(1) The conveyance of property from a trust occurs on or after December 31, 2014.
(2) The property transferred is residential real property.
(3) The person to whom the residential real property conveyed is the settlor's or the settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson, or granddaughter.
(4) The residential real property is not used for any commercial purpose following the conveyance.

No. Beginning December 31, 2014, conveyances from a trust if the person to whom the residential real property is conveyed is the settlor or settlor's spouse's mother, father, brother, sister, son, daughter, adopted son, adopted daughter, grandson or granddaughter and the property is not used for any commercial purpose following the conveyance are not considered a transfer of ownership. *See MCL 211.27a(7)(v).*

Can the assessor request the sole present beneficiary or the beneficiaries of a trust furnish proof that there has been a conveyance to or from a trust that qualifies as an exempt transfer under MCL 211.27a(7)(g)(ii) or MCL 211.27a(7)(v)?

Yes. The assessor or the Department of Treasury can request the sole present beneficiary or beneficiaries furnish proof within 30 days that the sole present beneficiary or beneficiaries meet the requirements to allow the conveyance to be an exempt transfer of ownership. *See MCL 211.27a(7)(g)(ii) and MCL 211.27a(7)(v).*

Is there a deadline for the sole present beneficiary or beneficiaries to furnish proof that the conveyance is not a transfer of ownership under MCL 211.27a(7)(g)(ii) or MCL 211.27a(7)(v)?

Yes. The law requires that the sole present beneficiary or beneficiaries are required to furnish proof that the conveyance is not a transfer of ownership within 30 days of the Department of Treasury or assessor's request.

Is there a fine if the sole present beneficiary or beneficiaries do not furnish proof?

Yes. If a present beneficiary fails to comply with a request by the Department of Treasury or the assessor, that present beneficiary is subject to a fine of $200.00.

Note: See also the information regarding trusts contained in this publication.

Court Orders

Is a transfer of property made due to an order of a court of record a transfer of ownership?

No, a transfer of property pursuant to a judgment or order of a court of record (any court which has been designated as a court by the legislature is a court of record) making or ordering the transfer is not a transfer of ownership—provided that no money is specified or ordered by the court for the transfer. If a specific amount of money is noted in the order or judgment for the transfer, a transfer of ownership occurs. *See MCL 211.27a(7)(h).*

If, as part of divorce proceedings, a court of record orders that a husband must pay his wife $25,000 (or any other specific sum) for a property owned by them as husband and wife, would this be a transfer of ownership?

Generally, no. Even though the court order specifies an amount for the transfer, this is generally not a transfer of ownership since the purpose of the transfer is to undo a tenancy by the entireties (see also information under tenancies by the entireties contained in this publication). The section of law dealing with court ordered transfers of property does not apply to this transfer, but the tenancy by the entireties transfer of ownership exemption does. Therefore, the transfer is not a transfer of ownership.

Joint Tenancies

What is a joint tenancy?

A joint tenancy is a form of concurrent ownership wherein each co-tenant owns an undivided share of property and the surviving co-tenant has the right to the whole estate. On the death of each joint tenant, the property belongs to the surviving joint tenants, until only one individual is left.

Example: Five people own a property as joint tenants. Each joint tenant has a 20 percent interest in the property (100/5 = 20). If one of the five dies, his/her interest is divided equally among the remaining four joint tenants, giving each of the remaining four a 25 percent interest in the property.

Does a joint tenancy require that the joint tenants have equal ownership interests in the property involved?

Yes. A joint tenancy requires that the joint tenants have equal ownership interests.

How is a joint tenancy formed?

A joint tenancy is formed by means of a deed or land contract conveyance with an express declaration of the joint tenancy. The language relating to the grantees on the deed or land contract establishes the joint tenancy.

When is there a transfer of ownership involved in a joint tenancy situation?

On March 10, 2011, the Michigan Supreme Court issued a decision in the case of *Klooster v City of Charlevoix,* 488 Mich 289; 795 NW2d 578 (2011), regarding the interpretation of

MCL 211.27a(7)(i) and specifically which conveyances involving a joint tenancy are or are not transfers of ownership.

James Klooster, the father, quit-claimed his property to himself and to his son, Nathan, as joint tenants with rights of survivorship, on August 11, 2004. James died on January 11, 2005, leaving Nathan as the sole owner. On September 10, 2005, Nathan quit-claimed the property to himself and his brother, Charles, as joint tenants with rights of survivorship. The assessor uncapped the taxable value for the 2006 assessment year. The taxpayer appealed and the Tax Tribunal ruled that the taxable value should have uncapped for the 2006 assessment year because Nathan was not an "original owner," or an already existing joint tenant before the August 11, 2004 joint tenancy was created.

The Michigan Court of Appeals reversed the Tax Tribunal. The Court found the property should not have uncapped because the death of a joint tenant does not constitute a transfer of ownership, even if the joint tenant who dies was the sole original owner. The Court concluded that a "conveyance" within the meaning of MCL 211.27a(7)(i) could not occur unless there was a transfer of title by a written instrument.

The Michigan Supreme Court reversed the Michigan Court of Appeals' decision. The Supreme Court found that the death of the only other joint tenant is a conveyance under the GPTA and does not require a written instrument beyond the deed initially creating the joint tenancy. The Court also determined that MCL 211.27a(7)(i) establishes requirements for an exception from the definition of transfer of ownership in three separate and distinct types of conveyances: termination of a joint tenancy, creation of a joint tenancy where the property was not previously held in joint tenancy or the creation of a successive joint tenancy.

Definitions:

Joint Tenancy: A joint tenancy is a form of concurrent ownership wherein each co-tenant owns an undivided share of property and the surviving co-tenant has the right to the whole estate. On the death of each joint tenant, the property belongs to the surviving joint tenants, until only one individual is left.

Initial Joint Tenant: A person whose interest in the property was obtained because he or she was one of the joint tenants who became a co-owner as a result of the "initial" joint tenancy **and** who has continuously held an interest in the property as a co-owner in joint tenancy since the creation of the "initial" joint tenancy.[1]

Original Owner: A sole owner at the time of the last uncapping event; a joint owner at the time of the last uncapping event; or, the spouse of the either a sole or joint owner of the property at the time of the last uncapping event.

