

# Proposition 60 v. Proposition 90

## **What is the difference between Proposition 60 and Proposition 90?**

Proposition 60 allows transfers of base year values within the same county (intracounty).

Proposition 90 allows transfers from one county to another county in California (intercounty) and it is the discretion of each county to authorize such transfers.

What are the counties that have enacted ordinances to accept intercounty transfers?

As of June 5, 2015, the following eleven counties in California have an ordinance enabling the intercounty base year value transfer:

**Alameda Orange San Diego Tuolumne El Dorado \*Riverside San Mateo Ventura Los Angeles San Bernardino Santa Clara**

Since the counties indicated above are subject to change, we recommend contacting the county to which you wish to move to verify eligibility.

\* On August 30, 2016, the El Dorado County Board of Supervisors approved an extension of their ordinance, which will now sunset on October 1, 2021.

## **What are the eligibility requirements for Propositions 60/90?**

You, or a spouse residing with you, must have been at least 55 years of age when the original property was sold.

The replacement property must be your principal residence and must be eligible for the homeowners' exemption or disabled veterans' exemption.

The replacement property must be of equal or lesser "current market value" than the original property. The "equal or lesser" test is applied to the entire replacement property, even if the owner of the original property purchases only a partial interest in the replacement property. Owners of two qualifying original properties may not combine the values of those properties in order to qualify for a Proposition 60 base-year value transfer to a replacement property of greater value than the more valuable of the two original properties.

The replacement property must be purchased or built within two years (before or after) of the sale of the original property.

To receive retroactive relief from the date of transfer, you must file your claim within three years following the purchase date or new construction completion date of the replacement property.

Your original property must have been eligible for the homeowners' or disabled veterans' exemption either at the time it was sold or within two years of the purchase or construction of the replacement property.

The original property must be subject to reappraisal at its current fair market value at the time of sale, unless the buyer(s) of your original property also qualify the property as a replacement property for a base year value transfer due to disaster relief or a base year value transfer for a severely and permanently disabled person. Therefore, most transfers between parents and children will not qualify.

This is a one-time only benefit. Once you have filed and received this tax relief, neither you nor your spouse who resides with you can ever file again, even upon your spouse's death or if the two of you divorce. The only exception is that if you become disabled after receiving this tax relief for age, you may transfer the base year value a second time because of the disability, which involves a different claim form.

**How many times can one receive the benefit of Propositions 60/90?**

As a senior citizen, one may transfer his or her base year value only once, with the one exception that if a person first received relief for age and subsequently became severely and permanently disabled after the date of the original claim and had to move because of the disability (Proposition 110), then the base year value may be transferred a second time. The base year value transfer, however, is not available in the reverse situation; if one receives the benefit due to disability, then they cannot subsequently claim the relief for age.

**I am over 55, but my wife is not yet 55. Is she considered a claimant for benefits of Proposition 60? What about other co-owners?**

A claimant is any person claiming Proposition 60/90/110 property tax relief. A claimant must be an owner or co-owner of the original property as a joint tenant, a tenant in common, or a community property owner. A spouse of the claimant is also considered a claimant if the spouse is a record owner of the replacement dwelling (and thus must provide his/her social security number on the claim).

An owner of record of the replacement property who is not the claimant's spouse is not considered a claimant, and a claim filed for the property will not constitute use of the one-time-only exclusion by the co-owner even though that person may benefit from the property tax relief.

**My Registered Domestic Partner and I sold a home and purchased a replacement property in 2008. My Partner transferred the base year value under Proposition 60. Since we are registered domestic partners, was I also considered a claimant? If not, will this affect my ability to use the exclusion later?**

As a registered domestic partner, you were not considered a claimant. The fact that your partner used the exclusion will not affect your ability to transfer the base year value later. Proposition 60 provides that "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. Since a registered domestic partnership is not a married couple, the registered domestic partner of a claimant is not a spouse and is not considered to have used his/her one-time-only exclusion under section 69.5.

**Would I still qualify for Proposition 60 benefits if I was a few months shy of 55 when my property sold, but over 55 when I purchased my replacement property?**

No, you must be at least 55 when your original property sells. While you may be 54 when you purchase your replacement property, you must be at least 55 when you sell your original property.

