

PENN ATTORNEYS

TITLE ALERT

DATE: 06/22/09

RE: Title Alert 2009-07

Inheritance Taxes and Attorney Guarantee Letters

When an owner of real property dies, his/her interest in the real property is subject to payment of inheritance tax based on the value of the real property at the time of his/her death and the relationship between the decedent and his/her beneficiaries, heirs, or transferees. In the past, it was common practice to accept a letter from the attorney handling the decedent's estate guaranteeing payment of any and all inheritance taxes that are due and owing on behalf of the estate. However, due to the Commonwealth's increased attempts to collect unpaid inheritance taxes, and the related increase in title claims, this practice is no longer acceptable.

As of July 1, 2009, Penn Attorneys will adjust the language on its commitment requirement concerning Inheritance Taxes to read as follows:

"Proof of payment of all open Inheritances Taxes due the Commonwealth of Pennsylvania and Estate Taxes due the United States of America in the Estate of..."

Proof of payment of the taxes is the Notice of Appraisalment from the Department of Revenue showing a zero balance. If an inheritance tax return was filed, the insured real property was included on the appropriate schedule of the return, and the taxes paid, the real property can be insured without exception for inheritance taxes owed to the Commonwealth.

If inheritance taxes have not been paid on the decedent's interest in the property, either because no return has been filed (even if an estimated tax payment has been made), or because the property was not included in the return, or because the Notice of Appraisalment has not been received, the following options are available to allow the property to be insured free of the lien for inheritance taxes (in order of preference):

- (1) **Obtain a payoff from the PA Department of Revenue**, Inheritance Tax Division, for the amount of tax attributed to the real property and pay that amount to the Register of Wills at settlement, for which the Dept. of Revenue will provide a release of lien upon receiving the payment receipt from Register of Wills (see attachment for the recommended process for obtaining the payoff); or
- (2) **Hold an escrow from the settlement proceeds** to cover the amount of tax attributed to the real property, plus one-half that amount as a buffer. See Title Alert 2008-08 for information about escrow agreements & holding escrows: http://www.pennattorneys.com/printable/title_alerts/2008-08.pdf.
- (3) **Submit an Inheritance Tax Guarantee**: The Inheritance Tax Certification form has been revised and is now titled "Inheritance Tax Guarantee" (See attached.) **Penn Attorneys will only accept a guarantee letter for inheritance taxes from an active Penn Attorney®.**

Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>

Penn Attorneys Title Insurance Co.

900 State Street, Ste 320 Erie, PA 16501

Tel 814-454-8278 or 800-352-2216

FAX 814-453-5983 or 1-800-234-2352

erie@pennattorneys.com

Recommended Process for Obtaining Payoffs from the Pennsylvania Department of Revenue, Inheritance Tax Division

As you may know, Penn Attorneys is a member of the First American family of companies. First American has worked with the Office of Chief Counsel of the Dept. of Revenue to come up with a system for obtaining inheritance tax payoffs and releases of liens. The following process has been authorized by the Office of the Chief Counsel:

Inheritance Tax payoff requests and questions regarding same should be sent to the attention of Sandra Kirk via e-mail at skirk@state.pa.us .

When filing the request, the following information should be provided:

1. Name of decedent
2. Date of death of decedent
3. Estate information (if any)
4. The current sale price of the property (or fair market value if a refinance)
5. The decedent's interest in the property (if less than 100%)
6. The relationship of the beneficiaries/heirs to the decedent
7. Payoff amounts of any mortgages on the property for which the decedent was a mortgagor

After receipt of complete information and review by the Department of Revenue, Inheritance Tax division, a payoff amount for the amount of tax attributable to the real property will be rendered.

Make payment of the payoff amount to the Register of Wills of the appropriate County. Get a receipt and forward a copy of same to skirk@state.pa.us .

Upon receipt of proof of payment, the Department of Revenue will provide a release of lien. The Approved Attorney can hold the release in his file or record it in the Register of Wills office. A copy of the release is to be submitted to Penn Attorneys as proof of payment of the Inheritance Tax so that the real property can be insured without exception for Inheritance Taxes owed to the Commonwealth.

As to Federal Estate Taxes: Penn Attorneys will continue to accept a letter from an estate's attorney confirming that the estate's value is not large enough to require payment of federal estate taxes for purposes of insuring free of the lien for federal estate taxes.

INHERITANCE TAX GUARANTEE

To: PENN ATTORNEYS TITLE INSURANCE CO.
900 State Street, Suite 320
Erie, PA 16501-1427

Penn Attorneys' File No.

From: _____
Approved Attorney with Penn Attorneys Title Insurance Co.

In Re: Estate of _____

Address: _____

To facilitate your issuance of Title Insurance Policies to: _____, OWNER, and to: _____, LENDER, concerning the above premises, I guarantee payment of any Inheritance Taxes due to the Commonwealth of Pennsylvania and any Federal Estate Taxes due to the United States of America in the above-captioned estate.

Dated: _____

APPROVED ATTORNEY:

Signature: _____

Name: _____