Transfer of Ownership Guidelines

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Background Information

The State Tax Commission has issued several bulletins pertaining to transfer of ownership and taxable value uncapping issues. The reader is directed to these bulletins for additional information regarding transfer of ownership and taxable value uncapping matters:

Bulletin No. 16 of 1995
Bulletin No. 8 of 1996
Bulletin No. 3 of 1997
Bulletin No. 7 of 2006

Bulletin No. 16 of 1995 addresses the implementation of the uncapping of an individual property's taxable value for a transfer of ownership when the assessor is aware of the transfer prior to the adjournment of the March Board of Review. Bulletin No. 8 of 1996 addresses procedures to use when a transfer of ownership is discovered after the close of the March Board of Review. A portion of Bulletin No. 3 of 1997 constitutes a supplement to Bulletin No. 16 of 1995. Another portion of Bulletin No. 3 of 1997 covers changes to the prescribed treatment of delayed uncapping situations and constitutes a supplement to Bulletin No. 8 of 1996. Bulletin No. 7 of 2006 addresses the transfer of ownership exemption for qualified agricultural property allowed by Public Act 260 of 2000. Bulletin No. 7 of 2006 constitutes another supplement to Bulletin No. 16 of 1995. These bulletins are available at the Michigan Department of Treasury website, www.michigan.gov/treasury.

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

In accordance with the Michigan Constitution as amended by Proposal A of 1994 and Michigan statutes, a transfer of ownership causes the taxable value of the transferred property being 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".

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 also 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).*

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. Michigan Complied Laws (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)-(q). (*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. 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).*

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 a transfer of property by a husband and wife to a trust 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.

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).

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

Yes. However, 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). 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 change merely adds or substitutes the spouse of the sole present beneficiary (and provided that no statutory exception or exemption applies). *See MCL 211.27a(6)(e).*

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)(f).*

<u>Distributions Under Wills or By Courts</u>

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, if the person receiving the property is the deceased person's spouse, the conveyance is not a transfer of ownership. *See MCL 211.27a(6)(f).*

*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).*

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 and after a person's death but before the distribution of that person's property, 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.

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.

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. (Walgreen's Co. v. Macomb Twp. (2008) 760 N. W.2d 594, 280 Mich. App. 58).

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 in this publication).

A limited liability company owns real property and conveys of 25.0 percent of the ownership interest in 2009. In January of 2010, 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 2009 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 2011.

As of January of 2008, 50.1 percent of the ownership interest of a limited liability company was been conveyed and the taxable value of the property was uncapped for 2009. If, in March of 2010, 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 2008 and March of 2010, not more than 50.0 percent of the ownership interest is conveyed. Therefore, no transfer of ownership occurs as of March of 2010.

Company A owns all the membership interest in a limited liability company. The limited liability company owns a piece of real property. In 2009, 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 2010. *See Signature Villas, L.L.C. 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 2009, 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 2010.

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 to contact the tenants in common to determine the various percentages and not presume equal shared of ownership interest.

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 has 100 shares of stock and during 2009 15 of the shares are conveyed?

A transfer of ownership occurs. Since 15 of 100 shares transferred in 2009, 15 percent of the taxable value of the cooperative housing corporation is to be uncapped for 2010.

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)-(q).

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 Department of Treasury, 420 Mich. 226; 362 NW2d 618 (1984); Inter Co-op Council v Tax Tribunal Dept. 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 (1983).

It is the opinion of the State Tax Commission that these principals which apply to general property tax exemptions also apply to transfer of ownership exemptions since a transfer of ownership exemption is simply

a form of property tax exemption. 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?

As a general rule, a transfer of property from one spouse to another spouse is not a transfer of ownership. *See MCL 211.27a(7)(a).*

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, oftentimes recently divorced spouses 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 (see below).

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 is a transfer of ownership applies.

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.

Examples: 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 become divorced 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).*

<u>Life Leases/Life Estates</u>

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).*

In 2009 Jane Doe conveys her residential property to her son, retaining a life estate on the entire parcel. Is this a transfer of ownership?