How to Determine if a Property Should Uncap:

Step 1: Identify the "Conveyance at Issue"

The first step is to determine if the "conveyance at issue" is the creation of an *"initial"* joint tenancy, the creation of a *"successive"* joint tenancy or the *"termination"* of a joint

[1] This phrase "initial joint tenant" is not specifically used in the Supreme Court's decision but is helpful in explaining the decision.

tenancy. The determination of whether a "conveyance at issue" is a transfer of ownership that uncaps the taxable value of the property must be separately determined *after* identification of the "conveyance at issue." A conveyance will not constitute a transfer of ownership under the General Property Tax Act if it is excluded under MCL 211.27a(7)(a) through (x).

Step 2: Determine if the Conveyance is the Creation of a Joint Tenancy

The creation of an "initial" joint tenancy occurs when a property held by a sole owner, by a husband and wife holding as tenants by the entirety, or by tenants in common, is conveyed to two or more persons as joint tenants.

If the person creating the joint tenancy held title to the interest being conveyed either as a sole owner, as husband and wife, tenants by the entirety, or as tenants in common, then the creation of a joint tenancy is not a transfer of ownership, if, at least one of the persons conveying the interest **and** one of the persons receiving the interest was an "original owner."

If you determine the conveyance meets the requirements defined above, STOP. No further review is necessary and the conveyance is not a transfer of ownership. If the conveyance does not meet both requirements defined above, move to Step 3 and/or Step 4.

Step 3: Determine if the Conveyance "Terminates" a Joint Tenancy

A joint tenancy terminates when there is no "successive" joint tenancy. The termination of joint tenancy **is** a transfer of ownership if the resulting owner is not an "initial joint tenant."

The termination of a joint tenancy **is not** a transfer of ownership if both of the following are true:

- At least one of the joint tenants in the joint tenancy being terminated was an "original owner" before the joint tenancy was initially created; **and**
- At least one of the joint tenants in the joint tenancy being terminated was an "initial joint tenant" and has remained a joint tenant in successive joint tenancies.

Step 4: Determine if the "Conveyance at Issue" is the creation of a "Successive" Joint Tenancy

A "successive" joint tenancy occurs when the conveyance is from one joint tenancy directly into another joint tenancy. The creation of a "successive" joint tenancy may, or may not, be a transfer of ownership.

The creation of a "successive" joint tenancy is **not** a transfer of ownership if both of the following are true:

- At least one of the individuals in the "successive" joint tenancy was an "original owner"
  and
- At least one of the joint tenants in the previous joint tenancy was an "initial joint tenant" and has remained a joint tenant in successive joint tenancies.

Conclusion:

- If a joint tenancy is created by an "original owner" and if that "original owner" or their spouse are also co-tenants in the joint tenancy, then the taxable value does not uncap.
- If a "successive" joint tenancy is created and an "original owner" or their spouse continue as co-tenants in the "successive" joint tenancy, then the taxable value does not uncap.
- If a joint tenancy is terminated by the death of an "original owner" or by the "original owner" making a conveyance, resulting in the ownership again being a sole ownership, and if that sole owner is an "initial joint tenant," then the taxable value does not uncap.
- If a joint tenancy is terminated by conveyance and the sole owner after the termination is an "initial joint tenant" then the taxable value does not uncap.

Several examples of each of the scenarios described above are listed below. The list should not be considered all inclusive. The State Tax Commission advises assessors that taxpayers are protected by a right of appeal, and therefore, when in doubt, if a transfer of ownership should result in an uncapping, an assessor should consider uncapping the property.

Assessors are directed to MCL 211.27a(4) and Bulletin 9 of 2005 for the procedures to follow if they determine the taxable value has mistakenly uncapped for a past assessment year.

Example # 1: Creation of a Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, John conveyed Blackacre to himself and his son, Michael, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

No, there was not a transfer of ownership. Since there was a transfer of ownership which uncapped the taxable value when John purchased the property in 2004, John was an “original owner” who continued to have an interest after the creation of the joint tenancy. Michael became an “initial joint tenant” but he was not an “original owner.” John’s status as an “original owner” who continued to be a co-tenant as part of the “initial” joint tenancy provides an exception to uncapping. Michael’s status as an “initial joint tenant” is not a factor in the analysis.

Example # 2: Termination of a Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Did the taxable value uncap in 2006?

No, there was not a transfer of ownership. Since John had previously held title as a sole owner, the joint tenancy he created with Michael was an “initial” joint tenancy. Further, since there was a transfer of ownership which uncapped the taxable value when John purchased the property in 2004, John was an “original owner.” John was an “original owner” and an “initial joint tenant” when the joint tenancy was initially created in 2005. Further, John remained a joint tenant from the creation of the “initial” joint tenancy until

the joint tenancy was terminated by the death of John. Since John was an "original owner" who continued to be a co-tenant after the creation of the "initial" joint tenancy and since Michael became a joint tenant when the "initial" joint tenancy was created, and Michael's interest continued uninterrupted until the death of John, the taxable value did not uncap when John died.

Example # 3: Termination and a Non-Successive Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed to himself and his brother, Peter, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2006?

Yes, there was a transfer of ownership when Peter was added as a joint tenant. These facts are, in substance, those in the *Klooster* case itself. Since John was an "original owner" who continuously held his interest as a co-tenant in the joint tenancy since the joint tenancy was initially created and since Michael became an "initial joint tenant" when the "initial" joint tenancy was created, the taxable value did not uncap when John died. However, when Michael, as the sole surviving co-tenant, created the joint tenancy with his brother, Peter, the creation of the joint tenancy itself was an uncapping event for the reason that Michael was not an "original owner" at the time of the creation of the "initial" joint tenancy with Peter. The reason that Michael was not an "original owner," was that he had not acquired his ownership interest in a transaction that resulted in an uncapping of the taxable value.

