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Changing California's Proposition 13 'change In Ownership' Language To Solve Current State Tax Revenue Deficits And Reassessing Its Accompanying Statutes

Caleb Moser

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CHANGING CALIFORNIA’S PROPOSITION 13
‘CHANGE IN OWNERSHIP’ LANGUAGE TO SOLVE
CURRENT STATE TAX REVENUE DEFICITS AND
REASSESSING ITS ACCOMPANYING STATUTES

*Caleb Moser**

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I. INTRODUCTION AND BRIEF ROADMAP

A. Introduction

Proposition 13 states that real property in California may only be taxed at “. . . no more than two percent of its ‘full cash value,’ with ‘full cash value’ defined to mean either the assessed value of that property in the 1975-1976 tax years, or the property’s value at the time of a subsequent ‘change in ownership,’ subject to an adjustment for inflation.”¹ The important takeaways are as follows: this amendment to California’s constitution caps the amount that certain real property in California can be taxed at a rate of two percent per year, straining tax resources over time at an inherently exponential rate.² This is regardless of a property’s *actual market value* at the time of annual reassessment, which is much higher at the time of a ‘change in ownership’ and is much higher on an average annual basis.³ While Proposition 13 serves its original stated purpose of helping homeowners avoid foreclosure due to hyper-inflationary housing prices and their corresponding inadequate tax assessed values, it also does so at the expense of the state’s already severely burdened balance sheet.⁴ The current state balance sheet deficit has led to very material drawbacks for everyone who calls California home, but the amendment’s long-term side effects particularly harm young and minority prospective homebuyers in the state.⁵

1. CAL. CONST. Art. XIII A § 2. (setting forth the California Constitutional Amendment under which the general provisions of Proposition 13 exist, the statute that this paper is the most interested in critiquing to solve related harms).

2. See Jeff Cockrell, *What Would Happen If the Fed Raised Its Inflation Target?*, 67 CHL. BOOTH REV. (“Public Policy Special”) (2017). (describing that “[t]he Federal Reserve targets an inflation rate of 2 percent [per year] . . .”); see also *id.* (maintaining that the contemporary goal is likely a reflection of the federal reserve’s target annual inflation rate of 2 percent annually).

3. See Jeff Cockrell, *What Would Happen If the Fed Raised Its Inflation Target?*, 67 CHL. BOOTH REV. (“Public Policy Special”) (2017).

4. See *id.*; see also Evelyn Danforth, *Proposition 13, Revisited*, 73 STAN. L. REV. 511, at 524 (Feb. 2021) (detailing the state’s balance sheet problems as a result of Proposition 13).

5. See *id.*

This paper's proposed solution recognizes a need to protect California homeowners from rapidly rising home values. Therefore, instead of calling for the complete repeal of Proposition 13, this paper suggests revising the plain text of the amendment itself to remove ambiguity and provide for less unnecessary litigation while also protecting against improper avoidances of reassessment.⁶ This paper takes issue with the number of situations in which a 'change in ownership' is currently allowed under the amendment itself and its accompanying statutes, *all of which serve to limit the amount of situations in which a 'change in ownership' occurs* for the purposes of reassessment. Accordingly, this paper exposes the harms associated with the current law under Proposition 13 and its accompanying provisions before providing more feasible proposals that can address those harms.

These proposals all increase the situations in which a reassessable 'change in ownership occurs.' Bearing in mind the nuances of constituent needs, this paper proposes amending the language of Proposition 13 to remove any ambiguity and repealing some of the Proposition's accompanying statutes. One proposed solution that this paper does not accept is repealing certain statutory exceptions like the spousal life estate statute,⁷ but it, however, it does not agree with allowing for non-reassessment upon a transfer of real property to children.⁸ Another exception that could be repealed to help cure this problem is the exception allowing for certain non-residential pieces of real property to receive grandfathered Proposition 13 treatment—after a commonsense 'change in ownership' occurs.⁹

Overall, these proposals will have the same intended outcome of *triggering more reassessments* so that the 'base year values' reset more often with the consequences of not only addressing the harms associated with the state's budget deficit but also addressing the inability to afford a home for many as a result of this law's manipulation of the Nash Equilibrium (the price that a free market's supply and demand curves efficiently produce at their intersection). As a result, not only will the harms associated with the state's budget deficit be addressed, but these proposals will also address the inability to afford a home due to the inherent distortion on supply that the amendment's incentive to hold one's home for an unnaturally long-time creates. The solutions provided in this paper for triggering more situations where a reassessment of 'change in ownership' occurs would also likely have the effect of renormalizing California housing prices. Thus, the paper's

6. See CAL. CONST. art. XIII A, § 2; see also *William Jefferson & Co., Inc. v. Orange County Assessment Appeals Bd.* No. 2, 228 Cal. App. 4th (June 25, 2014); *Sea World v. County of San Diego*, 27 Cal. App. 4th 1390 (1994) (exemplifying the very phenomena described above under the current vagueness of Proposition 13's text).

7. See CAL. CODE REGS., tit. 18, § 462.060(a) (2014).

8. See CAL. REV. & TAX. CODE. § 62(e).

9. See *Sea World*, 27 Cal. App. 4th at 1390-92 (exemplifying a corporation that was seeking base year value preferential Proposition 13 treatment, as a potential remedy for a simple clerical error during the recording of the acquired piece of real property, being *Sea World*); see also *Leckie v. County of Orange*, 65 Cal. App. 4th 334, 335 (1998).

proposed solutions would help those who are most vulnerable to the amendment's harms caused by insufficient state revenues, while helping them begin to *benefit themselves* from the same Proposition that has harmed them for so long by making homes more affordable, and by solving constrained vital tax revenues that benefit all Californians.¹⁰

The decades-long accrued side effects of the amendment are appearing more prominently now because the *base year value* is the amount used to establish the original starting point from which a property's tax amount may be raised by two percent annually. Therefore, properties purchased earlier in the amendment's passage during similar inflation in the 1970s, created larger distortions as the years progressed.¹¹ Later in this paper, an example of a hypothetical Proposition 13-eligible property in the 1980s illustrate the extent of this distortion and its inherent causes under the amendment's stipulations.

B. Roadmap

This paper will outline the relevant background of contemporary Proposition 13 law in Part II, before addressing the harms associated with current court holdings and statutory law surrounding Proposition 13's many 'change[s] in ownership'¹² in Part III. Part IV will detail this paper's two-pronged methodology of solving Proposition 13 provides.

Finally, Part V of this paper will conclude by addressing which preferred methods for improvement in this area of the law, provided in section IV, are the most likely to be feasibly accepted and put into action by the state legislature on account of their constituents' voiced needs. Understanding the probable implications of more broadly construing the term 'change in ownership'¹³—to be more inclusive of certain property transactions that were not in the spirit of the amendment's original legal purpose¹⁴—is suggestive of a necessary change to the law but is not evocative of a total repeal. Attempting to completely repeal Proposition 13 is a method that has been tried and that has failed numerous times.¹⁵

10. See Evelyn Danforth, *Proposition 13, Revisited*, 73 STAN. L. REV. 511, at 524 (Feb. 2021), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/02/Danforth-73-Stan.-L.-Rev.-511.pdf> [<https://perma.cc/X6NV-4Y3U>] (detailing the state's balance sheet problems as a result of Proposition 13).

11. See *id.*; see also Leslie Kramer, *How the Great Inflation of the 1970s Happened*, INVESTOPEDIA (Apr. 30, 2023), <https://www.investopedia.com/articles/economics/09/1970s-great-inflation.asp#:~:text=The%20Great%20Inflation%20was%20blamed,political%20leaders%20were%20the%20cause> (describing contemporarily similar "easy money" policies that led to the hyperinflation of not only homes in California, but also in goods all across the United States of America). Inflation is still less today than in the 1970's.

12. See CAL. CONST. art. XIII A, § 2.

13. See *id.*

14. See *id.*

15. Steven G. Sorrell, *Prop. 13: Reassessment is Here*, L.A. LAW, Apr. 2021, at 18-20 (reiterating that Proposition 13 still helps in carry-over benefits, especially for elderly and poorer property owners, but that Proposition 13 also remains problematic overall in achieving this end at a sufficient scale).

II. NECESSARY BACKGROUND

A. Understanding Proposition 13's 'Factor Base Year Value' Upon a Reassessment.

Proposition 13 mandates using what is termed a property's "Base Year Value" to decide the baseline assessment value of a property after a 'change in ownership' occurs, and it is the point from which the property owner begins enjoying a capped year-over-year appreciable value of two percent.¹⁶ That is until the next 'change in ownership' occurs and a new *Base Year Value* is created upon the requisite reassessment of that figure upon a 'change in ownership.'¹⁷ This number defines the *baseline value* from which a property's annual taxes will be capped, moving forward from the *baseline year*—until another 'change in ownership' occurs.¹⁸ In simpler terms, another source describes, the 'base year value' as "[t]he taxable value of a property against which the tax rate is applied."¹⁹ Understanding the relationship between 'base year value' and the Proposition 13 legalese 'change in ownership' is essential before moving to the next portion of the paper, where arguments will continue to be made against the current Proposition 13 legal regime.