No. A life estate was retained by the grantor, Jane Doe, and this life estate covers the entire property.

In 2008 Jane Doe conveys her residential property to her son, retaining a life estate on the entire parcel. In 2009, 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 2010 tax year.

In 1983 (before passage of Proposal A) Jane Doe conveyed her residential property to her son, retaining a life estate on the entire parcel. In 2009 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 son upon her death. The taxable value of the property must be uncapped for the 2010 tax year.

In 2009 Jane Doe conveys 80 acres to her son, 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 2010.

John and Sandy Smith own property and grant John Smith's mother a life estate for this property. Is the conveyance of the life estate to John Smith's mother 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 mother and a transfer of ownership occurred.

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)(d).* 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 2008. This sale was a transfer of ownership and the property's taxable value was uncapped for tax year 2009. In 2010 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 2009 and subsequent years be recapped as if the 2008 transfer of ownership never occurred?

No. The 2008 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 2009 and the 2009 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)(e).*

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 in the circumstances listed below?

(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)(f).*

Note: See also the information regarding trusts contained in the transfer of ownership definitions section of this publication, starting on page 3.

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 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)(g).*

What is a court of record?

Any court which has been designated as a court by the legislature is a court of record.

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 the transfer of ownership exemption 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. The language relating to the grantees on the deed or land contract establishes the joint tenancy.

Examples: If John Doe conveys property to John Doe and Joe Smith "as joint tenants", a joint tenancy is created. Similarly, if John Doe conveys property to John Doe and Joe Smith "as joint tenants and not as tenants in common", a joint tenancy is created. Also, if Jane Jones conveys property to John Doe and Joe Smith "as joint tenants" or "as joint tenants and not as tenants in common", a joint tenancy is established. John Doe and Joe Smith are the joint tenants in these examples.

Is a conveyance of property involving a joint tenancy a transfer of ownership?

This may or may not be a transfer of ownership depending upon the circumstances of the conveyance. A transfer between two or more persons that create or terminate a joint tenancy will not constitute a transfer of ownership if:
(1) at least one of the persons involved in the transfer was an original owner of the property before the tenancy was created and, if the property was held as a joint tenancy at the time of transfer
(2) at least one of the persons involved in the transfer was a joint tenant at the time the joint tenancy was originally created and has remained a joint tenant since that time.

See MCL 211.27a(7)(h) and Moshier v. Whitewater Township (2007) 745 N.W.2d 523, 277 Mich. App. 403.

Note: Original ownership is not the ownership that existed on January 1, 1995 when transfers of ownership for taxable value uncapping first became possible. Under these circumstances, original ownership is the ownership that existed prior to creation of the joint tenancy, regardless of when that joint tenancy was formed.

Parent A conveys a property to Parent A and her Child B as joint tenants. Is this a transfer of ownership?

No, since Parent A is the original owner of the property and has remained a joint tenant since the joint tenancy was created.

Parent Y conveys a property to Parent Y and her Child B as joint tenants. Parent Y later conveys her entire interest in the property to Child B. Is the later conveyance by Parent Y a transfer of ownership?

No. The conveyance by Parent Y, who is a joint tenant, of her entire interest in the property to the other joint tenant Child B is not a transfer of ownership. This is true even though the title is vested in a joint tenant who was not an original owner. Since Parent Y was an original owner of the property and both joint tenants were both joint tenants at the time the joint tenancy was created, statute does not require that conveyance of title vest in the original owner, which in this case was Parent Y.

Parent Y conveyed property to Parent Y and her child B as joint tenants. Parent Y later dies. Is the death of Parent Y a transfer of ownership?

No. The death of Parent Y and subsequent transfer of her interest in the property to the owner, Child B, was not a written conveyance but a change by operation of law and does not constitute a transfer of ownership.

