



Title Topics



May

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Short Sales by Non-Residents New GIT Procedure Announced May Eliminate Withholding Requirement

In response to the “recent increase in mortgage defaults in New Jersey” the New Jersey Division of Taxation has released a **Notice to Real Estate Closing Attorneys/Settlement Agents on Short Sales: GIT/REP-4 Waiver**.

In sum, the state is willing to forego collecting the withholding tax payment usually imposed on non-residents when the real estate is sold as a so-called “short sale”. As you will see from the state’s Notice reproduced on the next page, it outlines the procedure to follow when a non-resident seller seeks a waiver of the customary withholding from the sales proceeds.

In order to obtain the waiver, prior to closing, the seller or settlement agent must send the Division of Taxation a copy of the proposed deed, a copy of the HUD-1 settlement statement, a statement from the lender acknowledging that the transaction is a short sale and that all proceeds from the sale will go to the lender with the seller receiving no proceeds, and a completed GIT/REP-4 waiver form. (Check with the Division of Taxation (609) 292-5995 to see if it will review a fax submission.)

If the waiver is approved, the Division will place its raised seal on the GIT/REP-4 and return it to the seller or settlement agent for recording

with the deed.

Obviously, this procedure only applies to sellers to whom the withholding requirement applies (non-resident individuals, estates and/or trusts who do not enjoy one of the listed exemptions on the GIT/REP-3, for example, sale of the principal residence.) Thus, the GIT/REP-3 should still be used for resident taxpayers and non-residents to whom an exemption applies.

The Notice does not address those short sales where the lender does not demand payment of the net proceeds or where other creditors, such as junior lenders, are being paid at closing. Presumably, the state’s review process will take these issues into consideration when arriving at its decision as to whether the GIT/REP-4 will be issued.

Another question not asked or answered by the bulletin is why the state is giving up its potential tax withholding revenue when it is so short of tax revenues. At the end of the day, the new procedure is, in effect, a break for lenders.

As always, be sure to check our website at www.vestedtitle.com for the latest forms and information regarding this subject and others affecting your practice.

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**Notice to Real Estate Closing Attorneys/Settlement Agents on Short Sales:
GIT/REP-4 Waiver
May 20, 2009**

The recent increase in mortgage defaults in New Jersey and across the country has brought on real estate transactions commonly known as "short sales." In a short sale transaction, the defaulting seller (mortgagor) works out an agreement with the lender to avoid the need for a foreclosure action. Instead of signing over a deed to the lender (which means the lender then has to sell the property to try to recoup all or part of the outstanding mortgage debt plus costs), the seller and the lender agree that in return for the lender not pursuing a foreclosure action, the seller will sell the property (at a loss or no income gain) and the lender will agree to take the proceeds from the sale with no proceeds going to the seller. Therefore, a real estate sale by a non-resident seller/grantor that is subject to a short sale, is, in effect, very similar to a deed in lieu situation which does not require the collection at closing of a minimum of 2% of the consideration representing income tax withholding on estimated gain from the real property transfer.

However, this needs to be confirmed by the Division before the deed may be recorded by the county recording officer. Accordingly, when a seller is claiming that his/her real property is being sold as a short sale, the seller or settlement agent must send the Division a copy of the proposed deed, HUD-1 statement, a statement from the lender that this is a short sale and that all proceeds from the sale will go to the lender with the seller receiving no proceeds, and a GIT/REP-4 waiver form. If the documentation supports the seller's request for a waiver, the GIT/REP-4 will be stamped with the Division's raised seal and returned to the seller or settlement agent for filing with the deed.

Important: All inquiries concerning short sales should be directed to: New Jersey Division of Taxation, Regulatory Services Branch, 50 Barrack Street, P.O. Box 269, Trenton, New Jersey 08695-0269 or by fax at (609) 989-0113.

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