



STOP ULA THE UNFAIR LA TAX

Support the Legal Fight to Have the Tax Invalidated in Court





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Overview

LA voters passed Measure ULA in November 2022 which imposed a new “*Homelessness and Housing Solutions*” tax on all real estate sales transactions in the city for over \$5 million. Though it is now commonly referred to as the “**Mansion Tax**,” it applies to all residential, commercial, and land transactions. The Initiative was proposed by, among others, labor unions seeking to extract the equity from your properties, comprising 4% of all gross proceeds of sale (with no deduction for indebtedness) for properties of over \$5 million and 5.5% of all gross proceeds of sale for properties of over \$10 million.

The revenue is to be used to build housing for the homeless utilizing union contracts at union wages. It aims also to strengthen tenants’ rights against landlords, providing legal assistance to fight their landlords, thus making it more difficult for landlords to collect rent and evict tenants who do not pay.





The Case Against ULA

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Any legal challenge to the tax had to be filed within 60 days of the election, i.e. by January 7, 2023. Because the time to challenge was so short and expiring shortly after the holidays, it was very challenging for parties and law firms to file a lawsuit. We, the attorneys, took the initiative, in the names of two plaintiffs who had standing to sue and consented to be so named, to prepare both a Complaint in Federal Court and state court.

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We filed them with the hope that if we jumped into the fray to make sure that a timely challenge was filed, the greater LA real estate community who are the real beneficiaries of this litigation would join together with us to provide the financial backing for it.

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To date we have vigorously litigated these two cases, advancing from our own pockets all legal services and costs starting in November 2022 in the amount of approximately about \$800K to date. The state complaint has survived demurrer and we are now opposing motions for judgment on the pleadings. The federal case is awaiting the judge's ruling on the City's and the Unions' motions to dismiss which were heard on May 1, 2023.

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Our state case has been consolidated with the only other legal challenge to the tax (Howard Jarvis Taxpayers Association and Apartment Association of Greater Los Angeles v. City of Los Angeles). Our two state and federal cases allege 17 state and federal causes of action. The Howard Jarvis complaint alleges, essentially, only one state cause of action (which our Complaints also allege), making our state and federal complaints the primary challenge to the tax.



OUR ONLY CHANCE

These cases are the LA real estate community's only chance to challenge the legality of this travesty initiative. It not only imposes an exorbitant and very unfair tax on our \$5 million+ real estate sellers, it makes it harder for landlords to collect rents, and threatens the long term vitality of the real estate industry in LA by encouraging investors, builders, lenders, landlords, and others to look elsewhere for their prospective new projects and purchases. It will also encourage municipalities everywhere to impose similar exorbitant taxes, which could become the new "norm," and may encourage LA to later increase the ULA taxes and further weaken landlord's rights.

We estimate to take the cases through trial (*there may ultimately be only one case, i.e. either state or federal but not necessarily both*) it will cost approximately \$3 million to \$4 million. If the cost of this litigation is spread among all affected by the ULA, it would be miniscule to each participant, particularly when compared to the estimated \$800 million to \$1.2 billion per year the City has projected it will collect from this unfair tax from those same people.



Understanding the ULA



The ULA

The ULA is a new LA City Ordinance passed by voter initiative pursuant to the November 8, 2022, general election. The ULA prescribes, effective April 1, 2023:

- (a) all real properties sold in the City of Los Angeles (the “City”) having a value of over \$5 million to \$9,999,999 shall require payment to the City of an additional, special “Transfer Tax” of 4% of the gross sales prices of such properties (without regard to existing encumbrances), and
- (b) all real properties sold in the City having a value of \$10 million or more, shall require payment to the City of an additional, special Transfer Tax of 5.5% of the gross sales prices of such properties (without regard to existing encumbrances).



ULA's Impact on Property Owners

Virtually every piece of real property in the entire city of LA valued at \$5mm or more has suffered a loss in value of 4 to 5.5%. It does not matter when the real estate was bought, what type of property it is, and whether you sell it for a profit or a loss.