Example # 4: Successive Joint Tenancy

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. In 2006, John and Michael conveyed to themselves and Michael's brother, Peter, as an additional joint tenant, thereby expanding the joint tenancy by making John, Michael and Peter, joint tenants, with rights of survivorship. Did the taxable value uncap in 2007?

No, there was not a transfer of ownership. John was an "original owner" arising from the fact that he obtained his interest in the property by a conveyance that resulted in the uncapping of the taxable value. John and Michael became "initial joint tenant" when the "initial" joint tenancy was created in 2005. Since John was an "original owner" whose ownership interest has continued in the "successor" joint tenancy that added Peter, and since both John and Michael were "initial joint tenants" whose interests as co-tenants was continuous from the time of the "initial" joint tenancy, the taxable value did not uncap when Peter was added.

Example # 5: Life Estate

John and Mary purchased Blackacre, as tenants by the entireties, in 2004. In 2005 John and Mary conveyed to themselves and Michael, using language which indicated that "all three (held title) as joint tenants." However, in addition to creating the joint tenancy among the three of them, John and Mary also reserved a life estate for their joint lives. In 2006, both John and Mary died. Did the taxable value uncap in 2007?

Yes, there was a transfer of ownership. Although John and Mary were "original owners" in Blackacre, arising from the fact that the taxable value uncapped in 2005, the year following their purchase, no "present" joint tenancy was created by the 2005 conveyance. Instead, the instrument, by reservation, created a Life Estate during their joint lives, with a remainder interest, in joint tenancy, among John, Mary and Michael. MCL 211.27a(7)(c) provides an exception to uncapping for a conveyance of property subject to a retained Life Estate "until the expiration or termination of the life estate…" Therefore, it is the State Tax Commission's interpretation that a separate and distinct uncapping event, the expiration or termination of a retained life estate, occurred prior to the joint tenancy becoming a present interest and that this uncapping event took precedence over the exception to uncapping contained in MCL 211.27a(7)(i). MCL 211.27a(6) provides that a "transfer of ownership means the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." In this example, by the time the remainder interest becomes a present interest, Michael was the sole owner of the property, not an "initial joint tenant." It should also be noted that upon the death of John and Mary, Michael becomes an "original owner."

Example # 6: Partial Interest

John, who was a single man at all relevant times, purchased Blackacre in 2004. In 2005, by quit claim deed, John conveyed to himself and his son, Michael, as joint tenants, with rights of survivorship. Several weeks later, but still in 2005, John died, leaving Michael as the sole surviving co-tenant. Michael immediately conveyed a 1% interest in the property to his daughter, Roberta, as a tenant in common. At the time, Roberta was a Michigan resident who resided on the property, and the conveyance was made for the purpose of allowing her to claim the Principal Residence Exemption. In 2007, Michael and Roberta conveyed to themselves, as joint tenants, with rights of survivorship. Did the taxable value uncap in 2008?

Yes, there was a transfer of ownership as to an undivided 99% interest in the property. The original 1% conveyed to Roberta in 2005 resulted (or should have resulted) in an uncapping of the undivided 1% interest which she received as a tenant in common. This uncapping made Roberta an "original owner." However, she was an "original owner" of *only an undivided 1% interest*, as a tenant in common, with her father. When the joint tenancy interest was created, the effect was that Michael, as the sole surviving co-tenant of the previous joint tenancy with his father, John, could not rely on the fact that he was an "initial joint tenant" to exempt the conveyance of the undivided 99% interest he still held, for the reason that when the previous joint tenancy terminated, he was not an original owner. He was not an "original owner" for the reason that he had not acquired his remaining 99% undivided ownership interest in a transaction that resulted in an uncapping of the taxable value.

Please note, however, if multiple grantors hold as tenants-in-common, each tenancy-in-common interest must be analyzed separately, and it is possible for a partial uncapping to occur, for the reason that a person may be an "original owner" as to one tenancy-in-common interest, but not an "original owner," as to the remainder of the tenancy-in-common interests in the property.

Security Interests

What is a security interest?

A security interest is an interest in a property that is granted to ensure that a debt will be paid. An example of a security interest is a mortgage to a bank, where the owner of a property gives a security interest to the bank which allows the bank to foreclose on the mortgage and eventually take the property involved if the required mortgage payments are not made.

Is a transfer to establish, assign, or release a security interest a transfer of ownership?

No. A transfer to establish, assign, or relinquish a security interest is not a transfer of ownership. *See MCL 211.27a(7)(j).*

The following are not transfers of ownership since these transactions establish, assign, or relinquish a security interest:

- A beginning of a mortgage
- An end of a mortgage
- An assignment of a mortgage by one financial institution to another financial institution
- An assignment of a seller's interest in a land contract (see also the information on land contracts)
- An equitable mortgage

What is an equitable mortgage?

An equitable mortgage resembles a deed but is, in fact, a mortgage.

Example: A landowner holds title to a parcel of vacant land and desires to have a builder construct a home on the parcel. To ensure that the builder (or the bank financing the home construction) can obtain title to the property if necessary due to nonpayment, the landowner deeds the vacant land to the builder—with the expectation that the property will be deeded back upon completion of construction. The builder then constructs a home on the parcel for the landowner. The builder then conveys the property (land and house) back to the landowner. This scenario is an example of an equitable mortgage (since it would be recognized as a mortgage by a court even though it differs from what may be commonly considered to be a typical mortgage).

Is a transfer of property involving a relocation company a transfer of ownership (to the relocation company)?

Generally, no. A transfer of property (typically a residence) involving a relocation company is generally not a transfer of ownership (to the relocation company). Such a transaction may establish a security interest by the relocation company. It may take a significant amount of time for a relocation company to find a final buyer for a property. The amount of time the relocation company holds the property is not normally relevant to a determination regarding transfer of ownership. Occasionally, the relocation holds the property so long that it actually purchases the property and relocated previous owner transfers the beneficial use and all his or her interest in the property. When this

unusual scenario comes to the attention of the assessor, it should be treated as a transfer of ownership.