Note: In Klooster v. City of Charlevoix, 286 Mich. App 435, 781 NW2d 120 (2009), the Court of Appeals recently held that the death of a joint tenant does not equate with a "conveyance" and therefore does not constitute a transfer of ownership under MCL 211.27a. The court held that it is well established that "conveyance" means every instrument ***in writing*** *which affects the title to any real estate. The death of Parent Y was not a written conveyance, but instead child B owns the whole by virtue of the right of survivorship. The Michigan Supreme Court on May 26, 2010 granted an application for leave to appeal in the Klooster Case. Oral Arguments and a decision by the Court are pending.*

Parent Y conveyed a property to Parent Y and her Child B as joint tenants. Parent Y later conveys her interest to someone other than her spouse or Child B. Is this later conveyance by Parent Y a transfer of ownership?

Yes. Parent Y is the only original owner in the joint tenancy and, when the conveyance occurs, a transfer of ownership occurs because an original owner is no longer part of the joint tenancy.

Parent A and Child B acquire property together as joint tenants from unrelated individual C and this acquisition was a transfer of ownership. Later, Parent A conveys his interest to Child B (or someone other than his spouse). Is this most recent conveyance a transfer of ownership?

No. Parent A and Child B acquired the property together from unrelated individual C and this acquisition was a transfer of ownership. Under these circumstances, Parent A and Child B are both original owners and since Child B remains in the joint tenancy, no transfer of ownership occurs.

The answer to this question remains the same even if the joint tenancy between Parent A and Child B was established prior to 1995, when transfers of ownership for taxable value uncapping purposes first became possible.

Parent A and Parent B acquire property together in 1987. In 1995, Parent A and B granted a quitclaim deed to the subject property to themselves and Child C as joint tenants. Parent B dies in 2000. In 2009, Parent A quitclaims all her interest to Child C. Is this most recent conveyance a transfer of ownership?

No. Transfer of ownership by joint tenant Parent A, of her entire interest in property to another joint tenant is not a transfer of ownership. Although title vested in Child C who is not an original owner, since one joint

tenant Parent A was an original owner of the property and both joint tenants were both joint tenants at the time the joint tenancy was created this is not a transfer of ownership. MCL 211.27a(7)(h) does not require that the conveyance vest title in an original owner. *See Moshier v Whitewater Township, 277 Mich. App 403, 745 NW2d 523 (2007).*

Individual A conveys a property to Individual A and Individuals B and C as joint tenants. Later, Individual A conveys her interest to Individual D (not her spouse). This second conveyance to Individual D is a transfer of ownership. After the conveyance to Individual D, who is an original owner? If Individuals B, C, or D were to convey their interest in the property to someone, would that conveyance be a transfer of ownership?

After the conveyance to Individual D, Individuals B, C, and D are original owners. The joint tenants in the joint tenancy at the time of a transfer of ownership are original owners from that point forward. A conveyance by any of these three individuals (B, C, or D) would not be a transfer of ownership provided that at least one of the new original owners (or one of their spouses) remained in the joint tenancy.

Parent A deeds a property to parent A and child B as joint tenants. Later, child B conveys his interest back to parent A and the joint tenancy is terminated. Is this conveyance by child B a transfer of ownership?

No. Parent A, an original owner, held the property throughout and at the conclusion of the joint tenancy. Therefore, no transfer of ownership occurs.

Can a transfer of ownership involving a joint tenancy result in a partial uncapping of the taxable value of the property involved?

No, a transfer of ownership involving a joint tenancy must always result in a total taxable value uncapping for the transferred 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)(i).*
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 land owner 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 land owner 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 land owner. The builder then conveys the property (land and house) back to the land owner. 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. *See MCL 211.27a(7)(j).* 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)(j). Failure to comply with a request by the STC under this subsection is subject to a fine of $200.00.

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)(k).*

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)(l).*

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, aff'd Michigan Court Appeals, November 3, 2007 (Unpublished). 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. There are some 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. Property (or an ownership interest) is conveyed from one entity to another entity and both entities are owned by the same individual(s) with the same percentage of ownership.

2. Property transfers (or transfers of ownership interests) under these exact circumstances, which are the initial transfer to an entity, are considered to be transfers between commonly controlled entities and not transfers of ownership.