For instance:

- If you own a home, land, or commercial property worth \$5mm, the effective value of it just dropped \$200K because that is the tax you must now pay when you sell it.
- If you own a home, land, or commercial property worth \$10mm, the effective value of it just dropped \$550K because that is the tax you must now pay when you sell it.
- If you own a large apartment, retail, or office building worth \$100 million, the effective value just dropped \$5.5 million because that is the tax you must pay when you sell it.



ULA impact on the LA Real Estate Market

Any person or entity considering developing property in LA now has a significant disincentive to do so. Why develop in LA when you can develop in any number of surrounding cities or counties which have no such tax, such as Inglewood, West Hollywood, Long Beach, Malibu, Burbank, Pasadena, Orange County, Ventura County, or Riverside County? LA has a significant homeless problem and housing shortage. This law will clearly exacerbate that problem by disincentivizing development.





ULA Impact on the Homeless Problem



The bulk of the tax revenue generated must be spent on housing for the homeless. LA already imposed a sales tax on everything sold in LA to raise billions to build housing for the homeless. The number of homeless has only increased. The logic that if you build housing for the homeless in LA, homelessness in LA will decrease, is simply wrong. The more you incentivize homelessness in LA, the more it grows in LA. LA has now created a very attractive lure for homeless persons to come to LA from all parts of the globe. In fact, since the sales tax was passed over five years ago homelessness has gone up, not down, in LA.

While everyone recognizes that homelessness is a human tragedy, which must be ameliorated, it is a statewide and nationwide problem, not merely a LA problem. Its solution can only take place by a coordinated effort on the part of state and federal authorities, utilizing the vast resources of statewide and federal tax proceeds, working hand in hand with the various affected municipalities throughout the country. It cannot and should not be solved by laying the entire cost upon the shoulders of a limited number of LA property owners, unfairly labeled by the proponents of the ULA as “millionaires and billionaires” who “don’t pay their fair share,” simply because they own properties worth \$5 million or more.

ULA Impact on Landlords

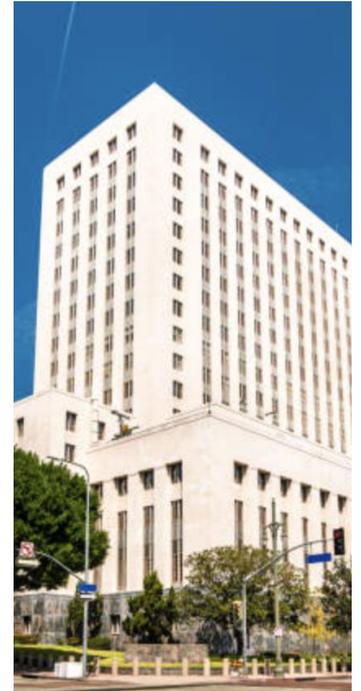
The rest of the money raised by the ULA is earmarked to help people facing eviction from their apartments by landlords. This is another misguided use of tax revenue. The thinking is that if you make it harder for landlords to evict tenants, there will be less unhoused people. The unintended effect, however, is that landlords will refuse to rent to people unless they have perfect credit, minimum annual revenue, and minimum net worth. This will make it much harder for people to find apartments. It will also disincentivize apartment developers to build more product to alleviate the shortage of housing that contributes to keeping the rents so high and unaffordable to so many.



The Lawsuits

There are only three cases challenging the ULA tax, two in state court and one in federal court. Any legal challenge had to be filed within 60 days of the election which expired on January 7, 2023. This required the attorneys who did file these cases to do significant work during the holidays if they were to challenge the law at all. Only three law firms took on the challenge. One was the in-house attorneys for the Howard Jarvis Taxpayers Association and Apartment Association of Greater Los Angeles, non-profits with paid staff attorneys. This case was filed only in state court with essentially only one legal claim. (Howard Jarvis Taxpayers Association and Apartment Association of Greater Los Angeles v. City of Los Angeles)

The other two cases were filed in a cooperative effort by The Law Offices of Keith M. Fromm and Costell & Adelson Law Corporation who, together, filed the other two cases, both entitled Newcastle Courtyards, LLC, and Jonathan Benabou, as Trustee of behalf of The Mani Benabou Family Trust et al. v. City of Los Angeles, County of Los Angeles et al., one in state court and the other in federal court, and include, together, seventeen legal claims. We can provide copies of the complaints upon request.