B. Overview of Proposition 13's Text and its Accompanying Statutes.

The relevant part of Proposition 13 itself explains that real property may be taxed at ". . . no more than two percent of its 'full cash value,' with 'full cash value' defined to mean either the assessed value of that property in the 1975-1976 tax year, or the property's value at the time of a subsequent change in ownership, subject to an adjustment for inflation."²⁰ While two percent may seem small, any increase above that can be highly detrimental to the owner(s) of a rapidly appreciating family home. Given that places of safety and abode are literally on the line with this law, it is unsurprising that many cases have been disputed as a result of the broad terminology of 'change in [real property] ownership,' which is textualized in Proposition 13.²¹

16. *See Proposition 13*, ORANGE COUNTY ASSESSOR, <https://www.ocassessor.gov/real-property-assessments/proposition-13>.

17. *See id.*

18. *Id.* (describing that [i]n formula form it is calculated using the method: "[f]actored base year value from prior year + Value of [Existing Proposition 13-eligible Property, or] New Construction + Consumer Price Index (CPI) increase [of] no more than 2% per year [=] New Factored Base Year Value.").

19. CAL. STATE BD. OF EQUALIZATIONS, CALIFORNIA PROPERTY TAX: AN OVERVIEW, PUB. 29, at 14 (2018).

20. *See id.*; *see also* Jeff Cockrell, *What Would Happen If the Fed Raised Its Inflation Target?*, CHI. BOOTH REV. 1, 3 (2017) ("The Federal Reserve targets an inflation rate of 2 percent [per year] . . .").

21. *See generally* Leckie, 65 Cal. App. 4th at 334 ; *see also* *William Jefferson & Co.*, 228 Cal. App. 4th; *Sea World*, 27 Cal. App. 4th at 1390; *Benson v. Marin County Assessment Appeals Bd.*, 219 Cal. App. 4th 1445 (2013); *Durante v. County of Santa Clara*, 29 Cal. App. 5th 839 (2018); *Penner v. County of Santa Barbara*, 37 Cal. App. 4th 1672 (1995); *Industrial Indemnity Co. v. City and County of San Francisco*, Cal. App. 1d (1990); *County of Orange v. Bezaire*, 117 Cal. App. 4d 121 (2004) (cases resultant from the overly-broad, and overly-construed definition that courts have assigned to the term 'change in ownership').

More specifically, the amendment harms California constituents who need tax revenues the most by leaving the state in a fiscal deficit²² while also creating an uneven playing field for those who are victims of structural racism and who have lower historical homeownership levels as a result of this.²³ The state's balance sheet issue trickles down to its constituents in other ways too, unfortunately, this includes inadequate funding for public schools.²⁴ Each of these new laws serve to further expand the amount of situations in which the accrued tax benefits of a Proposition 13 property may be transferred.²⁵ Outside of a 'change in ownership,' only a new construction, or a temporary reduction in a prior years' taxable values, triggers base year property value for tax reassessment purposes.²⁶ These rules derive from current Proposition 13 law and some interpretations of the same.²⁷ A new construction²⁸ or any temporary reductions in prior years' taxable values are easy enough to identify for most courts, so it is specifically the 'change in ownership' language that seems to cause the most legal battles in this area of the law and which therefore needs to be more broadly construed to protect important tax revenues for the state of California and its citizens.²⁹ In other words, "Proposition 13 generally limits annual increases in the 'base year value'³⁰ of real property to no more than [two] percent, except when [a] property *changes ownership* or undergoes new construction."³¹ This paper is therefore also aimed to remove the most

22. Zohra Ahmed, *Subversive Lawyering: Bargaining for Abolition*, 90 FORDHAM L. REV. 1953, at 1977 (Apr. 2022) (citing Steve Gorman, *After Strike, Los Angeles Teachers Aim at California Tax Reform*, REUTERS (Jan. 24, 2019, 7:32 PM), <https://www.reuters.com/article/us-usa-education/california-taxes-idUSKCN1PJ01U> [<https://perma.cc/W4MH-CEAJ>] (discussing how repealing Proposition 13 could generate \$10 billion per year in new state tax revenue, and also allow the state to afford spending nearly \$2,000 a year per student statewide.).

23. Jesse Bedayn, "Prop. 13 offers bigger tax breaks to homeowners in wealthy, white neighborhoods," CAL. MATTERS (Apr. 14, 2022), <https://calmatters.org/california-divide/2022/04/california-prop-13-neighborhoods/>.

24. See Francine J. Lipman, *How to Design an Antiracist State and Local Tax System*, 52 SETON HALL L. REV. 1531, 1560–65 (2022) (detailing that: "[a]ntiracist policies, including progressive income and wealth taxes, have a valuable role to play in reducing racism . . .").

25. See *Proposition 13*, ORANGE COUNTY ASSESSOR, <https://www.ocassessor.gov/real-property-assessments/proposition-13> [<https://perma.cc/M755-SH72>].

26. See "*Proposition 13 and Real Property Assessments*," SACRAMENTO COUNTY ASSESSOR, <https://assessor.sacounty.gov/TopicsAtoZ/Pages/Prop13andRealPropertyAssessment.aspx#:~:text=Under%20Proposition%2013%20the%20Assessor,or%20a%20decline%20in%20value> (last updated 2023) [<https://perma.cc/9FED-837X>] (stating that "[t]he Assessor values property *only when* there is change in ownership, new construction, or a decline in value.>").

27. See *Cnty. of Orange v. Bezaire*, 117 Cal. App. 4th at 121 .

28. See *Wunderlich v. Cnty. of Santa Cruz*, 178 Cal. App. 4th 680, 690, 692 (2009).

29. CAL. CONST. art. XIII A, § 2.

30. CAL. STATE BD. OF EQUALIZATIONS, CALIFORNIA PROPERTY TAX: AN OVERVIEW, Pub. 29, at 14 (2018) (explaining that "[f]or real property assessed under Proposition 13, its fair market value as of either the 1975 lien date or the date the property was purchased, newly constructed, or underwent a change in ownership after the 1975 lien date," for the purposes of defining the term 'Base Year Value,' as utilized in Proposition 13).

31. *Id.*; see also Jeff Prang, *Proposition 13*, L.A. CNTY. ASSESSOR, <https://assessor.lacounty.gov/real-estate-toolkit/proposition-13> (last visited Apr. 2023).

ambiguous part of this law; 'change in ownership' (of real property), and to redirect the tax subsidies to those who need it most.³²

C. Problems Discerning the Legalese of 'Change in Ownership' Under Proposition 13:

Under Proposition 13, the current test for a 'change in ownership' of real property is three-pronged, and the relevant accompanying statute's plain text (Cal. Rev. & Tax Code section 60) outlines that a 'change in ownership' is defined by a transaction that is: "[1] a transfer of a present interest in real property, [2] including the beneficial use thereof, [and 3] the value of which is substantially equal to the value of the fee interest."³³ Clearly not suitably worded to avoid uncertainty, a special task force was later assigned the same task of discerning just what constitutes a 'change in ownership' under Proposition 13. Simply stated, the latest task force said that "a 'change in ownership' was a transfer of: (1) a present interest; (2) the beneficial use; and (3) rights substantially equivalent in value to a fee interest."³⁴ Understanding this legal term of art's elements will be important to keep in mind while reading the harms section of this paper, which will advocate for a shift away from this current definition of "change in ownership,"³⁵ which remains uncertain. The fact that this one term has required two special teams to define it, and both unsuccessfully, speaks volumes to the need for clarity and updated text in the relevant part of the amendment itself.³⁶

For example, in *Leckie v. County of Orange*, a trust settlor transferred their home into a revocable trust, and then provided for a friend to enjoy his life estate upon his death.³⁷ When he died, the county assessor treated the transfer of life estate title to his friend as a "change in ownership" for the purposes of Proposition 13.³⁸ In that case, the court looked beyond the three-pronged test of Cal. Rev. Code section 60, and applied the common meaning of the word 'ownership,' in their ruling; an approach this paper advocates for.³⁹

D. Example Proposition 13 Tax Advantage for a Home Bought in the Year 1982:

If a Proposition 13-eligible piece of real property was acquired in California in 1982 with an assessed value of \$100,000, and the original owner still owns that property in 2022 when its fair market value is \$1,000,000, then the maximum tax assessed value for that property that is still held by the same

32. See Danforth, *supra* note 10, at 524 [<https://perma.cc/X6NV-4Y3U>].

33. CAL. REV. & TAX CODE. § 60.

34. *Leckie*, 65 Cal. App. 4th at pp. 334, 338.

35. See *id.*

36. See

37. See *Leckie*, 65 Cal. App. 4th, at 338.

38. See *Leckie*, 65 Cal. App. 4th at 338-39 (featuring a task force that stated that "it sought to distill the basic characteristics of a 'change in ownership' and embody them in a single test [now section 60] which could be applied evenhandedly to distinguish between 'changes' and 'non-changes' . . .").

