



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
**County Counsel**



**DATE:** September 14, 2015  
**BOARD MEETING DATE:** September 22, 2015  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors

**FROM:** John C. Beiers, County Counsel

**SUBJECT:** *Amicus Curiae* support for County of Los Angeles in appeal of 926 North Ardmore Ave. v. County of Los Angeles (2014) 229 Cal.App.4<sup>th</sup> 1335 to the California Supreme Court.

**RECOMMENDATION:**

Approve joinder in *Amicus Curiae* briefing to the California Supreme Court in the matter of 926 North Ardmore Ave. v. County of Los Angeles to support the County of Los Angeles' position that counties may impose documentary transfer tax under Revenue & Taxation Code §11911 on transfers of interest in legal entities that own real property.

**BACKGROUND:**

The County of Los Angeles seeks *Amicus Curiae* support from California Counties in the appeal to the California Supreme Court of 926 North Ardmore Ave. v. County of Los Angeles (2014) 229 Cal.App.4<sup>th</sup> 1335 ("Ardmore"). *Amicus* briefing is requested to support its position that documentary transfer tax may be imposed on transfers of interest in legal entities that own real property. The documentary transfer tax, Revenue & Taxation Code §11911 *et seq*, provides for an excise tax on the transfer of real property. San Mateo County Ordinance 2.93 and the Revenue & Taxation Code impose the tax on "each deed, instrument or writing by which any lands, tenements, or other realty sold within the County of San Mateo" is transferred or conveyed. Our County has long held that this includes the transfer of interest in a legal entity that holds title to real estate. In the *Ardmore* case, the partnership was the sole member of an LLC that held title to the real estate. When the partnership entity changed legal ownership the transfer tax was imposed on the value of the real property held by the LLC.

**DISCUSSION:**

The question posed to the Appellate Court was whether the Recorder is permitted to impose a documentary transfer tax based on the transfer of more than 50% of the interest in a partnership that was the sole member of an LLC that held title to realty. Ardmore argued that a documentary transfer tax may only be applied to "realty sold"

which it claims does not generally include sales of legal entities that own companies that hold title to realty. The County argued that “realty sold” under the transfer tax statute should have the same meaning as “change in ownership” for property tax purposes. The Appellate court upheld the County’s interpretation that a documentary transfer tax applies to the transfer of legal entities. The court also agreed that when determining whether a particular transaction qualifies as “realty sold” within the meaning of Revenue & Taxation Code §11911 the courts may look to definitions of change in ownership as set forth in the property tax provisions. The Supreme Court has undertaken review of this decision. Several counties are joining in support of the Appellate Court’s interpretation that would require payment of transfer tax for legal entity transfers that meet the definition of change in ownership under property tax law.

We recommend joining in the *Amicus Curiae* support for the Appellate Court interpretation as any other result will allow legal entities to structure transactions so as to permanently avoid transfer tax despite multiple transfers of real property among legal entities

**FISCAL IMPACT:**

There is no fiscal impact to the County by this joinder in *Amicus Curiae*. The fiscal impact of a reversal of the Appellate Court decisions is unknown at this time.