

REAL ESTATE TRANSFER TAX REGULATION
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Pursuant to the authority vested in the Commissioner of Revenues by Section 4 of Act 401 of 1979, as amended, and in compliance therewith, the Commissioner of Revenues of the Department of Finance and Administration does hereby promulgate the following rules and regulations:

- I. Purpose – This regulation is promulgated to administer and enforce the provisions of Act 275 of 1971 as amended by Act 926 of 1985, Act 1063 of 1985 and Act 1081 of 1985.

- II. In addition to other exemptions, previously provided by law, the following transactions are, effective April 15, 1985, exempt from the Real Estate Transfer Tax imposed by Act 275 of 1971, as amended:
 - (1) Instruments given by one party in a divorce action to the other party to the divorce action as a division of marital property whether by agreement or order of the court. This exemption applies regardless of whether the instrument is in the form of a warranty deed, quitclaim deed or other instrument evidencing transfer of title to real estate. This exemption applies regardless of whether the parties agreed to the division. For purposes of this exemption the term “divorce” includes both divorce or separate maintenance.
 - (2) Commissioner’s deeds, sheriff’s deeds, trustee’s deeds or other similar instruments are exempt from the Real Estate Transfer Tax when that deed is given as a result of judicial proceedings to enforce a security interest in the same real estate which the instrument conveys. However, this exemption applies only if the instrument conveys the real estate to a party to the action who is seeking to enforce his security interest in the property conveyed.

Commissioner’s deeds, sheriff’s deeds, trustee’s deeds and other similar instruments given as a result of judicial proceedings to enforce security interests in real estate are not exempt when someone other than a party enforcing a security interest in the property conveyed purchases the property at the judicial sale. In this case, the tax must be paid and stamps must be placed on the deed reflecting the full amount of consideration.

Examples

Facts: Jane Doe bought property from Jim Smith. Jane gives \$100,000 as consideration for the property. She pays \$25,000 cash. She borrows \$50,000 from ABC Bank and gives them a note and 1st mortgage for this amount. She gives Jim Smith a note for the \$25,000 balance and a second mortgage. Several years later Jane becomes insolvent and fails to make her mortgage payments.

Example A: ABC Bank files suit to foreclose its mortgage. At the sale of the property the Bank bids the amount of its judgment, which is

the amount outstanding on the note plus costs for a total of 35,000. Jim Smith is made a party to the suit and his second mortgage is foreclosed as part of the proceedings but he cannot afford to bid. There are no other bids. ABC Bank receives a Commissioner's deed to the property in exchange for satisfaction of its judgment and the foreclosure of Jim Smith's second mortgage. No tax is due on the Commissioner's deed.

Example B: ABC Bank files suit to foreclose, naming Jim Smith as a party. The Bank obtains judgment against Jane Doe for \$35,000. Jim Smith obtains a judgment for \$20,000 against Jane Doe. To protect his mortgage Jim Smith bids \$40,000 for the property and is the highest bidder. Jim Smith receives a Commissioner's deed to the property in return for his payment of \$35,000 plus costs and satisfaction of his own judgment in the amount of \$5,000. No tax is due on the Commissioner's deed.

Example C: Assume the same facts as Example B except that Mary Jones bids \$55,000 for the property and is the highest bidder. Mary Jones had no interest in the property prior to the judicial sale. Mary Jones receives the Commissioner's deed to the property in return for her payment of \$55,000 plus costs. Tax is due on this Commissioner's deed. Stamps should be placed on the deed to show payment of tax on a consideration of \$55,000.

- (3) Any deed, whether warranty deed, quitclaim deed or other similar instrument, which transfers real estate to a party having a security interest in the same real estate, whether the security interest is given by mortgage, deed of trust or other similar instrument, are exempt from the tax when the instrument is given to avoid a foreclosure or other similar judicial proceeding to enforce the security interest.
- (4) Deeds, where warranty deeds, quitclaim deeds or other similar instruments, given by the purchases of real estate under a contract are exempt from the tax when the deed is given to the seller under the real estate contract to avoid judicial proceedings for rescission [sic] of the contract, cancellation of the contract, foreclosure or other similar proceedings.
- (5) Instruments conveying cemetery lots or cemetery plots or any other interests allowing the disposition of human remains are exempt from the Real Estate Transfer Tax.

III. On and after June 27, 1985, the clerk may accept a deed for filing without an affidavit as required by Section 4 of Act 275 of 1971, as amended, if the instrument contains or is accompanied by a statement in the following form:

“I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument.

Grantee or Grantee’s Agent

Grantee’s Address”

This statement may be stamped on the deed, typed or printed as part of the deed or attached to the deed. The statement shall be recorded by the clerk as though it were a part of the deed in such a manner that the statement will clearly appear in the records of the clerk. The statement must be signed by the grantee or his agent and the grantee’s address shall be clearly shown in such a manner as to cause it to clearly appear in the records of the clerk.

IV. This regulation shall be effective on and after October 1, 1985.

Witness our hands this 11th day of July, 1985

Mahlon Martin
Director
Department of Finance and Administration

Charles D. Ragland
Commissioner of Revenues
Department of Finance and Administration