39. See *id.*

buyer in 2022 would only be \$220,804. That is, after four decades and \$900,000 of *actual* appreciation.⁴⁰ This is regardless of the fact that the property's actual value has increased by 1000% and that the \$779,196 mismatch between the *capped tax assessed value* and the *potential tax assessed value* is undeniably attributable to Proposition 13.⁴¹ That is because Proposition 13's *original text* basically says that the assessed value on a piece of property cannot be increased by more than one percent annually, a figure that has since been changed to two percent per year.⁴² It should be emphasized that the \$779,196 mismatch in tax assessed value is just for one hypothetical house bought in 1982. That kind of figure provides an idea about the sheer scale through which Proposition 13 deprives the state of potential funding. One source even describes how Proposition 13's effects lead to homelessness and that an extra \$8.1 billion of tax revenue is required to solve this problem.⁴³ However, even with the subsequent change to two percent per year as an assessed value cap, the lack of funding seen from this one hypothetical homeowner should terrify legislators who are concerned about the fiscal health of the state. This is especially true when considering just how many homeowners are eligible to take advantage of this exception to reassessment—one source suggests upwards of seven million of them.⁴⁴

III. HARMS

A. Broadening the Interpretation of a 'Change in Ownership' is Fundamental to Change:

This paper asserts that the current section 60 test⁴⁵ is under-inclusive in the number of properties that are reassessed at their full market value as a result of a commonsense definition of 'change in ownership.' Some state actors have already acknowledged this point, with some taking it upon themselves to interpret the term a 'change in ownership' in a more commonsensical and broad way, leading to more reassessment under

40. Derived Using the Exponential Formula: Assessable Value = Initial Value * (1+r)t. — In this paper's example: (100,000) * (1+.02)⁴⁰

41. Derived Using the Formula: Difference in Assessed Value for the Hypothetical House = Maximum Assessed Value of the House without Proposition 13 Laws (-) Assessed Value with Proposition 13 Laws. — [\$1,000,000 (-) \$220,804 = \$779,196].

42. See *The Original Proposition 13*, HOWARD JARVIS TAXPAYER'S ASS'N, <https://www.hjta.org/propositions/proposition-13/original-proposition-13/> (showing the text of Proposition 13 as it was originally formulated); see also CAL. CONST. art. XIII A § 2. The original one percent cap on a property's annual tax rate, utilized in Proposition 13's original statute, is used in this example for ease of understanding the implications of a cap on the annualized increase in a property's tax value on the owner of the property. .

43. Guest Commentary, *California can solve homelessness. Lawmakers have the solutions in front of them*, CAL. MATTERS (Feb. 27, 2023), <https://calmatters.org/commentary/2023/02/homeless-california-housing-solution-data/>.

44. See Travis Schlepp, *California has lowest rate of home ownership in America: study*, K.T.L.A. NEWS (Apr. 6, 2023) (pointing out that "Only about 7 million of California's roughly 40 million residents own their homes.").

45. See *id.*

Proposition 13, and thus more tax revenue.⁴⁶ This approach needs to be formalized into Proposition 13's text to avoid more unnecessary litigation,⁴⁷ and the amendment's accompanying statutes need to be partially or fully repealed, as to only protect spousal transfers from reassessment, while removing the other exceptions.⁴⁸

This ambiguity in the law is where most of the problems in Proposition 13 are magnified by companion provisions that alter the implications of Proposition 13 and other cases which show corporate attempts at taking advantage of the law's current vagueness.⁴⁹ Understanding the current elements of a 'change in ownership' is critical to understand the harms section of this paper, which will advocate for a commonsensical and less vague approach to interpreting the legal term 'change in ownership' than the way it is used currently.⁵⁰

B. Overview of Problems Created by Proposition 13 and its Accompanying Statutes.

The new state laws arising since Proposition 13's enactment on June 6, 1978, exacerbate the types of problems found within the amendment, all of which this paper will describe in this section. This is because the companion laws of Proposition 13 reduce the instances in which a legally described "transfer in ownership" (*change in ownership*)⁵¹ occurs. Remember, having a transaction defined as such more often is healthy for a broken state balance sheet. If a property is reassessed at its *current market value*, then the jurisdiction that property sits in will receive a natural amount of funding from that property at the time of the 'change in ownership.' This means that if, in the example above, the original property owner sold the same property for \$1,000,000, or the current assessed value of that property, then the tax rate for that property would be reset for a valuation of \$1,000,000. That means that the new owner will be paying taxes on the same property at a 940% premium compared to the previous owner. The local governments and their

46. See *Leckie*, 65 Cal. App. 4th at 338–39 (featuring a task force that stated that "it sought to distill the basic characteristics of a 'change in ownership' and embody them in a single test [now section 60] which could be applied evenhandedly to distinguish between 'changes' and 'non-changes' . . .").

47. See generally *William Jefferson & Co*, 228 Cal. App. 4th (covering a reoccurring issue with Proposition 13; assessor mistakes. These mistakes occur as a result of an erroneous "change of ownership" ruling by the clerks who manage property transactions); *Benson*, 219 Cal. App. 4th at 1445 ; see also *Sea World*, 27 Cal. App. 4th at 1390, 1392 (featuring a case where a corporation tried to seek the avoidance of base year value reassessment for the purposes of Proposition 13).

48. See CAL. CODE REGS. tit. 18, § 462.060(a) (2014); see also CAL. REV. & TAX. CODE § 62(e) (2019) (comprising the two accompanying statutes that this paper intends on keeping, but to the narrower extent that they should only allow the avoidance of reassessment during spousal transactions for Proposition 13 property). But see CAL. REV. & TAX. CODE § 60; CAL. REV. & TAX. CODE § 63.1 (comprising two statutes this paper does not see the merit in keeping on balance with the tax revenues they deplete the state and its constituents of).

49. See *Leckie*, 65 Cal. App. 4th at 338.

50. See *id.*; see also REV. & TAX. § 60.

51. CAL. CONST. art. XIII A § 2.

constituents could surely use this kind of increased funding, instead of the long-time benefited homeowner that is staying put for taxes.⁵²

This is even more important to consider when it is acknowledged that the original version of Proposition 13 was designed in the context of a collective response to dramatic increases in property taxes and a growing state revenue surplus of nearly \$5 billion.⁵³ Contrast that context of the state's financial balance sheet in the 1970's with today's state balance sheet, and the case for limiting Proposition 13's inclusiveness of situations that constitute a 'change in ownership' only becomes stronger.⁵⁴

C. 'Change in Ownership' Exception for Spousal Transfers of a Life Estate:

One possible modification is *Cal. Code Regs., title 18, § 462.060(a)*, which allows for creators of a life estate in real property to avoid a reassessment of 'change in ownership' in scenarios where ". . . the life estate reserves such estate in the transferor or the transferor's spouse."⁵⁵ "However, the termination of such an estate . . . shall constitute a 'change in ownership,' except where the trustor/transferor retains the reversion, or the reversion passes to the transferor's spouse."⁵⁶ This allows for the spouse of a transferor of a life estate property to avoid paying a new tax rate on the property even though a 'change in ownership' has occurred, within the sensible meaning of the term. This broader approach to affirming a 'change in ownership' is one California courts have begun to utilize themselves when attempting to discern the state constitutional meaning of 'change in ownership' for the purposes of Proposition 13, and shows this spirit of the law in a non-spousal case.⁵⁷

However, this paper does not argue that spousal transfers of life estates should be taken away as an exception to the 'change in ownership' rule that generally triggers reassessment. Thus, the two spousal transfer implicative exceptions that allow the avoidance of property *base year value* reassessment upon an arguable 'transfer' are the only accompanying exceptions to Proposition 13 that this paper intends to keep in place, albeit with a broader concept of when a 'change in ownership' occurs. Further, this paper has the

52. See Ariel J. Kleiman, *Tax Limits and the Future of Local Democracy*, 133 HARV. L. REV. 1884, 1895-97 (Apr. 2020).

53. CAL. STATE BD. OF EQUALIZATION, CALIFORNIA PROPERTY TAX: AN OVERVIEW PUB. 29, at 1 (2018) (asserting further that "[e]ssentially, Proposition 13 converted the market value-based property tax system to an acquisition value-based system.").

54. Zohra Ahmed, *Subversive Lawyering: Bargaining for Abolition*, 90 FORDHAM L. REV. 1953, at 1977 (Apr. 2022) (citing to Steve Gorman, *After Strike, Los Angeles Teachers Aim at California Tax Reform*, REUTERS (Jan. 24, 2019, 7:32 PM), <https://www.reuters.com/article/us-usa-education/california-taxes-idUSKCN1PJ01U> [<https://perma.cc/W4MH-CEAJ>] (discussing Proposition 13, a 1978 ballot initiative in California that capped real estate levies and resulted in a steep decline in public spending per pupil in California and stating that repealing Proposition 13 could generate \$10 billion a year or more in new revenue and allow the state to afford to spend nearly \$2,000 a year per student statewide, which covers nearly half of the current expenditure gap for K-1 public schools).

