

PENN ATTORNEYS

TITLE ALERT

DATE: 2/11/08

RE: Title Alert 2008-01

PA REALTY TRANSFER TAX

REALTY TRANSFER TAX – 61 PA. Code CH 91 – Amendments
– Effective December 15, 2007 (37 Pa. B 6516)

The PA Department of Revenue has amended several regulations governing the payment of realty transfer tax and taxable transfers. These new realty transfer tax regulations were effective upon publication of the new regulations in the Pennsylvania Bulletin No. 07-2306, December 15, 2007.

The amended portions of the regulations can be examined at:

www.pabulletin.com/secure/data/vol37/37-50/2306.html .

Please bear in mind that the liability for payment of transfer taxes lies with the parties to the transaction.

It is not the function of title insurance providers to offer advice or suggestions as to transfer tax liability, but only to insure that the instruments creating the interests to be insured will be accepted for recording.

The key consequences of some of the amendments which may affect title insurance practices are:

Subchapter G. Valuation – Section 91.132 – Assignment of Contract Transactions

A significant change deals with “combining” transactions in which an Agreement of Sale is assigned. Transfer tax will be imposed on the consideration paid for the assignment of a contract to acquire real estate, whether included in the stated consideration or not. That is, if the consideration on the Deed to the assignee is the original contract sale price PLUS the amount paid to the assignor for the assignment, transfer tax will be based on the Deed consideration; if the Deed consideration is only the original contract sale price, there will be additional transfer taxes for the assignment consideration.

- The regulations provide that the seller is liable for the transfer taxes based on the original contract sale price, presumably leaving the assignor and assignee/buyer liable for the additional amount.

Further discussion of this change and others, including detailed possible scenarios, can be studied at www.revenue.state.pa.us/revenue/lib/revenue/RTT_2008-01.pdf .

Section 91.153 – Principal and agent – #1031 Tax Free Exchanges

Transfers to and from Qualified Intermediaries (QIs) and Exchange Accommodation Title holders (EATs) **do not** qualify as excluded transaction under Reg. 91.193(b)(11) in effecting IRS §1031 like-kind exchanges. The amendments treat each transfer to and from the qualified intermediary as a separate, taxable event.

Section 91.154 – Transfers between entities & their stockholders, shareholders, etc.

Entities are separate from their stockholders, shareholders, partners and members. Transfers of title to real estate between entities and their stockholders, shareholders, partners and members, including transfers between a subsidiary and parent corporation, and transfers in consideration of the issuance or cancellation of stock are fully taxable, unless otherwise excluded. The new regulations affirm that recording a deed solely to confirm an entity's continuing real estate ownership following a conversion of the entity (e. g. conversion from L.P. to LLC) is not taxable, **provided that** there is no change in the underlying economic ownership of the entity.

Section 91.156 – Trusts

The amended regulations further codify the current practice.

- **Transfers to trusts – taxable** unless a direct transfer from the Grantor/Settlor to **all** possible beneficiaries/remaindermen of the trust would be excluded from transfer tax (e. g. children).
- **Transfers from trusts – taxable** unless transfer is for no or nominal consideration and is from the trustee to the beneficiary under the terms of the trust.

No transfer tax exemption will be granted under this section unless the transfer tax Statement of Value is accompanied by a copy of the Trust Agreement.

Section 91.168 – Sale & leaseback transactions – taxable unless the conveyance and lease are part of an excluded financing transaction under Reg. 91.193(b)(23). If title to real estate is conveyed on the condition that the real estate be leased back to the grantor, the document of conveyance is taxable, **AND**, the lease is taxable if it is for a term of 30 years or more.

As always, if you have any questions, please contact us.

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