

USE CAUTION WHEN TRANSFERRING PROPERTY TO A RELATED ENTITY

In 1994, the State of Michigan adopted a sweeping change to property taxation. Among other things, the amount that property taxes could rise in any one year was "capped" at 5% or the inflation rate, whichever is less. Thus, if the assessed value of the property increased by 10%, but the rate of inflation was only 2%, the taxable value of the property would only increase by 2%, and there would be a spread between true cash value (also known as state equalized value) and taxable value. As property values rise more quickly than the inflation rate, the spread becomes even greater year after year. This spread disappears, however, when the taxable value is "uncapped." That is, upon an uncapping, the true cash value becomes the taxable value. Therefore, property owners would be well advised to avoid an uncapping if at all possible.



An uncapping occurs in the year following a statutory transfer of ownership. There are several exceptions to the uncapping rules, and one of them was at the center of a recent dispute decided by the Michigan Court of Appeals. In Puppy's Cubby v City of Farmington Hills (Dkt. 347757, September 12, 2019), the Court was faced with a situation where a rental home was owned by husband and wife as tenants by the entirety. They decided to transfer ownership of the home to a limited liability company owned solely by the husband. The City of Farmington Hills notified the homeowners that it was "uncapping" the taxable value of the home because of this transfer of ownership. The homeowners contended that one of the exceptions to uncapping, MCLA §211.27(a)(7)(m), applied to this situation. That provision exempts transfers of real property among "commonly controlled" legal entities.



The Court of Appeals rejected the homeowners' contention. The Court noted that because the home was owned by husband and wife as tenants by the entirety, neither the husband nor the wife could dispose of the property without the consent of the other, and thus they shared control of the home. After the conveyance to the LLC, which was solely owned by the husband, only the husband had control of the home. Therefore, this transfer was not between "commonly controlled" entities, and the taxable value was properly uncapped.

The key to this case is that the homeowners conveyed the property directly from husband and wife to the LLC. Had they instead conveyed the property first to the husband (which would be an exempt transfer), and then by a second deed from the husband to the LLC, they would have avoided uncapping. Also, had the wife been a 50% member of the LLC, the "commonly controlled" exemption should have applied as well, therefore avoiding uncapping. If you are considering conveying real property to a related entity, you should consult with [Phil Neuman](#) or [Gregg Nathanson](#) or any of the [real estate attorneys](#) at Couzens Lansky in order to minimize the possibility of an uncapping of the property's taxable value.