55. CAL. CODE REGS. tit. 18, § 462.060(a) (2014).

56. *Id.*

57. See *Leckie*, 65 Cal. App. 4th, at 338-40.

other specific intent of protecting spousal transfers *only* from reassessment after an arguably commonsense notion of a ‘change in ownership’ occurs for a spouse with real property.⁵⁸ The paper concurrently calls for the *complete* repeal of two companion statutes, whose exceptions benefits do not outweigh the societal harms of lower tax revenues, in opposition to the outlook for the spousal transfer.⁵⁹ This theory is given credibility by the contemporary legal landscape where spouses are almost always considered to be one entity for tax law purposes and property law purposes.⁶⁰

Therefore, by allowing this exception to the ‘change in ownership’ rule, California’s tax system is essentially facilitating the double-dipping of inheritance property tax benefits.⁶¹ Thus, the change this paper advocates for does not align with the belief that protecting real property assets gained through inheritance was a built-in intention of Proposition 13. Exempting inheritances from reassessment after a ‘change in ownership’ moreover seems unfair, perhaps unless it is from one’s spouse given the disproportionate economic advantages given to white property right ownership throughout American history and the fact that the current laws around Proposition 13 only serve to expand generational wealth gaps.⁶²

The *non-spousal* transfers of life estate exceptions should be narrowly construed to be the only life estate transfers allowed under the Proposition 13 provision: Cal. Code Regs., title 18 section 462.060(a).⁶³ Thus, there is a fairly strong argument against this companion provision to Proposition 13 because this companion provision continues to vacuum-up valuable tax dollars and because two owners have the tendency, on average, to live longer than one.⁶⁴ Regardless, it does not seem ethical to *prima facie* punish someone monetarily for losing a spouse.

One takeaway from this companion law to Proposition 13 is that it lengthens the amount of time that a property may be given an overly-privileged tax rate.⁶⁵ It is clearly understandable for the government to not want to penalize *family members* who have received property in inheritance; however, this policy must be more narrowly construed to ensure these life estate transfers only avoid reassessment for spouses who are the recipients of the ‘new’ ownership rights. Therefore, *the line should be distinctly drawn at children*, whose properties should always be reassessed upon the transfer of life estates or remainders thereof because the benefits of lineages of

58. See tit. 18, § 462.060(a) (2014); see also CAL. REV. & TAX. CODE § 62(e) (2019).

59. See *supra* note 96, and accompanying text, at 20.

60. See *id.*

61. See *id.*

62. See generally Francine J. Lipman, *How to Design an Antiracist State and Local Tax System*, 52 SETON HALL L. REV. 1531 (2022).

63. See tit. 18, § 462.060(a) (2014).

64. See generally Jeremy Bearer-Friend, Ari Glogower, Ariel Jurow Kleiman & Clinton G. Wallace, *Taxation and Law and Political Economy*, 83 OHIO ST. L.J. 471 (2022) (exploring the similar deleterious effects of a similar tax proposition in Massachusetts, which serves as evidence that this approach to property tax law is one that has been a proven failure for citizens across the United States who face similar laws).

65. *Id.*

inheritance are not in the progressive taste of contemporary common law, and especially not when placed in juxtaposition to the societal harms experienced by the current tax revenue shortfalls.⁶⁶ This is mainly because those who inherit property are already given tax breaks in the form of gross income exceptions.⁶⁷ Even if the same policy reasonings were to underlie these lesser-connected laws, the point remains that the more tax exceptions to ‘change in ownership’ that exist, the more likely a property owner is to obtain double-dipped tax benefits.

As a result, many scholars argue that property tax limits in themselves are generally a harmful policy that has proven ineffective from coast-to-coast, and therefore should be abandoned as an idea that did not work for the many states that tried them.⁶⁸ However, this paper is clearly more forgiving on its take, so long as the benefit of the exclusion or exception to reassessment outweighs the societal good that would come from allowing reassessment.

D. Parent-Child Transfers Under Proposition 13 Should Trigger Reassessment

Additionally, there is Cal. Rev. & Tax Code § 63.1,⁶⁹ which serves more specifically to allow certain parent-child transfers to occur without invoking a reassessment of the Proposition 13 property in question. The only stipulation that does not afford reassessment protection under this exception is that the child must be born to “natural persons.”⁷⁰ This seems to be overly inclusive, given that this law prevents almost any parent-child transfer of property to be eligible for tax reassessment upon a ‘change in ownership’ unless that child’s parents are not naturally born.⁷¹ Thus, if a parent wants to transfer a house to their ‘naturally born’ child, they must only show that an investment-style relationship does not exist between the two when the ‘change in ownership’ occurs and that their children lived in the house for a sufficient amount of time.⁷²

The end result is that most inherited real property in California will not be reassessed, but rather it will be given the grandfathered preferential treatment of the original owner of the real property. This is the kind of companion law that can really drive up the housing market beyond natural levels because families can hold on to property for generations without realizing a fair assessed value based on the contemporary revenue needs of the

66. *See generally* National League of Cities, *Principles of Home Rule for the 21st Century*, 100 N.C.L. REV. 1329 (2022).

67. *See* 26 U.S.C. § 102 – Gifts and Inheritances; *see also* tit. 18 § 462.060(a) (2014).

68. *See generally* Jeremy Bearer-Friend, Ari Glogower, Ariel Jurow Kleiman & Clinton G. Wallace, *Taxation and Law and Political Economy*, 83 OHIO ST. L.J. 471 (2022).

69. *See* CAL. REV. & TAX CODE § 63.1.

70. CAL. REV. & TAX. CODE § 63.1; *see also Penner*, 37 Cal. App. 4th at 1675.

71. *See* REV. & TAX. § 63.1.

72. *See id.* (displaying another ambiguity seen within the context of Proposition 13 law).

California state government and the community it is charged with serving.⁷³ Some scholars assert that California could have an additional \$10 billion in much-needed tax revenues if the law were changed.⁷⁴

E. Which “Change in Ownership” Interpretations have Courts Used, and at What Costs?

The split seen between the California legislatures’ tendency to exclude situations in which a “change in ownership” results and the California courts’ tendencies to make additions to situations in which a “change in ownership” occurs⁷⁵ is likely best explained by the courts’ tendencies to be less political, and more objective. The courts are less concerned with votes in the next election and more concerned with the law they are supposed to be objective about. That is likely why many of the courts who have decided issues related to this matter tend to be more inclusive in the definition of a “change in ownership” under Proposition 13.⁷⁶ Still, there are other California courts whose decisions on this issue have been constrained by the additional statutory provisions that now accompany Proposition 13.⁷⁷

Removing Proposition 13’s accompanying statutes alone would allow courts to discern the ‘change in ownership’ term in a more inclusive way so that these harms can finally be resolved. It would also likely increase local tax revenues, which could help public schools and rural areas the most.⁷⁸ The main benefit of Proposition 13 is that it protects California homeowners from inflationary costs related to their annual property taxes, and the potential reflection of an inflating housing market.⁷⁹ However, these benefits are likely outweighed by the disadvantages discussed, and because wage inflation also occurs alongside consumer price inflation.⁸⁰

73. See generally National League of Cities, *Principles of Home Rule for the 21st Century*, 100 N.C. L. REV. 1329 (2022) (posing that laws like Proposition 13 “pose challenges both for thriving cities and for struggling local communities, often rural, with far fewer resources from which to draw.”); Steven G. Sorrell, *Prop. 13: Reassessment is Here*, L.A. LAW., Apr. 2021 at 19 (illuminating how this same problem is ubiquitous for similar property tax provisions across the United States, and specifically how the harm of similar provisions elsewhere is mainly found on the ability of the state or local government to generate enough revenue to serve its constituents).

74. See Ahmed, *supra* note 22, at 1953–59.

75. See tit. 18 § 462.060(a) (2014); see also Rev. & Tax. § 63.1.; Cal. Rev. & Tax. Code § 60.; Cal. Rev. & Tax. Code § 62(e). But see *Industrial Indemnity Co.* Cal. App. 1st Dist.; *Leckie v. County of Orange*, 65 Cal. App. 4th 334 (June 30, 1998); *Benson v. Marin County Assessment Appeals Bd.*, Cal. App. 1st Dist. (Sept. 26, 2013); *Durante v. County of Santa Clara*, Cal. App. 6th Dist. (Nov. 30, 2018).

76. See *Industrial Indemnity Co.*, Cal.App.3d at 999; *Leckie*, 65 Cal. App.4th at 334; *Benson*, Cal.App.4th at 1145.; *Durante*, 29 Cal.App.5th at 839.

77. See *Penner*, 37 Cal. App. 4th at 1672.

78. See generally National League of Cities, *Principles of Home Rule for the 21st Century*, 100 N.C.L. REV. 1329 (2022) (considering the uneven balance between harms to rural and non-rural communities under similar California laws).

79. See CAL. CONST. art. XIII A § 2.

80. See Jorge Alvarez et al., *Wage-Price Spirals: What is the Historical Evidence?*, I.M.F. (2022) (describing the phenomenon where inflation causes prices to rise, which causes wages to rise, which in turn causes prices to rise further . . . and the cycle repeats until a stronger monetary balance is established).