**My home is held in a trust in which I am the sole present beneficiary. Can I qualify for Proposition 60 benefits if I sell my home and buy a replacement home that will also be held in trust? In other words, am I a qualified claimant if the transactions are made by me as trustee of the trust?**

You qualify for the benefits if you are the present beneficial owner of the trust, not simply the trustee of the trust. For property tax purposes, the property owner is the person who has the present beneficial interest of a trust. The trustee holds legal title to the trust property but may not necessarily be the present beneficial owner of it.

**What does "equal or lesser value" of a replacement property mean?**

The market value of the replacement property as of the date of purchase must be equal or less than the market value of the original property on the date of sale. The meaning of "equal or

lesser value" depends on when you purchase the replacement property. In general, equal or lesser value means:

100% or less of the market value of the original property if a replacement property were purchased or newly constructed before the sale of the original property, or

105% or less of the market value of the original property if a replacement property were purchased or newly constructed within the first year after the sale of the original property, or

110% or less of the market value of the original property if a replacement property were purchased or newly constructed within the second year after the sale of the original property.

In determining whether the "equal or lesser value" test is met, it is important to understand that the market value of a property is not necessarily the same as the sale or purchase price. The assessor will determine the market value of each property. If the market value of your replacement dwelling exceeds the "equal or lesser value" test, no relief is available.

**When making the "equal or lesser value" comparison, is a simple comparison of the sales price of the original property and the purchase price of the replacement dwelling all that is needed?**

No, the full cash value of the original property as of the date of its sale must be compared with the full cash value of the replacement property as of its date of purchase or completion of new construction. However, property tax laws presume that the purchase price paid in a transaction is the full cash value unless evidence shows that the real property would not have transferred for that price in an open market transaction.

**If the full cash value of the replacement dwelling does not satisfy the "equal or lesser value" test, can a claimant receive partial benefit?**

No. Unless the entire replacement dwelling satisfies the "equal or lesser value" test, no benefit is available. It is "all or nothing." Partial benefits are not granted.

**I want to sell my principal residence valued at \$180,000 and purchase a one-third interest in a property valued at \$360,000. Since my interest in the new property is only valued at \$120,000, which is less than my sale price, can the base year value of my original property be transferred?**

No, comparison of values must be between the total properties involved and not just a fractional interest. Only if the property that is being purchased has a market value of \$180,000 (or less), will the property qualify for the base year value transfer.

**I plan to relocate from Los Angeles County to San Francisco County, but San Francisco County says they don't allow base year value transfers from another county. I thought there was a law that allows that.**

The law that allows for transfers of base year value between counties merely authorizes each county board of supervisors to adopt an ordinance accepting transfers from other counties. It is the discretion of each county to allow such intercounty transfers. The county in which your replacement property is located must have an ordinance that accepts intercounty transfers. It does not matter what county in California your original property is located in.

**Will the transfer of an original property or acquisition by gift or devise qualify under section 69.5?**

A property that is given away or acquired by gift or devise will not qualify because nothing of value was exchanged. Section 69.5 requires a "sale" of the original property and a "purchase" of

a replacement dwelling. Sale and purchase are statutorily defined as a change in ownership for consideration. This is a two-part test:

(1) the property must be subject to change in ownership and (2) something of value must be exchanged for the property.

**I co-own and live in a house shared with another co-owner. Can we sell this original property and each still qualify for the claim if we both buy separate replacement dwellings?**

No. Only one of you can receive the benefit. Assuming you both qualify, you must decide between yourselves who will get the benefit. Only in the case of a multiple unit original property where several co-owners qualify for separate exemptions may portions of the factored base year value of that property be transferred to several replacement dwellings.

If an original property has a separate living unit on the property (i.e. in the back or over a detached garage), what portion or value of the original property will qualify to determine qualification of the replacement property?

If the original property has a separate living unit that is used as a rental, its full cash value would be allocated between the main residence and the rental unit and only the value of the unit the claimant occupies would be compared to the value of the replacement dwelling. The factored base year value being transferred would be adjusted for both the separate unit and that portion of land used to support the second unit. A unit would be considered separate from the main residence if it has its own kitchen, bathroom facilities, and entrance and is used for purposes incompatible with the homeowners' exemption.

The market value of the separate living unit (land and improvements) would be deducted from the market value of the total property. Only the amount of the indexed base year value allocated to the original residence would be transferred.