Affiliated Groups

What is an affiliated group?

An affiliated group is one or more corporations connected by stock ownership to a common parent corporation.

Does an entity have to be a corporation to be part of an affiliated group?

Yes. Entities which are not corporations cannot be part of an affiliated group.

Is a transfer of a property between members of an affiliated group a transfer of ownership?

No. Upon request by the State Tax Commission, a corporation shall furnish proof within 45 days that the transfer meets the requirements of MCL 211.27a(7)(k). Failure to comply with a request by the STC under this subsection is subject to a fine of $200.00. *See MCL 211.27a(7)(k).*

Normal Public Trades

What is normal public trading?

Normal public trading of shares of stock includes the usual day-to-day trading of publicly held stock.

Can normal public trading of stocks or other ownership interests be a transfer of ownership?

No. Normal public trading of shares of stock or other ownership interests in a corporation or other legal entity is not a transfer of ownership if the ownership interests are both:

1. Traded in multiple transactions and
2. Involve unrelated individuals, institutions, or other legal entities. *See MCL 211.27a(7)(l).*

This transfer of ownership exemption applies even if the trading cumulatively totals more than 50 percent of the total ownership interest of the entity.

Are certain types of trading transactions considered not to be normal public trading?

Yes. The six trading situations listed below are not normal public trading. Any of these six trading situations could result in a transfer of ownership (provided that no statutory exception or exemption applies):

1. The merger of two or more companies
2. The acquisition of one company by another or by an individual
3. The initial public offering (IPO) of the stock of a company

4. A secondary public offering of the stock of a company (a secondary public offering occurs when a company whose stock is already publicly traded issues additional new stock for sale to the public)
5. The trading of the stock of a privately held company (a privately held company is a company whose stock is not available for sale to the public)
6. A takeover involving a public offer by someone to buy stock from present stockholders in order to gain control of a company

Commonly Controlled Entities

If entities are commonly controlled, is a transfer of property (or ownership interests) among the entities a transfer of ownership?

No. *See MCL 211.27a(7)(m).*

With regard to entities under common control, what is meant by "entities"?

"Entities" in this context means corporations, partnerships, limited liability companies, limited liability partnerships, or any other legal entity.

When are entities considered to be commonly controlled?
The State Tax Commission has directed that Michigan Revenue Administrative Bulletin 1989-48 is to be used in determining whether entities are commonly controlled. This bulletin is available on the Internet at www.michigan.gov/treasury. This bulletin details three categories of common control:

1. A parent-subsidiary group of trades or businesses
2. A brother-sister group of trades or businesses
3. A combined group of trades or businesses (a specific combination of a parent-subsidiary group and a brother-sister group of trades or businesses)

For entities to be commonly controlled under Michigan Revenue Administrative Bulletin 1989-48, the entities must be engaged in a business or trades activity. See *C & J Investments of Grayling, LLC v City of Grayling*, unpublished opinion per curiam of the Court of Appeals, issued November 13, 2007 (Docket No. 270989). The term "common" is defined as "belonging equally to, or shared alike by, two or more or all in question." Entities which are not engaged in a business activity cannot be entities under common control under Michigan Revenue Administrative Bulletin 1989-48.

Example: A husband and wife own their personal residence together as tenants by the entireties. For estate planning and other purposes, they convey the property to a limited liability company of which the wife is the only member. The entities involved (the husband and wife and the limited liability company) cannot be considered entities under common control under Michigan Revenue Administrative Bulletin 1989-48 since no business activity exists in this situation.

Note: Michigan Revenue Administrative Bulletin 1989-48 refers to Internal Revenue Service regulations concerning constructive ownership (also commonly known as ownership attribution). It is the opinion of the State Tax Commission that, although Michigan Revenue Administrative Bulletin 1989-48 is to be used in determining entities under common control, the Internal Revenue Service regulations concerning constructive ownership are to be disregarded. Application of the regulations regarding

constructive ownership (ownership attribution) would result in transfer of ownership exemptions that were clearly not intended by the legislature.

Is it possible for entities not to qualify as entities under common control under Michigan Revenue Administrative Bulletin 1989-48 but still be considered entities under common control?

Yes. If there is a business purpose, there are two circumstances that constitute a common control situation—even though the entities involved may not qualify as entities under common control under Michigan Revenue Administrative Bulletin 1989-48:

1. Initial transfers by individuals of a fee simple interest in a property, made to an entity such as a corporation, a limited liability company or a partnership, are considered to be transfers between commonly controlled entities and not transfers of ownership, if the ownership interests and extent of control which the individuals have in the entity are identical to the ownership interest and extent of control which each of the individuals had in the property prior to the initial transfer. Transfers to limited partnerships would not qualify for the reason that such transfers involve a change in control.

2. Transfers where the fee simple interest in a property is conveyed (retransferred) from an initial transferee entity, as described in 1 above, to the individuals who made the initial transfer to that entity, if the ownership interests and extent of control which those individuals have in the entity at the time of the retransfer are identical to the ownership interests and extent of control which each of the individuals had in the property prior to the initial transfer and those interests have not changed the between the time of the initial transfer and the time of the retransfer.

In *Sebastian J. Mancuso Family Trust v City of Charlevoix,* 300 Mich App 1, 831 NW2d 907 (2013), the Court held that Trustees between trusts do not equate to the trusts being commonly controlled. The Court stated: "property is transferred from one owner to a wholly new owner. Exceptions are made for transfers from a trust settlor where the settlor is the sole present beneficiary because ownership in such a situation does not change. *See MCL 211.27a(6)(c)*. Exceptions are also made for transfers of property that substitute the transferor for the transferor's spouse. *See MCL 211.27a(6)(d), (e), and (f)*. The exceptions in § 7 are similar in nature; they are triggered when property is transferred from one owner to a wholly new owner. Reading the statute as a whole, it is apparent that petitioner simply does not fall within the definition of "commonly controlled" by virtue of having the same trustees for both the transferring trust and the receiving trust."