The Attorneys





ATTORNEY

Law Offices of Keith M. Fromm

Law Offices of Keith M. Fromm is a law firm founded in 2001 by its namesake, Keith M. Fromm, who has been an attorney in California since 1977. He previously practiced real estate law at two prominent national firms in LA (Loeb and Loeb and New York based Finley, Kumble, Heine, Underberg and Manley). He is also a licensed real estate broker, real estate developer, and litigator.

Of particular note, highly pertinent to the instant ULA lawsuits, is that Mr. Fromm was the lead litigation attorney in two successful trials in 2003 against the City of Pacifica, one in state court and one in federal court, for violations of his client's 5th Amendment and 14th Amendment constitutional rights, rights that are also claimed in the ULA lawsuits to have been violated by the passage of the ULA. One of the attorneys whom Mr. Fromm opposed in those Pacifica trials was none other than Kevin D. Siegel, who is currently representing the City of Los Angeles in its defense in these ULA cases.



ATTORNEY

Costell & Adelson Law Corporation

Costell & Adelson Law Corporation: Founded in 1993 by its principal attorney and C.E.O. Jeffrey Lee Costell, the Firm is an established, full-service business law firm specializing in real estate, commercial, corporate, and entertainment transactions and litigation.

Of particular note is that the Costell firm recently, successfully, sued the Coachella Valley Water District in reverse validation actions similar to the ULA actions at bar and proved constitutional violations by such agency, similar in nature to those claimed in the instant ULA actions. Those cases involve tens of millions of dollars in potential damages.





The Legal Arguments

The federal court complaint sets out our complete set of claims, as follows:





FIRST CLAIM FOR RELIEF

(Violation of Equal Protection)

The ULA violates both the 14th Amendment of the United States Constitution and the Equal Protection Clause of the California Constitution because, as held in *Stewart Dry Goods Co. v. Lewis*, 294 U.S. 550 (1935) (“Stewart”), a tax, as here, based on gross sales rather than net income is an arbitrary and irrational metric for determining the ability to pay a tax.

A property owner who sells for \$2 million a property that is unencumbered with debt will have far more net proceeds from a sale than a property owner who sells a \$5,000,001 property having an 80% mortgage.

One property owner could sell five single family homes individually for \$4 million each for total gross sales of \$20 million and pay nothing, while another could sell one apartment building for the same \$20 million and be liable for a tax burden of \$1,100,000.

A property owner who owns a ten-unit condominium building could sell the individual units for \$1,100,000 each, for a total of \$11 million and pay no ULA taxes, but if he sells the very same building in bulk for half that price (\$5,500,000), he will owe the ULA tax of \$220,000.

A landowner who subdivides his land into ten parcels which he sells for \$1,100,000 each, for a total of \$11 million, pays no ULA taxes. If he sells the entire parcel for half of that price (\$5,500,000), he pays the ULA taxes.

One property owner could own five adjacent apartment buildings each having a different assessor’s parcel number and sell each of them individually for \$4 million apiece, for an aggregate gross sales price of \$20 million and pay nothing under the ULA, while his neighbor next door may own five identical apartment buildings on one lot, having one assessor’s parcel number and be liable for \$1,100,000 in ULA taxes.

Two property owners may have bought identical houses next door to one another. One property owner may have taken on debt to improve his house. The other did not. The one with the debt may have boosted the sales price of his house to \$5,000,001 because of the debt and work he took on to improve his house. The debt free house next door sells for \$4,900,000. The indebted seller has to pay ULA taxes, the debt free one does not.

Many properties in the \$5,000,001 plus property sub-class, particularly office buildings and shopping centers, are owned by the pension and retirement funds for working class persons such as teachers, police and firefighters, who are far from being either billionaires or millionaires and, who, individually cannot afford to pay the ULA taxes.



SECOND CLAIM FOR RELIEF

(Violation of Equal Protection)

The ULA also violates the Equal Protection requirements of uniformity and apportionment. The California Court of Appeal has stated: “Principles of equal protection require ‘that persons who are similarly situated receive like treatment under the law.’”

The \$5 million cut-off is clearly an arbitrary figure. If a seller sells for one dollar above the cut-off the seller pays taxes of hundreds of thousands of dollars, whereas if one dollar below it the seller pays nothing.