If, however, the separate living unit is used solely as a guest house, it may be considered part of the principal residence and the full cash value of the entire property may be transferred to the replacement property, even if the new property does not have such a separate living unit.

**A few years ago I inherited a residence from my mother. I filed for and received the parent-child exclusion. In a couple years after I turn age 55, can I sell this property and transfer my mother's base year value to another property that I purchase?**

Yes, as long as you have moved into the inherited residence and live in it as your primary place of residence. If you are over age 55, you may sell your primary residence, buy another residence, and transfer the base year value as long as all the other requirements (timing, value, residency, timely filed claim) are met. It does not matter how you acquired your original property.

**Do I need to be receiving the homeowners' exemption on my original property when it is sold?**

No. The original property must be eligible for the homeowners' exemption because you own it and because it was your principal place of residence, either

1) at the time of its sale or

2) within two years of the purchase or new construction of the replacement dwelling. If you did not have the homeowners' exemption on your property, you may need to provide documents to the assessor that prove it was your principal place of residence. Proof of residency may include voter or vehicle registration, bank accounts, or income tax records.

**I purchased three units in a six-unit building and I intend to use all three as my principal place of residence. Can I transfer the base year value to all three units?**

The transfer would be granted only if physical construction is undertaken to convert multiple units into a single merged unit. The construction must be completed within two years of the sale of the original property. In addition to a traditional single family residence, the original or replacement property may be a single unit in a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development.

**I purchased a replacement home for \$200,000 last year but did not sell my original home at that time. The market has slowed down since then and now I am only getting offers for \$185,000 although I expected it to sell it for more than what I paid for my replacement property. What can I do to qualify for the base year value transfer now?**

Since the property you purchased for \$200,000 did not meet the requirements of section 69.5, you did not use the one-time-only benefit and you are paying taxes on the market value of the \$200,000 home. You may purchase another qualifying replacement property, but it must be within two years of the sale of your original home to benefit from the lower base year value.

**If a replacement home is newly constructed, what is the date of completion?**

The date of completion of a newly constructed replacement home shall be the date that the property has been inspected and approved for occupancy by the local building department, or, if there is no such inspection and approval procedure, when the prime contractor has fulfilled all of the contractual obligations. If inspection and approval procedures are non-existent and there is no prime contractor, the date of completion is when outward appearances clearly indicate it is immediately usable for the purpose intended.

The construction on replacement property must be completed within two years of the sale of the original property to qualify for Proposition 60/90/110 tax relief. The replacement lot may be purchased any time, but completion of the construction on the lot must occur within two years of the sale of the original property.

**Is there any extension of the two-year period after I sell my home if construction on my new home is delayed due to unforeseen circumstances beyond my control?**

Regardless of the reason, if the new construction is not completed within two years, the property will not qualify for property tax relief. There is no provision for exceptions due to hardship or other factors which may have prevented compliance with the two-year time period from the date of sale of the original property.

**If I make an improvement to my replacement home after I transferred the base year value to it, can I get additional tax relief for the new construction?**

Yes, provided (1) the construction is completed within two years of the sale and (2) the full cash value of your new construction plus the market value of your replacement home when purchased does not exceed the market value of the original property as determined for the original claim. You must notify the assessor in writing within 6 months after completion of the new construction.

**I purchased a lot six years ago with the expectation of building my retirement home. I plan to start construction next year. If construction is completed within two years of the sale of my original home, will the new home qualify for the base year value transfer?**

Yes. The date of your lot purchase has no bearing on the qualifying time period for base year value transfers. Section 69.5, subdivision (h)(1) provides that a base year value shall be transferred as of the latest qualifying date:

- the date the original property sold;
- the date the replacement property is purchased;
- the date the new construction of the replacement property is completed.

Thus, if your new home is completed within two years of the sale of your original home the time period requirement will be satisfied.

The full cash value of the lot and improvements as of the date of completion of new construction must be equal to or less than the full cash value of the original property as of the date of sale.

I purchased and moved into another residence in March 2003 and completed an addition on it in September 2003. I rented my original property and then sold it in July 2005. Can the base year value be transferred to the replacement property?

No. Over two years have elapsed since the time you purchased your replacement property and when you sold your original property. The completion of the addition was within two years but it is not a qualifying date for the tax relief.