F. The Legal and Social Costs of Proposition 13's Imprecision:

Other cases show that Proposition 13's accompanying provisions not only lead to reduced revenues, but may also lead to an unnecessary amount of litigation due to its vague language surrounding the "change in ownership" requirement for property tax reassessment.⁸¹ For example, in *Sea World v. County of San Diego*, the court held that "Sea World had failed to exhaust its administrative remedy of seeking equalization of its 1989 supplemental tax assessment, thereby precluding Sea World from claiming a refund for that year."⁸² In so deciding, the court held that the addition of section 51.5 to the Revenue and Taxation Code⁸³ did not provide Sea World an avenue around the section 80 proscription⁸⁴ against retroactive application of a *base year value* reduction.⁸⁵ Most relevantly, the court also reasoned that the "failure to obtain a refund [did not] violate the mandate of Cal. Const., art. XIII, to uniformly assess, levy, and collect taxes on the full value of property in California. Any claimed lack of uniformity was due to the taxpayer's failure to comply with the requirements of the system."⁸⁶

Regardless, this case represents one of the many examples where corporations or other legal entities try and take advantage of Proposition 13's *base year value* benefits.⁸⁷ *Sea World* saw this as a potential opportunity to seek legal remedy through taking advantage of Proposition 13's base year value benefits and the legal system's resources by giving a feeble argument for favorable reassessment under Proposition 13. Essentially, this case shows how large corporations misconstrue Proposition 13's language and purpose. The court even calls it the "fascinating world of real property reassessments after the passage of Proposition 13."⁸⁸ Other ambiguous terminology in section (a) of Proposition 13 has led to disputes over whether replacement dwellings should be considered "new construction" for the purposes of reassessment.⁸⁹

In another case, the confusing language of this part of Proposition 13 led to more clerical errors, which were irreversible for the property owner as a result of strict statutes of limitations in this area of the law.⁹⁰ The court made clear, however, that "[n]either did the failure to obtain a refund violate the mandate of Cal. Const., art. XIII, to uniformly assess, levy, and collect taxes on the full value of property in California. Any claimed lack of uniformity was due to the taxpayer's failure to comply with the requirements of the system."

81. *See William Jefferson & Co.*, 228 Cal. App. 4th (June 25, 2014); *see also Sea World v.* 27 Cal. App. 4th 1390.

82. *See Sea World*, 27 Cal. App. 4th at 1390-92.

83. CAL. REV. & TAX. CODE § 51.5 (1990).

84. CAL. REV. & TAX. CODE § 80(a)(5) (1987).

85. *See Sea World*, 27 Cal. App. at 1390.

86. *Id.*

87. *See id.*

88. *Id.*

89. *See Wunderlich*, 178 Cal. App. 4th 686.

90. *William Jefferson & Co.*, 228 Cal. App. 4th; *see also Sea World*, 27 Cal. App. 4th 1390, 1391 (1994).

Regardless, this case represents one of the many where corporations or other legal entities try to take advantage of Proposition 13's tax benefits that accrue over time.

Aside from the legal costs, there are also social costs that stem from Proposition 13's cap on residential taxes. These result from the fact that some Californians are still paying taxes on their property as if they have not reached the year 2000 yet. Since schools and rural areas are primary recipients of property tax funds in the state, this reduction in local revenues harms those areas the most.⁹¹ Minorities are also particularly harmed by the described problematic aspects of Proposition 13, as "Latino, Black and Asian residents are more likely to rent, a likely legacy of redlining."⁹² For example, one study in Oakland found that "[h]omeowners in Latino neighborhoods also pay taxes on homes that are under-assessed, but by an average of \$216,430, resulting in about \$3,000 in tax breaks per home—a third of the savings in white neighborhoods, according to the analysis."⁹³ The result is that "[m]ore white residents in Oakland benefitted in general from Proposition 13 because more own their homes than other racial groups," and thus, "race and ethnicity matter, too" when it comes to sizing up the harms associated with the current legal regime encompassing Proposition 13 and its companion statutes.⁹⁴ This all culminates into a situation where the neighborhoods that currently have the most wealth are receiving the most tax breaks, and "[e]ven when people of color do own their homes, their tax savings from Proposition 13 are smaller than those of majority white communities."⁹⁵

Overall, Proposition 13 clearly leads to a grossly inadequate property tax shortfall when comparing this example to a situation where the state did not have such a tax scheme. This means that on a piece of property like the one above, the local government is making about hundreds of percent less in tax revenues than they should be on an annual basis. This is the way Proposition 13 leads to shortfalls in funding for public schools⁹⁶ and causes other issues like unattainable housing for youth and minorities who are cannot afford homes due to the distorted supply and demand curve that Proposition 13 creates.⁹⁷ Tax revenues are also used to help uplift localities that are falling

91. *See generally* Christine Hulsizer, *A Proposed Future for the Progressive Realization of Economic, Social, and Cultural Rights in California*, 1100 CALIF. L. REV. 567 (2022) (describing Proposition 13's harmful impacts on public school funding, in particular).

92. JESSE BEDAYN, *Prop. 13 offers bigger tax breaks to homeowners in wealthy, white neighborhoods*, CAL MATTERS (2022), <https://calmatters.org/california-divide/2022/04/california-prop-13-neighborhoods/> [<https://perma.cc/CZE4-FCJT>].

93. *Id.*

94. *Id.*

95. *Id.*

96. *See generally* Christine Hulsizer, *A Proposed Future for the Progressive Realization of Economic, Social, and Cultural Rights in California*, 110 CALIF. L. REV. 567 (2022) (explaining the lack of public funding available for schools to adequately support their students, and mentioning Proposition 13 as a specific cause of that harm).

97. *See* Henry Grabar, *These Graphs Explain Why California's Property-Tax Regime Is the Worst*, SLATE.COM (Sept. 22, 2016), <https://slate.com/business/2016/09/californias-proposition-13-is-bad-policy->

behind, so the current scheme also harms poorer communities by limiting their available tax funding.⁹⁸

The possible solutions for this mapped-out legal problem in California will be thoroughly explained in the following section of this paper, which offers two proposals to serve as the antidote to the current inadequate legal framework surrounding Proposition 13—and the implications of not addressing that inadequate framework on broader society.⁹⁹ The following proposal section of this paper will focus on addressing the harms discussed thus far.

IV. PROPOSED SOLUTIONS:

A. Repealing Proposition 13's Accompanying Statutes Related to a 'Change in Ownership':

This proposal is aimed at reducing the negative effects of the previously mentioned depleted tax-revenues by amending Proposition 13 to be more inclusive of situations in which a 'change in ownership' occurs. There are different ways to accomplish this goal, but the best starting point is likely to repeal the accompanying laws surrounding Proposition 13's notion of the term "ownership."¹⁰⁰ This is a more attainable task than repealing Proposition 13, because Proposition 13 was enacted through a ballot initiative. "Howard Jarvis's genius in enacting Proposition 13 through a ballot initiative is that it can be significantly changed only through that same blunt-force instrument."¹⁰¹ The only way out of the current version of Proposition 13 is through the ballot initiative, which is a political process. Therefore, it will likely take longer to change the actual text of Proposition 13, though it is still an important task to complete. That is a major reason why this paper's favored solution strays away from suggesting a complete repeal of Proposition 13, and for other reasons that will soon be described.

and-here-are-some-graphs-to-show-you-why.html (explaining that "Prop 13 fixed the statewide property tax rate at 1 percent, and applied that millage to purchase price (plus a small annual rate of increase), rather than market value. That means that as home values have skyrocketed in California, property taxes have not. If you bought a home in California in 1980, the difference between the market value and assessed value of your home is, on average, \$300,000. It has paid to stay put. Look how uneven tax collection rates are in one neighborhood of Los Angeles: That amounts to a giant, rent-control-size subsidy to Californians who bought their homes a long time ago. (It's particularly sweet for Californians with big, expensive houses. Tax relief from Prop 13 aligns almost perfectly with household income; it is one reason why the proportion of the state's properties that change hands each year fell from 16% in 1977 to less than 6% in 2014.).

98. *See id.*

99. *See id.*

100. *See* CAL. CODE REGS. tit.18, § 462.060(a) (2014); *see also* CAL. REV. & TAX. CODE § 63.1.; CAL. REV. & TAX. CODE § 60.; CAL. REV. & TAX CODE § 62(e).

101. Evelyn Danforth, Prop. 13, Revisited, 73 STAN. L. REV. 511, at 511-12 (Feb. 2021).

Cal. Code Regs., title 18 section 462.060(a),¹⁰² and Cal. Rev. & Tax Code § 62(e),¹⁰³ should also only be partially repealed to eliminate double-dipping¹⁰⁴ of annual property tax exceptions, which allow creators of a life estate in real property to avoid a taxable ‘change in ownership’ where one should be had (in a *non-spousal* situation). This would not only prevent double-dipping of the property tax exceptions previously described, but it would also allow for the state to regain much of its needed annual tax revenues from property taxes.¹⁰⁵ This change would most relevantly restart the *base year* and *base year value* for the purpose of calculating the annual property taxes owed based on those reassessed amounts *for life estates that are transferred to anyone other than a spouse*. In situations where a *spouse* is transferred the benefits of a Proposition 13 property, the law should stay the same to protect the spouse’s interest in the property.¹⁰⁶ This is the only companion exception to avoiding reassessment due to a deemed ‘change in ownership’ that this paper’s solution advocates for keeping.