Tax-Free Reorganizations

If a transfer of real property (or other ownership interest) results from a transaction that qualifies as a tax-free reorganization under section 368 of the Internal Revenue Code, 26 USC 368, is that transfer a transfer of ownership?

No. *See MCL 211.27a(7)(n).*

What is meant by "reorganization"?

"Reorganization" in this context can cover a number of situations such as the following: corporate acquisitions, corporate mergers, corporate divisions, etc.

What types of entities (individuals, partnerships, limited liability companies, corporations, etc.) are covered by section 368 of the Internal Revenue Code, 26 USC 368?

Section 368 of the Internal Revenue Code, 26 USC 368, applies solely to corporations and corporate reorganizations. This section of the Internal Revenue Code does not apply to individuals, partnerships, limited liability companies, or any type of entity other than corporations. Therefore, the transfer of ownership exemption for tax-free reorganizations applies only to tax-free reorganizations solely involving corporations. A tax-free reorganization that involves an entity that is not a corporation is a transfer of ownership.

Qualified Agricultural Properties

What is qualified agricultural property?

Qualified agricultural property is (1) unoccupied property and related buildings classified as agricultural by the local assessor or (2) unoccupied property and related buildings located on that property devoted primarily to agricultural use as defined by law. *(See MCL 211.7dd for the definition of qualified agricultural property and the STC Q and A on Qualified Agricultural Property for more information*).

Is a transfer of qualified agricultural property a transfer of ownership?

A transfer of qualified agricultural property is not a transfer of ownership if (1) the property remains qualified agricultural property after the transfer and (2) the person to whom the qualified agricultural property is transferred files an affidavit (form 3676, Affidavit Attesting That Qualified Agricultural Property Shall Remain Qualified Agricultural Property) with the assessor and the register of deeds. *See MCL 211.27a(7)(o).*

Must an assessor verify that the affidavit has been filed with the appropriate register of deeds before granting this transfer of ownership exemption?

It is a requirement of the law that this affidavit be filed with the appropriate register of deeds in order for the transfer of ownership exemption to be granted.

Is a property which is transferred and has a partial exemption (for example 75%) as qualified agricultural property eligible for the qualified agricultural property transfer of ownership exemption?

Yes, if the new owner maintains the parcel as 75% qualified agricultural property and files an affidavit with the assessor and the register of deeds attesting that the property will remain 75% qualified agricultural property. In this case, there would be a partial uncapping of 25 percent (for the portion of the property which is not qualified agricultural property) and the 75 percent which is qualified agricultural property would remain capped.

Is a property which is 100 percent qualified agricultural property but will be something less than 100 percent qualified agricultural property after a transfer (example 75%) eligible for the qualified agricultural property transfer of ownership exemption?

No. The taxable value of the parcel will be completely (100 percent) uncapped for the following year. It is the opinion of the State Tax Commission that a reduction in the percentage of qualified agricultural property exemption results in a total uncapping of that parcel's taxable value in the situation described above. The qualified agricultural property transfer of ownership exemption does not provide for a partial uncapping in this situation.

What happens if a split occurs and the split parcel is converted by a change in use?

If part of the property is split from the parcel and then the split parcel is converted by a change in use, the taxable value of the split parcel is uncapped in the following year. The taxable value of the remainder of the parcel which has not been converted by a change in use remains capped. However, if part of the property is converted by a change in use prior to or not involving a split, the taxable value of the entire parcel is to be uncapped in the year following the change in use.

Can only a portion of a parcel uncap following a transfer of ownership if that portion is no longer qualified agricultural property?

Under Public Act 375 of 2016, effective December 28, 2016, a transfer of ownership includes an assessor's establishment of a separate tax parcel, at the request of the property owner, for a portion of a parcel that ceased to be qualified agricultural property but was not subject to a land division under the Land Division Act. The separate tax parcel only will have the taxable value uncapped as of December 31 in the year that the separate tax parcel ceases to be qualified agricultural property. The separate tax parcel that is no longer qualified agricultural property is subject to the agricultural property recapture tax.

The status of the remaining portion of the original parcel is not affected by the establishment of the separate parcel.

A parcel is 100% qualified agricultural property and could receive a 100% qualified agricultural property exemption. However, the owner, who lives on the parcel, claims the homestead exemption so that he can also claim a homestead exemption on contiguous vacant property. If this parcel is transferred, could the new owner benefit from the qualified agricultural property transfer of ownership exemption even though the property is not receiving the qualified agricultural property exemption?

Yes, provided that the new owner files the required affidavit with the local assessor and the register of deeds attesting that the property will remain qualified agricultural property. Statute requires that a property be qualified agricultural property to be eligible for this transfer of ownership exemption. It is not required that the property be receiving the qualified agricultural property exemption to be eligible for this transfer of ownership exemption.

What happens if a property receives the qualified agricultural property transfer of ownership exemption and later is converted by a change in use?

If property is granted the qualified agricultural property transfer of ownership exemption and is later converted by a change in use, all of the following must occur:

1. The taxable value must be uncapped in the year after the year of the conversion by a change in use.
2. The property is subject to the recapture tax associated with PA 261 of 2000, MCL 211.1001 to 211.1007.
3. The assessor must remove the qualified agricultural property exemption in the year following the conversion by a change in use.

How is a property converted by a change in use?

A property can be converted by a change in use in either of two ways:

1. The actual use of the property changes and the assessor determines that the property is no longer qualified agricultural property.
2. A purchase is about to occur and prior to the purchase the future purchaser files a Notice of Intent to Rescind the Qualified Agricultural Property Exemption (form 3677) with the local tax collecting unit indicating the purchaser's intent to rescind the qualified agricultural property exemption.

Note: If the sale is not consummated within 120 days of the notice in item 2, the property is not converted by a change in use.

When does the conversion by a change in use occur in the case of a future purchaser filing a notice indicating the purchaser's intent to rescind the qualified agricultural property exemption?

In such a case, the property is converted by a change in use on the date that the proper notice is filed with the local tax collecting unit, provided that the sale is consummated within 120 days of the notice.