THIRD CLAIM FOR RELIEF

(Violation of Article 1, Section 10, of the U.S. Constitution)

Article 1, Section 10, of United States Constitution, applicable to the states, prohibits “ex post facto” laws (i.e., laws that have retroactive effect).

Before the ULA came into existence, perhaps many years before, the owners of such properties had relied upon the value of such properties without regard to an unforeseen, indeed, unforeseeable subtraction of 4% or 5.5%, as the case may be, of the gross value as a ULA tax, in planning their business affairs and reasonable investment backed expectations such as (a) whether to even buy the property in Los Angeles, (b) whether to pay monies to improve it, and (c) whether and how much to borrow against it to either acquire it or improve it.



FOURTH CLAIM FOR RELIEF

(Violation of Article XIII A, Section 4, of California Constitution)

The ULA is invalid because it violates Article XIII A, Section 4, of the California Constitution, aka Proposition 13, which imposes limits on the ability of local governmental entities to enact new taxes.

It expressly prohibits a transaction tax or sales tax on the sale of real property within such City, which is exactly what the ULA is and/or purports to be.



FIFTH CLAIM FOR RELIEF

(Violation of Cal. Government Code Section 53725)

Government Code section 53725 states: “Except as permitted in Section 1 of Article XIII A of the California Constitution, no local government ... may impose any ad valorem taxes on real property. No local government ... may impose any transaction tax or sales tax on the sale of real property within the city, county or district.”

The ULA is invalid because it violates section 53725 because the reduction of homelessness is a statewide concern as is the (retroactive) impairment of the security of real estate loans issued and/or insured and/or guaranteed by federally chartered lending institutions, federal agencies and/or federally sponsored agencies.



SIXTH, SEVENTH AND EIGHTH CLAIMS FOR RELIEF

(Governmental Taking Without Compensation)

The ULA is a disguised exaction which constitutes a taking under the Fifth Amendment of the United States Constitution and the California Constitution without just compensation, which neither bears any essential nexus with the purpose of the ULA to reduce homelessness, nor any reasonable proportion to the creation of homelessness by the sale of a property for more than \$5 million or the registration of a deed of sale.

The ULA lacks both an essential nexus to the creation or reduction of homelessness and lacks any rough proportionality to the creation of homelessness by the sale of either a property for more than \$5 million or the registration of a deed for such sale.

The money demanded under the ULA is so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property.



NINTH CLAIM FOR RELIEF

(Violation of Freedom of Speech)

The ULA violates the freedom of speech guarantees in both the United States Constitution and the California Constitution because it imposes an unreasonable burden on some property owners' rights to give public notice of the title to their property.

The purpose of the recording of deeds is to give public notice of the ownership of properties to all of the world. The imposition of an exorbitant charge in a minimum amount of at least \$200,000 and possibly millions of dollars upon those few persons who are sellers of properties within the \$5,000,001 plus property sub-class in order to merely exercise their right of free speech to give public notice of the ownership or transfer of ownership of their properties is an unconstitutional abridgment of such protected right of free speech.



TENTH CLAIM FOR RELIEF

(Violation of Substantive Due Process)

The United States Constitution and California Constitution ensure the right to substantive due process. As noted by the California Court of Appeal, “[t]he substantive due process doctrine thus acts as a limitation on unreasonable and arbitrary legislation.” *California Rifle & Pistol Assn. v. City of West Hollywood*, 66 Cal.App.4th 1302, 1330 (1998).



ELEVENTH CLAIM FOR RELIEF

(Unlawful Delegation of Authority)

Under the doctrine of separation of powers, the lawmaking function is assigned to the legislature which it cannot delegate to any other agency. (Kugler v. Yocum, 69 Cal. 2d 371, 375 (1968)), Here, the delegation of power through the passage of an initiative measure is exactly what has occurred. The ULA unconstitutionally delegates lawmaking power as discussed above.



TWELFTH CLAIM FOR RELIEF

(The ULA is Unconstitutionally Vague)

“[A] statute will be deemed void for vagueness if it either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess as to its meaning and differ as to what is required.” *Nisei Farmers League v. Labor & Workforce Development Agency*, 30 Cal.App.5th 997, 1013 (2019).

