

## **Final Report: Private Transfer Taxes Task Force**

September 16, 2008

The task force was appointed in April with the following charge:

### Mission Statement:

The mission of the Private Transfer Tax Alternatives Task Force is to:

1. Review the final report of the Private Transfer Tax Task Force which summarizes the problems associated with the imposition of private transfer taxes (PTTs) on homebuyers. Generally, PTTs require payment of a “fee” which is a percentage of a home’s sale price by every buyer who purchases the home.
2. Determine what type of restrictions should be placed on PTTs to regulate their imposition on homebuyers.
3. Make recommendations as to what, if any, legislation C.A.R. should sponsor with regard to regulating PTTs.

### Members:

Heath Hilgenberg, Chair  
Larry Fargher  
Brian Holloway  
Leslie Munger  
Frank Nelson

### Meetings:

June 3, Sacramento.  
July 2, Conference Call.  
August 22, Conference Call.

**Executive Summary.** There is no political will within the legislature to prohibit the imposition of PTTs. Nor is there the will to place reasonable restrictions on their imposition. Other than marketplace considerations affecting their use, PTTs can continue to be imposed by developers because existing law does not prohibit their imposition. Expanding the purposes for which Mello-Roos districts may be formed to include the funding of environmental mitigation and/or affordable housing – the primary purposes for which PTTs are now imposed – would have the advantage of placing the funding derived via Mello-Roos districts for these purposes within the heavily regulated statutory structure that has been developed over the years. Mello-Roos funds, for

example, have to be spent to benefit the particular development in which they are collected as opposed to PTT funds where there is no requirement that the development in which the funds are collected be benefited. In fact, expansion of Mello-Roos in this manner could be tied to an outright prohibition on PTTs. Legislators may look more favorably on enacting a prohibition of PTTs if funding for environmental mitigation and/or affordable housing can be derived from another source – namely, via a Mello-Roos district.

The task force considered but, ultimately, rejected placing PTTs within the regulation provided by the Mello-Roos law. The task force members were troubled by two aspects of Mello-Roos: (1) unlike current PTTs which are imposed only at point of sale, the Mello-Roos payment obligation is imposed for a number of years and, thus, constitutes an on-going financial obligation, and (2) adding environmental mitigation and/or affordable housing to the list of services/facilities that can be funded via Mello-Roos could open the door to attempts to add other services/facilities that can be funded by Mello-Roos that provide little, if any, benefit to the homeowner.

In addition, the task force considered attempting to find a middle ground between the legislative measure to regulate the imposition of PTTs sponsored by C.A.R. and the bill sponsored by the California Building Industry Association. There were some common areas of agreement (for example, that private individuals be prohibited from establishing a PTT payment obligation on their own home) but there were also areas of wide disagreement (the total amount of the PTT payment obligation as a percentage of the home sale price, as well as the number of years over which payment could be required of new owners of the home). Ultimately, the task force decided that any compromise in this area may result in increases in the amount of PTT obligations above that which is currently being seen. In other words, placing any limit on, for example, the amount of the PTT may cause builders to move up to that limit.

**Problems.** The task force identified the following problems with regulating the imposition of PTTs:

1. A lack of political will in the legislature to prevent the imposition of PTTs or to regulate their imposition.
2. Placing limits on the imposition of PTTs may result in PTTs moving up to those limits.

**Possible Solutions.** The task force considered the following possible solutions:

1. Regulating PTTs by bringing them within the Mello-Roos statute.
2. Regulating PTTs by way of a separate statutory scheme that includes placing limits on the amount of the PTT as well as on the number of years during which the PTT can be imposed on new buyers of a home.

**Evaluating Solutions.** The task force used the following principal to evaluate possible solutions:

A proposed course of action to regulate the imposition of PTTs should be taken only if it (1) will significantly curtail the imposition of PTTs, and (2) is politically feasible.

**Recommendations.** The task force made the following recommendations, that C.A.R.:

1. Take a “wait and see” attitude with regard to sponsoring legislation to prevent or regulate the imposition of PTTs. Specifically, the sponsorship of any such legislation should occur if the makeup of the legislature changes significantly enough that it is politically feasible that the legislation will win approval.