If someone acquired a property that qualified for the qualified agricultural property transfer of ownership exemption but neglected to file the required affidavit, can that person still qualify for the exemption several years later?

Yes, MCL 211.27a(8) allows for the recapping of taxable value, for uncapping's which occurred after 2001 and when <u>all</u> five of the following conditions exist:

1. The property qualified for the qualified agricultural property exemption from uncapping but the purchaser failed to timely file the required affidavit.
2. The assessor uncapped the property's taxable value in the year following the transfer.
3. The purchaser later discovered the error.
4. The purchaser then filed the required affidavit under MCL 211.27a(7)(o).
5. The property was qualified agricultural property for each year back to, and including, 1999.

If all of these five conditions are met, the property is recapped beginning with the year the affidavit is filed. The taxable value will be changed to the taxable value the property would have if it had not been uncapped after the transfer. This requires recalculation of the property's capped values from the year that the property was

uncapped to the year that the affidavit was finally filed. However, the owner of the property is not entitled to a refund of taxes already paid on the taxable value being recapped. If a tax bill has not been paid and the due date for the bill occurs after the recapping, the recapped taxable value is to be used for that bill.

Who authorizes a taxable value recapping for a transfer involving qualified agricultural property?

The local unit can authorize a taxable value recapping for a transfer involving qualified agricultural property. The assessor implements this recapping by completing form 3675 Assessor Affidavit Regarding the Recapping of the Taxable Value of Qualified Agricultural Property. It is not necessary a recapping be approved by the July or December Board of Review, the Michigan Tax Tribunal, or the State Tax Commission. In fact, in most instances, these bodies do not have the legal authority to process a taxable value recapping of qualified agricultural property.

Conservation Easements

What is a conservation easement?

A conservation easement is an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

Is a transfer of land that qualifies as a conservation easement, or is eligible for a qualified conservation contribution under 170(h) of the internal revenue code, 26 USC 170, a transfer of ownership?

No. A transfer of land is not a transfer of ownership if the transfer of land is either subject to:

1. A conservation easement under subpart 11 of part 21 of the natural resources and environmental protection act, 1994 PA 451 or
2. A transfer of ownership of the land or a transfer of an interest in the land is eligible for a deduction as a qualified conservation contribution under section 170(h) of the internal revenue code, 26 USC 170. *See STC Bulletin 11 of 2007 and MCL 211.27a(7)(q).*

Is the conservation easement transfer of ownership exemption applicable to buildings or structures located on the land?

No, the conservation easement transfer of ownership exemption only applies to the transfer of land and does not apply to buildings or structures located on the land.

Boy Scout, Girl Scout, Camp Fire Girls, 4-H Clubs or Foundations, YMCA and YWCA

Are Boy Scout, Girl Scout, Camp Fire Girls, 4-H Clubs or Foundations, YMCA and YWCA eligible for a transfer of ownership exemption?

Yes, if the transfer of real property (or other ownership interest):

1. Results from a consolidation or merger of a domestic nonprofit corporation that is a boy or girl scout or campfire girls organization, a 4-H club or foundation, a YMCA, or a YWCA **and**
2. At least 50% of the members of that organization or association being residents of the State of Michigan then these organizations qualify for the transfer of ownership exemption. *See MCL 211.27a(7)(r).*

Note: Other lawful transfer of ownership exceptions or exemptions may apply. Additionally, a provision is given for waiver of the residency requirement by a County Board if the property is used solely for the purposes for which the organization was established. *See MCL 211.7d and STC Bulletin 1 of 2009.*

Are there any limitations on the amount of acreage that is exempt for eligible Boy Scout, Girl Scout, Camp Fire Girls, 4-H Clubs or Foundations, YMCA and YWCA for a transfer of ownership exemption?

Yes, if these organizations reorganize, merge, affiliate or in some other manner consolidate with another Boy or Girl Scout or Camp Fire Girls Organization, 4-H club or Foundation or YMCA or YWCA after December 30, 2007, then the exemption is limited to 480 acres times the number of individual organizations that took part in the reorganization, merger, affiliation or consolidation.

Property Transfer Affidavits

What is a Property Transfer Affidavit?

Michigan statutes require that the buyer, grantee, or transferee of a property notify the local assessing office when a transfer of ownership occurs. The **Property Transfer Affidavit**, form 2766 (formerly L-4260) is available on the STC website at www.michigan.gov/statetaxcommission.

Is there a deadline for filing the Property Transfer Affidavit?

Yes. The law requires that the Property Transfer Affidavit shall be filed with the local assessing office for the local unit of government in which the property is located within 45 days of a transfer of ownership. *See MCL 211.27a(10).*

Is there a penalty for failure to file a Property Transfer Affidavit?

Yes. *See MCL 211.27b.*

Michigan law provides for the following penalties:

Prior to April 2, 2025, for real property classified other than industrial real or commercial real, Michigan law provides a penalty of $5.00 per day for each separate failure to file a Property Transfer Affidavit up to a maximum of $200.00 for each parcel.

After April 2, 2025, for real property classified other than industrial real or commercial real, Michigan law provides a penalty of $5.00 per day for each separate failure to file a Property Transfer Affidavit up to a maximum of $200.00 for property owned and occupied as a principal residence, and a maximum of $4000.00 for all other property.

For property classified commercial real or industrial real with a sales price of $100 million or less the penalty is $20 per day for each separate failure to file a Property Transfer Affidavit up to a maximum of $1,000.

For property classified commercial real or industrial real with a sales price over $100 million the penalty is $20,000 unless the taxpayer can demonstrate that the failure to file was due to reasonable cause and not due to willful neglect. If the taxpayer can make that demonstration, then the penalty is $20 per day up to a maximum of $1,000. Penalties begin to accrue after the 45-day filing deadline has passed. However, the governing body of a local unit of government may adopt a resolution waiving this penalty.

Who receives the penalties?

This penalty is distributed to the local tax collecting unit.

Does the penalty become a lien on the property?

No. Because it is not a lien on the property, penalties for failure to file a property transfer affidavit will not cause a parcel to go to tax sale.