The ULA leaves many questions unanswered. For instance, the procedure and criteria for issuing exemptions from the ULA tax is undefined and non-existent. It is left to be made “according to a procedure that will be promulgated by the Los Angeles Housing Department, or its successor agency.” The procedure and criteria, and perhaps even the agency, for issuing such exemptions does not even exist. An ordinance cannot get more vague than that.



THIRTEENTH CLAIM FOR RELIEF

(The ULA Violates the Commerce Clause)

Article 1, Section 8, Clause 3 of the U.S. Constitution gives Congress the power “to regulate commerce...among the several states...” The sheer magnitude of the ULA tax of 4.0% to 5.5% of the gross proceeds of sale of property comprised in the \$5,000,001 plus sub-set retroactively impairs the loan to value ratios and, thereby, impairs the security of real estate mortgage loans and devalues such loans that have been issued by federally regulated lending institutions and/or that have been issued by, insured and/or guaranteed by federal agencies.



ADDITIONAL CLAIMS FOR DECLARATORY RELIEF AND A WRIT

The complaint makes additional claims, including that the City exceeded its jurisdiction and authority in imposing costs, responsibilities and obligations upon LA County regarding the ULA Tax by making it responsible for the collection despite it receiving no benefit from the tax.





Present Status of Litigation

State Case: The County of LA filed a demurrer to our complaint. After we filed an opposition to the motion the County withdrew the motion. Our case has been consolidated with the Howard Jarvis case. The County and City have since answered the complaint and filed motions for judgment on the pleadings. The motions are set to be heard on September 26, 2023. The motions provide numerous substantive objections to our claims which we are vigorously opposing.

Federal Case: The City and the proponents of the ULA have filed motions to dismiss the case. We have filed oppositions. The parties conducted oral argument on these motions on May 1, 2023, whereupon the Court asked for supplemental briefing which was completed on May 9, 2023. We are awaiting a ruling on the motions.



Projected Litigation Cost

We estimate that the total cost (attorney fees, experts, expenses) to prosecute both the federal and state court cases through trial will be about \$4 million. Litigation is unpredictable so naturally this is only an estimate.

We have already incurred about \$800K in legal fees and expenses through the first 6 months of litigation.





The Ask

We appreciate a contribution in any amount to this incredibly important cause. We have prepared the following guidelines to consider in deciding an amount to contribute.

Holders of commercial real estate valued at \$5 million or more: We suggest a contribution of a mere 2% of the tax to which your properties are now subject due to the ULA.

For instance:

- \$5 million property owner subject to a 4% transfer tax of \$200K upon future sale would contribute \$4K.
- \$10 million property owner subject to a 5.5% transfer tax of \$550K upon future sale would contribute \$11K.
- \$100 million property owner subject to a 5.5% transfer tax of \$5.5 million upon future sale would contribute \$110K.

For residential property owners we suggest contributing just 1% of the tax.

For property owners who have already sold properties subject to the tax, we suggest a contribution of 10% of the tax.

For entities that make significant fees from the sale of LA properties in excess of \$5 million, e.g., law firms, title companies, real estate brokers, mortgage brokers, and contractors, and real estate agents, we suggest a contribution of 5% of the average annual revenue received as a result of such transactions.

We also welcome contributions from anyone concerned about unfair taxes, bad homeless policies, and establishing a precedent that these so-called “tax the rich” schemes are unconstitutional.



HOW TO CONTRIBUTE

Contributions should be made to:

The California IOLTA Trust Account of the Law Offices of Keith M. Fromm

All contributions will be held in this account until dispersed for payment upon invoice for services rendered or expenses.

Payments may be made in the following ways:

By check made out to The Law Offices of Keith M. Fromm

By bank transfer to:

The Law Offices of Keith M. Fromm

907 Westwood Blvd., Suite 442

Los Angeles, CA 90024

Bank of America Account No. 3251 7868 3513

Bank of America Routing No. 121000358 for Paper & Electronic

Bank of America Routing No. 026009593 for Wires

A receipt will be provided upon receipt of the contribution, which may not be tax deductible. We offer no tax advice and suggest you consult with your tax adviser.



Thank you.