In tandem with the aforementioned proposal, this part of the paper’s proposal also seeks to reduce the amount of contexts in which a property’s *base year* and *base year value* get to stay the same by advocating for the partial repeal of Cal. Rev. & Tax Code section 62(e) and¹⁰⁷ keeping only the spousal exception in place.¹⁰⁸ This partial repeal to Proposition 13 would also eliminate the unnecessary double-dipping of tax exceptions after a ‘change in ownership’ occurs by the eliminating the ability of a transferor to transfer to themselves or another, a *reversion* for an *estate for years* or an *estate for life*.¹⁰⁹ Proposition 13 was not designed as an investment vehicle for trustees or trustors to reassign their property rights at their own convenience and at the unnecessary expense of much-needed state tax dollars.¹¹⁰ That issue has proven to be a compelling

102. *See generally* tit. 18, § 462.060(a) (2014) (providing that “[t]he creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor’s spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor’s spouse to a third party is a ‘change in ownership’”).

103. *See generally* REV. & TAX. § 62(e) (exempting from a ‘change in ownership,’ “[a]ny transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate . . . shall constitute a change in ownership, except where the trustor/transferor retains the reversion, or the reversion passes to the transferor’s spouse”).

104. *See id.*; *see also* 26 U.S.C. § 102.

105. Jesse Bedayn, *Prop. 13 offers bigger tax breaks to homeowners in wealthy, white neighborhoods*, CAL. MATTERS (Apr. 14, 2022), <https://calmatters.org/california-divide/2022/04/california-prop-13-neighborhoods/> [<https://perma.cc/CZE4-FCJT>] (analyzing how “[l]ow property taxes from Prop. 13 also mean fewer tax dollars.”); *see also* 26 U.S.C. § 102; tit.18 § 462.060(a) (2014).

106. *See* tit.18 § 462.060(a) (2014) (allowing for the creator of a life estate in real property to avoid an assessable ‘change in ownership,’ in most situations where they transfer their real property to their spouse.).

107. *See generally* CAL. REV. & TAX CODE § 62(e).

108. *See id.*

109. *See id.*; *see also* 26 U.S.C. § 102; CAL. CODE REGS., tit. 18, § 462.060(a) (2014).

110. *See generally* *Benson v. Marin County Assessment Appeals Bd.*, Cal. App. 1d (Sept. 26, 2013) (featuring a case where the owner of a residential property was in joint tenancy with their brother for a piece of real property. The owner of the property deeded his joint tenancy interest to himself as a tenant in common with his brother, and the court subsequently held that this deeding of his interest constituted a “change of ownership.” Therefore, the owner was forced to have the property legally reassessed).

state interest in the past.¹¹¹ This provision is therefore likely to be feasibly removed to provide for more reassessment and to generate government tax revenues needed to help the currently under-funded schools¹¹² and rural communities in California.¹¹³

As opposed to the quasi-spousal statutes' *partial* repeal recommendations, Cal. Rev. & Tax Code section 63.1¹¹⁴ and Cal. Rev. & Tax Code section 60¹¹⁵ should be *completely* repealed to limit the number of contexts in which Proposition 13's reassessment exceptions can be realized by a California homeowner.¹¹⁶ This end could be achieved by disallowing *parent-child transfers* of property to receive the benefits of the exception that allows a child to retain the *base year value* of their parent under certain transactions. Instead, a *parent-child* transfer should *always* trigger base year value reassessment to close an easy loophole that this law creates.¹¹⁷ That means a parent-child transfer of real property will now trigger a reassessment, and that the "natural persons"¹¹⁸ language will no longer exist in California law, further reducing the discrimination that is presently found in this area of the law.¹¹⁹

111. See Jesse Bedayn, *Prop. 13 offers bigger tax breaks to homeowners in wealthy, white neighborhoods*, CAL. MATTERS (Apr. 14, 2022), <https://calmatters.org/california-divide/2022/04/california-prop-13-neighborhoods/> [<https://perma.cc/CZEA-FCJT>]; see also "Eminent Domain Without Limits?: U.S. Supreme Court Asked to Curb Nationwide Abuses," INST. FOR JUST. (Dec. 20, 2000) (describing that the Kelo v. New Lond decision "[m]ade it much easier to abuse eminent domain," and more pertinently that "[n]ow instead of a 'public purpose,' condemnations would be upheld based on 'expected public benefits.' If a property could potentially generate more tax dollars or create new jobs as something bigger and newer, then using eminent domain to replace the current owner with a glitzier development served the public good. Worse, the Supreme Court explicitly allowed seizing private property without requiring 'a reasonable certainty' that the expected public benefits will actually accrue.").

112. See generally Christine Hulsizer, *A Proposed Future for the Progressive Realization of Economic, Social, and Cultural Rights in California*, 110 CAL. L. REV. (Apr. 2022) (focusing on proposition 13's harms on public education funding).

113. See generally *Principles of Home Rule for the 21st Century*, 100 N.C.L. REV. 1329 (June 2022) (stating that: laws like Proposition 13 "pose challenges both for thriving cities and for struggling local communities, often rural, with far fewer resources from which to draw."); see also Jesse Bedayn, *Prop. 13 offers bigger tax breaks to homeowners in wealthy, white neighborhoods*, CAL. MATTERS (Apr. 14, 2022), <https://calmatters.org/california-divide/2022/04/california-prop-13-neighborhoods/> [<https://perma.cc/CZEA-FCJT>].

114. See CAL. REV. & TAX. CODE § 63.1 (limiting the exclusion allowed under Proposition 13 for parent to child transfers, codifying that a parent-child transfer must be one to a child who is born to "natural persons").

115. See CAL. REV. & TAX. CODE § 60 (creating the three-prong test which was described in-depth earlier in this paper).

116. See generally *How to Design an Antiracist State and Local Tax System*, 52 SETON HALL L. REV. 1531 (2022) (describing some of the racial effects of property tax laws like Proposition 13. It says that California's Proposition 13 benefits wealthy white homeowners at the expense of others).

117. See generally Gregory Broege & Andrew Bodeau, *This is 'Split Roll': Would the end of Proposition 13 Restrictions Lead to a Better Trained California or Loss of Business for the State?*, 42 L.A. LAWYER 16, (Dec. 2019) (describing the taxpayer loopholes that are created by each new addition to Proposition 13); see also REV. & TAX. § 63.1.

118. *Penner*, 37 Cal. App. 4th 1672, 1678.

119. See *id.* (creating the unfair and unnecessary rule that parent-child transfers of real property receive different tax benefits under Proposition 13, compared with the well-described tax benefits offered to those of a non-parent child transfer; except for those who are not "natural citizens" – an exception to the general rule that has no place in the spirit of progressive and contemporary California common law).

This change will have the practical effect of also renewing the *base year* and *base year value* for the purpose of calculating the annual property taxes owed for real property in California after a *parent-child* transfer of that real property, which should *always* be reassessed according to this paper.¹²⁰

Similarly, Cal. Rev. & Tax Code section 60 should be completely repealed because of its causal harms to state tax revenue and because it is overly-vague, even though it was created by a task-force which was supposed to make interpreting a ‘change in ownership’ under Proposition 13 easier.¹²¹ This is the three-pronged test aimed at clarifying the meaning of a ‘change in ownership’ by stating that a ‘change of ownership’ is a transaction that is a “1) transfer of a present interest in real property, 2) including the beneficial use thereof, [and] 3) the value of which is substantially equal to the value of the fee interest.”¹²² However, even this test is supposed to be used in conjunction with other tax laws involving the term ‘ownership.’¹²³

This paper proposes the complete dissolution of the current and confusing three-pronged test to define a ‘change in ownership’ under Proposition 13. It instead proposes a methodology akin to the commonsense interpretive strategy deployed by the court in *Leckie*, where the broader and more commonsensical interpretation of the word ‘ownership’ was deployed instead of the three-prong statutory test, and with more success. That is, the property was reassessed as it should have been. With this unnecessary statute gone, courts will have the freedom to more broadly interpret the term ‘change in ownership’ under Proposition 13 itself, leading to more reassessment events. Thus, Cal. Rev. & Tax Code section 60 is the second accompanying statute to Proposition 13 that should be completely repealed to allow for less litigation, less government expenses, and more tax revenue from an increase in the quantity of reassessable transactions.¹²⁴

B. Amending the Text of the “Change in Ownership” Section of Proposition 13:

The text of Proposition 13 currently states that real property may only be taxed at an annual appreciative assessment value of “. . . no more than one percent of its ‘full cash value,’ with ‘full cash value’ defined to mean either the assessed value of that property in the 1975-1976 tax year, or the property’s value at the time of a subsequent *change in ownership*, subject to an adjustment for inflation.”¹²⁵ This paper proposes altering this text to read: “. . . or the property’s value at the time of a new construction, or a subsequent

120. See REV. & TAX. § 63.1.

121. See CAL. REV. & TAX. CODE § 60.

122. *Id.*

123. *Id.*; see also *Benson*, 219 Cal. App. 4th at 1457 (featuring an owner of residential property in joint tenancy with their brother. The owner of the property deeded his joint tenancy interest to himself as a tenant in common with his brother. The court held that this deeding of his interest constituted a “change of ownership.” Therefore, the owner had the property reassessed.).