If a Property Transfer Affidavit does not contain all required information or contains incorrect information, has the Property Transfer Affidavit been timely filed? If not, can the penalty be levied?

It is a statutory requirement that certain information (e.g., the parties to the transfer, the date of the transfer, the actual consideration for the transfer, parcel identification number or legal description) be reported to the local assessor when reporting a transfer of ownership. If information is missing from these required sections or if these required sections do not contain correct information, the Property Transfer Affidavit has not been properly filed. If a Property Transfer Affidavit has not been properly filed, the penalty is to be levied unless waived by local unit resolution.

The State Tax Commission expects that assessors will make reasonable efforts to work with property owners to correct inadequate filings of Property Transfer Affidavits. However, the ultimate responsibility for filing a properly completed Property Transfer Affidavit rests with the purchaser.

Is the Property Transfer Affidavit (or any of the information provided on the Property Transfer Affidavit) confidential?

No.

Who is required to file the Property Transfer Affidavit?

Michigan law specifies two possibilities for the party responsible for filing the Property Transfer Affidavit.

1. Under a transfer of more than a 50 percent ownership interest in a legal entity (such as a corporation, partnership, etc.) which owns property, the Property Transfer Affidavit must be timely filed by either that legal entity or by the buyer, grantee, or other transferee of the property.
2. In all other transfer of ownership situations, Michigan law specifies that the buyer, grantee, or other transferee of the property must timely file the Property Transfer Affidavit.

Must a Property Transfer Affidavit be filed when a transfer of property (or ownership interest) is not a transfer of ownership?

No. A Property Transfer Affidavit must only be filed when a transfer of property (or ownership interest) is a transfer of ownership. However, the Property Transfer Affidavit was designed to be filed even in situations where no transfer of ownership has occurred. The form was designed to allow parties involved in transactions which were not transfers of ownership, but which may appear to have been transfers of ownership to alert the local assessor that the transactions were not transfers of ownership (and should not result in taxable value uncapping's). Property owners are therefore encouraged to submit Property Transfer Affidavits even in situations where no transfer of ownership has occurred in order to avoid an incorrect taxable value uncapping's.

Can notification of a transfer of ownership be made by means other than a Property Transfer Affidavit?

Under the law, a transfer of ownership must be reported using a Property Transfer Affidavit. No substitute reporting means is permitted. However, it is permissible to submit additional documentation, along with a Property Transfer Affidavit. Property owners are encouraged to submit additional documentation as needed to inform local assessors of relevant circumstances associated with transfers of property (or ownership interests).

Can a local assessor require documentation in addition to a Property Transfer Affidavit to make a decision whether a transfer of property (or ownership interest) was a transfer of ownership?

Local assessors have the responsibility to determine whether transfers of property (or ownership interests) are transfers of ownership under the law. To make this determination, local assessors will sometimes need more information than is contained on the Property Transfer Affidavit. Although a local assessor cannot

require documentation in addition to a Property Transfer Affidavit, a local assessor can request that additional documentation (e.g., copies of trust instruments, partnership agreements, articles of incorporation, limited liability company operating agreements, etc.) be submitted.

Often the documentation needed by an assessor to make a transfer of ownership determination is sensitive in nature. Assessors are advised to treat sensitive documents which come into their possession with discretion, even if the documents could be considered to be public records.

Partial Uncapping Situations

What is a partial uncapping situation?

A partial uncapping situation is one where a transfer of ownership has occurred but the prescribed treatment for the property's taxable value in the year following the transfer of ownership does not involve setting the property's entire taxable value at the property's state equalized value (50% of the property's true cash value) as is usually required. Instead, only a portion of the property's taxable value is set at (a corresponding portion of) the property's state equalized value; the remainder of the property's taxable value remains subject to capped value limitations.

Example: Jane Doe and her sisters, Mary Doe and Sally Doe, own a parcel of property together as tenants in common, each with an undivided 1/3 interest. In 2010 Jane Doe transfers her undivided 1/3 interest in the parcel to Mary Doe and this transfer is a transfer of ownership (assumed for this example). The 2011 taxable value of the parcel is to be partially uncapped due to this (partial) transfer of ownership i.e., the 2011 taxable value of the parcel is to be 1/3rd uncapped to match the undivided ownership interest conveyed from Jane Doe to her sister.

In accordance with State Tax Commission guidelines, the 2011 taxable value for this parcel would be determined as follows:

(0.333 x 2010 state equalized value)
+ (0.667 x 2010 capped value)
2011 taxable value

The above formula is in accordance with established State Tax Commission guidelines for partial taxable value uncapping in a tenancy in common (undivided interest) situation. **The mathematical procedures in other partial uncapping situations may differ from the above formula.** If, for instance, a life lease is retained by a grantor for a portion of a property, a partial transfer of ownership occurs. In this case, the taxable value corresponding to the true cash value of the portion of the property not covered by the life lease is uncapped, while the taxable value corresponding to the remainder of the true cash value of the property remains capped.

Under what circumstances can a partial taxable value uncapping occur?

Transfers of ownership will result in partial uncapping situations under the following:

1. Tenancy in common
2. Long-term (or bargain purchase option) lease of a portion of a parcel
3. Cooperative housing corporation
4. Life lease retained by the grantor for a portion of a parcel
5. Prior-year split of a parcel discovered after the close of the current year March Board of Review
6. A parcel with a partial qualified agricultural property exemption

These are the circumstances that will currently result in a partial taxable value uncapping due to a transfer of ownership. All other transfers of ownership will result in a complete taxable value uncapping.

It is specifically noted that transfers of ownership involving joint tenancies cannot result in a partial uncapping (unless one of the six sets of circumstances listed above also applies).

It is also specifically noted that transfers of ownership due to changes of ownership interest of a legal entity (e.g., a corporation, limited liability company, etc.) cannot result in a partial uncapping (unless one of the above sets of circumstances also applies).

Delayed Uncapping's

What is a delayed uncapping?