**If I purchased a lot five years ago and completed building my own home this year, how is the new construction valued? For base year value transfer purposes, is there a separate value for the land as of the date of purchase for value comparison?**

The full cash value of the land and completed improvements must be determined as of the date of completion of new construction. This is not a simple summation of the (factored) purchase price of the lot plus construction costs.

**I owned and lived in a home that was destroyed in a fire in April 2000. It had a full cash value of \$650,000 and I received \$300,000 in insurance proceeds for it. I eventually sold it in February 2004 for \$250,000 still in its damaged condition. I then found a replacement home in January 2006 for \$700,000. Can my new house qualify for section 69.5 tax relief?**

Yes, your new house qualifies since your replacement home is 110 percent or less than the fair market value of your original home (plus inflationary factoring of 2 percent or less per year between the time of fire and when you purchased the replacement property). Additionally, to qualify, it is assumed that you were 55 when your original property was sold and that the damage was more than 50 percent of its full cash value immediately before the fire.

The base year value to be transferred is the original property's factored base year value just prior to the fire plus inflationary factoring for the period between the fire and the purchase of the replacement property.

**I purchased a replacement dwelling in March 2004, which the assessor reappraised as of April 1, 2004. I received two supplemental assessment bills; one for the remaining three months of the 03-04 fiscal year, the other for the entire 04-05 fiscal year. My original property later sold in November 2004 and I filed a claim to transfer the base year value. Is**

**the date of transfer the date I purchased the replacement dwelling? Wouldn't the supplemental assessments be included in the transfer?**

Assuming you meet all the qualifications of section 69.5, the base year value is transferred as of the latest qualifying date:

- the date the original property sold;
- the date the replacement property is purchased;
- the date the new construction of the replacement property is completed.
- In your case the base year value should be transferred as of November 2004 because that is the latest qualifying date.

You are responsible for the increased taxes from the time the replacement property was purchased until the original property was sold. Thus, any supplemental assessments on the property prior to your November purchase must be paid. The difference between the new base year value and the transferred base year value from November to the end of the fiscal year should be cancelled or refunded.

**How do I file for Proposition 60/90 tax relief?**

After both transactions are complete, an application must be filed with the county assessor where the replacement property is located. The claim form, BOE-60-AH, Claim of Person(s) at Least 55 Years of Age for Transfer of Base Year Value to Replacement Dwelling, may be obtained from the assessor's office. Some counties offer a downloadable form from their internet website, which can be accessed via the Board's website: /proptaxes/assessors.htm.

**Can I still be granted the exclusion if I file after the three-year filing period?**

Yes, as of January 1, 2007, a claim that is filed after the three-year filing period may receive the benefits commencing with the lien date of the assessment year in which the claim is filed. Retroactive benefits from the date of transfer will not be granted. The full cash value of the replacement property in that assessment year shall be the base year value from the year in which the property was transferred, factored to the assessment year in which the claim is filed. The factored base year value of any new construction which occurred between the date of sale and the date the prospective relief is being applied should also be added.

**The assessor's office denied my base year value transfer claim because they indicated that my replacement property has a higher value than my original property. Can I appeal?**

Yes. If you do not agree with the full cash value that was placed on the original property and your claim was denied because the replacement property did not meet the value comparison test, the appeals board would have to determine the full cash value of the original property for purposes of qualification. An appeals board has the jurisdiction to hear such an appeal if:

- 1) the original property is located in the same county as the replacement dwelling and
- 2) the new base year value of the original property can still be challenged pursuant to section 80 of the Revenue and Taxation Code.

Appeals can be filed with the county assessment appeals board either within 60 days of the date of mailing of the assessment notice (section 1605) or during the regular equalization period (section 1603). A base year value may be appealed during the regular equalization period for the year in which it is placed on the assessment roll or in any of the three succeeding years.

After receiving the notice that my application has been approved for a base year value transfer, will I receive a refund of the taxes I already paid?

Yes, any overpayments you made will be refunded for the period following the effective date of the base year value transfer (i.e., the latest qualifying transaction).

I still have questions about Propositions 60/90. Where can I find more information?

If you still have questions about Propositions 60/90, you may find the answers in Letter To Assessors No. 2006/010 or, you may call the Assessment Services Unit at 916-274-3350.