Example: Individual A and individual B own a lakefront cottage property together as tenants in common, each with an undivided 50 percent interest. This is the only such property these individuals own and they use the property solely for recreational purposes, residing there from time to time. For liability protection

purposes, individual A and individual B convey the property to a limited liability company. Individual A and individual B are the only members of the limited liability company, each having a 50 percent ownership interest. Even though these entities (individual A, individual B, and the limited liability company) are not entities under common control under Michigan Revenue Administrative Bulletin 1989-48, these entities are considered to be under common control by policy of the State Tax Commission and this property transfer would not be a transfer of ownership.

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)(m).*

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)(n).*

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.

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 <u>be receiving</u> 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 uncappings 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)(n).
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.

Qualified Forest Property

What is Qualified Forest Property?

Qualified forest property is:
(1) Property not less than 20 vacant, contiguous acres in size, of which not less than 80% is productive forest capable or producing wood products
(2) Is stocked with forest products
(3) Has no buildings or structures located on the real property, and
(4) Is subject to an approved forest management plan. (*See MCL 211.7jj[1]*).

Is a transfer of Qualified Forest Property a transfer of ownership?

A transfer of qualified agricultural property is not a transfer of ownership if the person to whom the Qualified Forest Property is transferred files form 4508 Affidavit Attesting that Qualified Forest Property Shall Remain Qualified Forest Property with the assessor and the register of deeds. *See MCL 211.27a(7)(o)*

An owner of Qualified Forest Property must inform a prospective buyer that the Qualified Forest Property is subject to recapture tax provided in the Qualified Forest Property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036.

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

Yes, it is a requirement of law that this affidavit be filed with the appropriate register of deed in order for the transfer of ownership exemption to be granted.

Must the assessor remove the Qualified Forest Property exemption from a parcel after that parcel transfers ownership?

No. Once a parcel is granted the Qualified Forest Property exemption, the exemption remains in place until the end of the year in which the property is no longer Qualified Forest Property (except in withdrawal and denial situations). Ownership is not relevant in determining whether the parcel continues to receive the Qualified Forest Property exemption.

What happens when the Qualified Forest Property stops being Qualified Forest Property at any time after being transferred?

If the property stops being Qualified Forest Property the taxable value of the property shall be uncapped in the following year that the property stops being Qualified Forest Property. The property is also subject to the recapture tax provided for under the Qualified Forest Property recapture tax act, 2006 PA 379, MCL 211.1031 to 211.1036.

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)(p.)*

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 camp fire 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)(q).*

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. 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. This penalty begins 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 $5.00 per day/$200.00 maximum penalty?

This penalty is distributed to the local tax collecting unit.

Does the $5.00 per day/$200.00 maximum 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 $5.00 per day/$200.00 maximum 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 $5.00 per day/$200.00 maximum 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 uncappings). 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 uncappings.

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 2009 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 2010 taxable value of the parcel is to be partially uncapped due to this (partial) transfer of ownership—i.e., the 2010 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 2010 taxable value for this parcel would be determined as follows:

(0.333 x 2010 state equalized value)
+ (0.667 x 2010 capped value)
2010 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 only 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 Uncappings

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 uncappings?

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

The procedures for handling delayed uncappings depend upon the cause and are detailed below.

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. 8 of 1996 (and its supplement contained in State Tax Commission Bulletin No. 3 of 1997) for a more comprehensive discussion of delayed uncapping procedures and issues.

Note: A completely different procedure, discussed below, is required if a delayed uncapping is necessary due to a clerical error by the assessor or a mutual mistake of fact.

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 2009 a property owner does not file a Property Transfer Affidavit to report a transfer of ownership that occurred in 2009 and the property's taxable value is not uncapped for 2010. 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 2009 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 2010 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 receiving 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 uncappings 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 2010 a local assessor discovers that a transfer of ownership occurred in 2005 and that the taxable value of the property involved was not uncapped for 2006 (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 2006 through 2010 will be recalculated, however only the 2009 and 2010 taxable values can be changed by the 2010 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. A penalty of $5.00 per day up to $200.00 for failure to file a Property Transfer Affidavit (the $5.00 per day begins to accrue after the 45-day deadline to file the form; see also the information contained in the Property Transfer Affidavits section of this publication, starting on page 29)

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.