For various reasons, it sometimes happens that the taxable value of a property is not uncapped in the year following a transfer of ownership as required by statute. At some later time (after the close of the March Board of Review in the year following the transfer of ownership), this situation is discovered and the property's taxable value is uncapped. This later taxable value uncapping is called a delayed uncapping.

What are the causes of delayed uncapping's?

There are two main causes of delayed uncapping situations:

1. A failure on the part of the transferee (buyer) of a property to file a Property Transfer Affidavit in a timely manner as required by law
2. A clerical error on the part of the assessor or a mutual mistake of fact

What happens if a delayed uncapping is the result of a failure on the part of the transferee (buyer) of a property to file a Property Transfer Affidavit in a timely manner?

If a local assessor becomes aware that a taxable value of a property was not uncapped in the year following a transfer of ownership of that property due to the failure of the transferee of the property to file a Property Transfer Affidavit in a timely manner (and the March Board of Review has closed for the year following the transfer of ownership), the assessor must uncap the taxable value of the property for the year following the transfer of ownership. The assessor must also then recalculate the taxable values of subsequent years, if any, using the uncapped taxable value as a base. The assessor must complete a separate Form 3214, formerly known as form L-4054, Assessor Affidavit Regarding "Uncapping" of Taxable Value, for each year that the property's taxable value needs to be changed (i.e., if the taxable values for five years need to be changed, the assessor will need to complete five forms). Affected assessment rolls and tax rolls are updated accordingly as well. Ultimately, the property owner will be billed for taxes based on the uncapped and recalculated taxable values.

The answer provided above is not intended to be a complete listing of delayed uncapping procedures. See State Tax Commission Bulletin No. 20 of 2017 (for a more comprehensive discussion of delayed uncapping procedures and issues.

Is there a limit on the number of years of additional property taxes a property owner can be made to pay if that property owner failed to report a transfer of ownership in a timely manner?

No, there is no limitation. If a delayed uncapping is the result of a failure on the part of a transferee of a property to file a Property Transfer Affidavit in a timely manner, additional taxes, penalties, and interest must be levied for all years affected. The interest and penalties originate from the date the tax would have been originally levied if the property's taxable value had been uncapped at the proper time.

Example: In 2010 a property owner does not file a Property Transfer Affidavit to report a transfer of ownership that occurred in 2010 and the property's taxable value is not uncapped for 2011. In December of 2020 the property is still owned by the same individual and it is discovered by the assessor that a transfer of ownership occurred in 2010 and the property's taxable value was not uncapped. A billing will occur for all additional taxes due to the delayed uncapping, along with associated penalties and interest. The additional taxes will be for the years 2011 through 2020.

Does a property owner who failed to file a Property Transfer Affidavit in a timely manner have any appeal rights when the property's taxable value is uncapped in a delayed manner?

Yes. MCL 211.27b specifies, however, that such "[a]n appeal…is limited to the issues of whether a transfer of ownership has occurred and correcting arithmetic errors." When an assessor uncaps a taxable value under these circumstances (i.e., a delayed uncapping due to a failure on the part of a transferee to report a transfer of ownership in a timely manner), the assessor must immediately notify the transferee in writing that it is the assessor's determination that a transfer of ownership occurred and that the taxable value of the transferred property has been uncapped. At that time, the assessor must also advise the transferee of the transferee's right to appeal the matter to the Michigan Tax Tribunal. This appeal is to be made within 35 days of the notice from the assessor.

Can a delayed uncapping due to the failure of a transferee to file a Property Transfer Affidavit in a timely manner be processed by a July or December Board of Review?

No. No legal authorization exists for a July or December Board of Review to process a delayed uncapping under these circumstances.

What happens if a delayed uncapping is the result of a clerical error on the part of an assessor or a mutual mistake of fact?

If a delayed uncapping is the result of a clerical error on the part of an assessor or a mutual mistake of fact, the delayed uncapping can be processed by the July or December Board of Review using the same procedures that are used to process other clerical errors and mutual mistakes of fact. These procedures include all notification procedures.

Is there a limit on the number of years of additional property taxes for which a property owner can be liable if a delayed uncapping is the result of a clerical error on the part of the assessor (or a mutual mistake of fact)?

Yes. As discussed above, such delayed uncapping's are processed by the July or December Board of Review. The authority of the July or December Board of Review in such matters is limited to correction for the current tax year (the year the error or mistake is corrected) and the immediately preceding tax year. Although assessors are

required to recalculate taxable values starting with the year following the transfer of ownership, only the taxable values for the current tax year and, if appropriate, the immediately preceding tax year can be corrected. *See MCL 211.27a(4) which refers to MCL 211.53b.*

Example: In May of 2011 a local assessor discovers that a transfer of ownership occurred in 2007 and that the taxable value of the property involved was not uncapped for 2008 (even though the transfer was timely reported by the buyer of the property using a Property Transfer Affidavit). The assessor also verifies that the reason for the failure to uncap the property's taxable value was a clerical error. Under these circumstances, the taxable values for the property for 2008 through 2011 will be recalculated, however only the 2011 and 2012 taxable values can be changed by the 2012 July or December Board of Review. The property owner will be billed for the additional taxes for these two years.

What happens if a local assessor becomes aware of a transfer of ownership which did not result in a taxable value uncapping due to a failure on the part of the transferee to file a Property Transfer Affidavit in a timely manner, but a subsequent transfer of ownership has occurred for this same property?

Under these circumstances, Michigan law allows the local taxing unit to sue the transferee who did not report the first transfer of ownership. The local taxing unit may sue for all of the following:

1. Any additional taxes that would have been levied from the date of transfer if the transfer of ownership had been reported as required
2. Interest and penalty from the date the tax would have been levied
3. The penalties as described in the Property Transfer Affidavit section

The taxable value(s) of the property are not actually changed due to the first transfer of ownership. Also, what would have been additional taxes, etc. do not become a lien on the property. It is the former owner, not the current owner, who can be sued. The current owner of the property is not held responsible for the additional taxes, etc. which are the result of a previous owner's failure to timely file a Property Transfer Affidavit.