124. REV. & TAX CODE § 60.

125. See CAL. CONST. art. XIII A § 2.

change in ownership, “[with ‘change in ownership’ to be analyzed from a broad legal lens that weighs in favor of reassessment].”¹²⁶ Altering the text of Proposition 13 to read in such a way would override the current accompanying statutes because the California constitution has precedent over them.¹²⁷ It would also remove the ambiguity associated with the other ways courts allow a property’s value to be reassessed because of the new inclusion¹²⁸ in this paper’s recommended preferred updated version of section (a) in Proposition 13.¹²⁹

More specifically, ‘change in ownership’ must be more broadly construed under this paper’s solution by amending the relevant part of Proposition 13’s plain text¹³⁰ to read that the maximum percentage of a property’s annual tax-assessed value appreciation shall be capped at two percent¹³¹ of the previous year’s assessed value, and that the baseline year for this methodology shall be in accordance with “the property’s value at the time of a new construction or a subsequent change in ownership, with ‘change in ownership’ constituting *only* a situation where a California resident buys an existent piece of real property.”¹³² Further, because of the amendment’s narrow purpose of keeping struggling homeowners in their home during an inflationary time, it makes no sense for the amendment to continue covering those people for perpetuity, no matter what. Granted, the reality remains that fluctuations in property taxes can be particularly difficult for those on fixed incomes, even if they have paid off their mortgage. Thus, this paper’s solution proposes the grandfathering-in of all property rights for current Proposition 13 owners in California. However, schools and similar state-run organizations should continue to receive the tax exceptions of Proposition 13 after a ‘change in ownership’ so long as the transfer of ownership is between two governmental or quasi-governmental organizations because they are the ones in most need of tax revenues right now.

After any ‘change in ownership,’ the property should be reassessed for the new owner using the traditional method of deriving the *factor base year value (base year value)*, which is calculated using a rather complex formula,¹³³ but the *base year value* is really just derived using the fair market value of the property at the time (*base year*) of a reassessable transfer. Again, this is the

126. *Id.*

127. *See id.*

128. CAL. REV. & TAX. CODE § 110.1-110.1 (a)(2), *see also* CAL. REV. & TAX. CODE § 75.8.

129. *See* CAL. CONST. art. XIII A § 2 (notice the italicized text used above-the-line in this paper’s proposed additional text to the current version of Proposition 13).

130. *See id.*

131. *See* Jeff Cockrell, *What Would Happen If the Fed Raised Its Inflation Target*, CHICAGO BOOTH REV., <https://www.chicagobooth.edu/review/what-would-happen-if-fed-raised-its-inflation-target#:~:text=A%20majority%20of%20panelists%20agreed,amount%20in%20a%20future%20recession> (July 13, 2017) (describing that “[t]he Federal Reserve targets an inflation rate of 2 percent [per year]”); *see also* CAL. CONST. art. XIII A § 2.

132. This is the other language that this paper intends to have added to CAL. CONST. art. XIII A § 2.

133. *See Proposition 13*, ORANGE COUNTY ASSESSOR, <https://www.ocassessor.gov/real-property-assessments/proposition-13> (last visited February 19, 2024).

number used for the purpose of deciding the baseline assessment value of a property from which appreciation will be taxed from the point of a ‘change in ownership’ and moving forward, from that initial assessment value at a capped percentage of two percent per assessment year.¹³⁴ This number is particularly important because it is the baseline year established for the purposes of calculating the future capped annual taxes on a taxable piece of real property.

Broadening the text of Proposition 13 to cover ‘new constructions,’ purchases, *or* the more broadly construed and advocated-for meaning of other ‘changes in ownership’ of real property detailed above would raise more tax revenue for the state by triggering more reassessments. Simultaneously, it keeps the *necessary* provisions of Proposition 13 in place for now, which are specifically targeted at protecting Californian’s who face a reasonable risk of losing their home.¹³⁵ Notice that this paper is advocating for exclusively allowing the property tax breaks described above to *only* be available to those who buy a “newly constructed home”¹³⁶ or those who experience a ‘change in ownership’ using this paper’s more broadly construed version of that legal term of art—while also *only* retaining the spousal life estate transfer exception statutes that contemporarily accompany Proposition 13.¹³⁷ Notably, these are the only two provisions found within Proposition 13 itself or found within its accompanying provisions that actually facilitate the needs that the amendment was originally intended to protect.¹³⁸ Therefore, these ‘change in ownership’ contexts and laws should both remain as they are in current law. In an unfortunate twinge of irony, those same first-time homebuyers facing an inflated housing market due to the amendment are barred from the tax advantages the amendment provides because of the stated disincentive for current California homeowners *who are benefitting* from Proposition 13 to sell their homes. After all, who in their rational economic mind would sell a house that they are acquiring hundreds of basis points of annual tax discounts from, even if it is not their *ideal* place of abode anymore? The answer, of course, is that some homeowners still sell, but that many more ‘on the fence’

134. *See id.*

135. *See* Jesse Bedayn, *Prop. 13 offers bigger tax breaks to homeowners in wealthy, white neighborhoods*, CAL. MATTERS (Apr. 14, 2022), <https://calmatters.org/california-divide/2022/04/california-prop-13-neighborhoods/> [https://perma.cc/CZE4-FCJT].

136. CAL. CONST. art. XIII A § 2.

137. *See id.*; *see also* CAL. CODE REGS., tit. 18, § 462.060(a) (2014) (creating the spousal transfer exception to a reassessable ‘change in ownership’ after a transfer of a life estate to a spouse — the first statute this paper proposes only the partial repeal of); CAL. REV. & TAX. CODE § 62(e) (2019) (serving as the spousal transfer exception to allow for the avoidance of a reassessable ‘change in ownership,’ and allowing for reversion rights to be transferred to a spouse without triggering reassessment, the second statute this paper proposes should only be partially repealed). *But see* CAL. REV. & TAX. CODE § 60 (codifying the vague and insufficient three-pronged test which this paper intends to fully nullify in favor of a broader and more commonsensical approach to the word ‘change in ownership’ in Proposition 13 itself); CAL. REV. & TAX. CODE § 63.1 (2022) (allowing for non-reassessment after a commonsensical ‘change in ownership’ between a parent and child, so long as the child is a “natural born person.”).

138. *See* Jesse Bedayn, *Prop. 13 offers bigger tax breaks to homeowners in wealthy, white neighborhoods*, CAL. MATTERS (Apr. 14, 2022), <https://calmatters.org/california-divide/2022/04/california-prop-13-neighborhoods/> [https://perma.cc/CZE4-FCJT].

homeowners would also become sellers with this paper's proposed change in the law. Thus, this second proposal would help with the fiscal deficit in California and the housing affordability crisis.

C. Either Proposed Solution Would Help; but Applying Both Solutions May End the Harms:

The attributes of both proposed solutions provided above are not mutually exclusive at all. In fact, this paper's final proposal will utilize both solutions provided in this section of the paper. Ideally, they would both be done tomorrow. However, the nature of the California Ballot Initiative Process, through which Proposition 13 was created, means that the first recommended solution here (*a*) may procedurally have to be completed after this paper's second proposal (*b*).

Simply put, this paper's feasible proposal is first to repeal or remove the current statutes that accompany Proposition 13. Next, this paper proposes amending Proposition 13 to be less ambiguous by allowing for a broader and more commonsensical interpretation of 'change in ownership' to be used and by allowing only 'new constructions' to retain their *base year* and *base year taxable value*. This method would also preferentially use the newly drafted language provided in *subsection (a)* to clear up the ambiguity so there are no undeserved 'grandfathered-in' transactions that are not reassessed upon a commonsense 'change in ownership.'

D. Why this Paper Avoids Proposing a Complete Repeal of Proposition 13:

That is why some scholars even see repealing Proposition 13 as a way to move in the political direction of a wealth tax and to help thwart inequality.¹³⁹ This paper does not necessarily disagree with these scholars, but it does believe that the companion provisions related to an interpreted 'change in ownership' are a more feasible place to start when it comes to repeal. This is especially the case considering how amending these provisions first could serve as a legal steppingstone by invoking more feasible changes in the overall spirit of limiting the harms associated with Proposition 13's expansive situations where a 'change in ownership' is allowed. These are situations where a 'change of ownership' in substance occurs but the statute does not recognize it as such, so the transferee does not face reassessment. This paper's approach can therefore allow for more change later on Proposition 13 itself, if still necessary after these proposals are put into law. Overall, repealing these provisions will also have a sizable effect on tax revenues because of the wide array of contexts under which a current 'change in ownership' is allowed to occur without a reassessment of the property for Proposition 13 tax purposes.¹⁴⁰

139. See Lipman, *supra* note 24 at 1560.

140. See tit. 18, § 462.060(a)(2014); see also REV. & TAX. § 63.1. REV. & TAX. § 60; REV. & TAX. § 62(e).

While it has been repeatedly argued that Proposition 13 should be completely repealed,¹⁴¹ this paper does not agree with such an extreme approach as to completely repeal the amendment. This is an approach which has failed too many times to try again. Rather, this paper would like to see ‘change in ownership’ more commonsensically interpreted by courts through a broader scope so that ‘changes in ownership’ occur more frequently. Then, the many harms this paper discusses stemming from tax revenue shortfalls will be adequately addressed with increased property tax revenues. However, the only way to achieve this end without eliminating Proposition 13 completely is to simultaneously completely repeal the accompanying statutes.¹⁴² Under this paper’s proposals for the amendment, Proposition 13 can still exist practicably without most of its companion statutes.¹⁴³

V. CONCLUSION

Given the evidence presented thus far, an attempt should clearly be made to apply all of the methods of change described in the two proposals this paper puts forth because both methods have the ability to reduce all of the harms this paper illuminates. Further, both can do so in a feasible manner by not attempting to completely overhaul the entire law all at once.¹⁴⁴ Relatedly, this paper suggests transforming the ‘change in ownership’ definition under Proposition 13 first before taking such a leap as to do away with the amendment completely. That is a method which has failed too many times, and likely for good cause.¹⁴⁵ Also, being more precise in the procedure for change in this area of law may allow for the complete repeal of the amendment in the future once the benefits derived from this paper’s desired changes are realized.

That being said, this paper also concurrently and completely accepts the first proposal it puts forth, which would be necessary to produce the kind of tax-breaks that are still needed by new homeowners and which are especially needed by new minority homeowners.¹⁴⁶ This connected proposal

141. See generally *Subversive Lawyering: Bargaining for Abolition*, 90 FORDHAM L. REV. 1953 (Apr. 2022).

142. See tit. 18, § 462.060(a)(2014); see also REV. & TAX. § 63.1. REV. & TAX. § 60; REV. & TAX. § 62(e).

143. See tit. 18, § 462.060(a)(2014); see also REV. & TAX. § 63.1. REV. & TAX. § 60; REV. & TAX. § 62(e).

144. See tit. 18, § 462.060(a)(2014); see also REV. & TAX. § 63.1. REV. & TAX. § 60; REV. & TAX. § 62(e).

145. Bedayn, *supra* note 23 (quoting Susan Shelly, a spokesperson for the Howard Jarvis Taxpayers Association, who argues that “[d]oing away with Prop. 13 altogether would have far-reaching implications, including the potential to make property taxes unaffordable for low-income families and retired seniors who rely on a fixed income and low-property taxes to keep their homes.”).

146. See *id.* (explaining further that “Latino, Black and Asian residents are more likely to rent, a likely legacy of redlining, [and] referring to a banking practice which kept residents of poor and largely minority neighborhoods from obtaining bank loans to purchase or refinance their homes [and that] The wealthiest neighborhoods receive the most (tax breaks), which helps them build more wealth for their communities that were already benefiting from lots of wealth.”).

advocates for completely repealing two of the accompanying statutes of Proposition 13. It also calls for partially repealing the other two most relevant accompanying statutes—all of which serve to excessively expand the interpretation of the term ‘change in ownership’ under Proposition 13’s current state of the law.¹⁴⁷

The two proposals put forth in the prior section of this paper are not mutually exclusive, so both of them should be advocated for by current California legislators and their constituents, but timing is crucial. Both solutions put forth have the similar aim of reducing the number of scenarios in which a piece of California real property can be reassessed after a legal ‘change in ownership’ occurs. Thus, they also align well with one-another from a policy perspective alone. This is especially the case when considering that the solutions in this paper would also likely reduce the cost of housing, which is clearly a major concern when it comes to the current state of inflation.¹⁴⁸ However, none of these benefits can be recognized by anyone unable to financially afford to *own* a home in the first place. That is another reason why all of the advocated-for aspects included in *section IV* of this paper’s proposed solutions should be instituted immediately by the legislatures and courts.

This proposed solution therefore allows for the necessary guardrails that Proposition 13 was designed for, to continue operating, while also adding a tremendous amount of reassessable events to California real property, ultimately leading to much-needed tax revenues and a lesser-manipulated housing market for younger and minority homeowners who are also attempting to take advantage of its benefits. Consider, for instance, that “[o]nly about seven million of California’s roughly forty million residents own their homes, the lowest rate of home ownership in the United States, according to a new study.”¹⁴⁹ Further, this paper’s solution allows for the continued protection of spouses who will not have to absorb an instantaneously multiplied tax assessed value while also having to deal with the loss of a loved one.

The missing state revenue will also come from the *complete* repeal of the two accompanying statutes to Proposition 13: Cal. Rev. & Tax Code § 63.1, and Cal. Rev. & Tax Code § 60¹⁵⁰ and the *partial* repeal of Cal. Code Regs., tit. 18, § 462.060(a) (2014) and Cal. Rev. & Tax Code § 62(e), which should only

147. See tit. 18, § 462.060(a)(2014); see also REV. & TAX. § 63.1; REV. & TAX. § 60; REV. & TAX. § 62(e).

148. CAL. CONST. art. XIII A, § 2 (creating the law targeted at keeping people in their homes, particularly during times of inflationary pressure); see also Bedayn, *supra* note 23.

149. Travis Schlepp, *California has lowest rate of home ownership in America: study*, K.T.L.A. (Apr. 6, 2023), <https://ktla.com/news/california/california-has-lowest-rate-of-home-ownership-in-america-study/>.

150. See CAL. REV. & TAX. CODE § 60 (codifying the vague and insufficient three-pronged test which this paper intends to fully nullify in favor of a broader and more commonsensical approach to the word ‘change in ownership’ in Proposition 13 itself); see also CAL. REV. & TAX. CODE § 63.1 (allowing for parent-child transfers; transactions which this paper does not agree with, given the harms created by their depletion of state tax revenues).

retain their respective non-reassessable transfer rights for spouses.¹⁵¹ All of those changes would trigger more reassessments and more corresponding state tax revenue, as will following the commonsense approach of a ‘change in ownership’ that is advocated for and followed in the *Leckie* case, exemplifying how and why a broader and more commonsensical approach to defining the word ‘ownership’ would help raise tax revenues, while maintaining Proposition 13 rights for those who really need them.¹⁵²

Thus, the only remaining non-reassessable transfers of real property under this paper’s preferred solution will be: instances where there is a life estate that is transferred to a spouse, and instances where more commonsensically interpreted ‘change in ownership’ occur, or getting the remainder from your parent’s spousal interest, or building a new house. Reassessable commonsensical transfers under this paper’s proposals would thus include instances such as a life estate for an old house being transferred from a brother in joint tenancy.¹⁵³ If this paper’s proposals are put into law, then those are the kind of commonsense transfers that will promote adequate revenue for the state’s ‘compelling interests’ moving forward. These include compelling interests like ending homelessness, and protecting households from hyperinflationary pressures, as well as from the hardships associated with spousal passings.

Future interpreters of Proposition 13 should have a broader and more commonsensical view of when a ‘change in ownership’ for real property occurs, to allow for more reassessments to occur and, in turn, to allow for more state and local revenue to be absorbed by the government resulting from higher average *base year values* upon reassessments. However, to completely solve the current property tax deficit in California caused primarily by Proposition 13 and its current companion statutes, the companion statutes need to be partially or fully repealed, as described in the preceding paragraph and throughout the “*Harms*” section of this paper. These ends can be accomplished by deploying either proposal that this paper offers. However, this paper would prefer for all of its given proposals to be accomplished as soon as possible for the overall well-being of the state of California and its residents.¹⁵⁴

151. See CAL. CODE REGS. tit. 18, § 462.060(a) (2014); see also CAL. REV. & TAX. CODE § 62(e) (2019) (comprising the two accompanying statutes that this paper intends on keeping, but to the narrower extent that they should only allow the avoidance of reassessment during spousal transactions for Proposition 13 property). But see REV. & TAX. § 60; REV. & TAX. § 63.1 (comprising two statutes this paper does not see the merit in keeping on balance with the tax revenues they deplete the state and its constituents of).

152. See *Leckie*, 65 Cal. App. 4th at 334.

153. See generally *Benson*, 219 Cal. App. 4th 1445 (holding against an owner of residential property in joint tenancy with their brother, and who later deeded his joint tenancy interest to himself, as a tenant in common with his brother. The court held that this deeding of his interest constituted a “change of ownership.” Therefore, the owner had the property reassessed.).

154. See *California Population 2023*, POPULATION USA (2023), <https://www.usapopulation.org/california-population/> [https://perma.cc/4E8F-VB86] (asserting that California’s population will reach 41.372 million by [the] 1st July of 2023).

It should be reemphasized that these proposed changes to Proposition 13, and its accompanying statutes, will not have a surprise effect on any California homeowners, because they will be grandfathered into their current set of property tax rules. That follows the same reasoning for why the spousal exception for allowing the avoidance of reassessment should stay—because keeping people in their homes is still the most vital objective at the end of the day.¹⁵⁵

155. *See* CAL. CONST. art. XIII (amending the California constitution to cap the annual increase of a real property's tax assessable value with the intention of keeping Californian's facing inflationary pressures in their homes).