



Title Topics



36.14

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Realty Transfer Fee: Related-Entity Transfers

One of the most frequently-asked questions regarding the Realty Transfer Fee ["RTF"] imposed by *N.J.S.A.*

46:15-5 et seq. is whether deeds between "related entities" are exempt. In 2006, the Treasury Department promulgated regulations, *N.J.A.C. 18:16-1.1 et seq.*, which govern payment of the RTF. These regulations replaced earlier versions which had [inadvertently] been allowed to expire in 2003. So for the most part, they simply codify existing practice. However, there are a few sections to which close attention should be paid, particularly *N.J.A.C. 18:16-6.1*, which governs transfers between related entities.

The rule begins by reminding us that *no exemption exists per se for related-entity transfers*. Deeds made in lieu of capital contributions to corporations, LLCs, etc., are thus subject to RTF, based on the value of the stock or interest in the grantee business entity received by the grantor. The section concludes: "When a value is indeterminate, the RTF is calculated on the assessed value of the property being conveyed ...".

Does the preceding statement refer only to deeds where (*e.g.*) the value of stock received by the grantor in the grantee corporation cannot be determined (because the corporation is not publicly traded)? Or does it refer to deeds where (*e.g.*) a corporation conveys to its subsidiary for nominal consideration and there are no existing mortgages on which to base the RTF? In such cases, will RTF be imposed based on the assessed value of the realty? The an-

(Continued on page 2)

Complying with RESPA Good faith estimates got you down? Check out Vested Title Inc.'s Good Faith Estimator

Ever feel that you were alone out there while you try to practice law? We knew that the revisions to RESPA would be a matter of concern to real estate practitioners, but underestimated just how difficult it could be to comply with the new law. In other words, where are you going to get the numbers that are necessary for preparation of the Good Faith Estimate (GFE)?

Frankly, we did not anticipate the lender's need for help in preparing its Good Faith Estimate. The scenario went something like this- lender entertains loan application, lender calls you as attorney for the borrower for the amounts to be inserted in the GFE, you reply that you haven't ordered the title work, you're told you have to get them the figures, you call Vested Title. A lot of back and forth resulting in a waste of a lot of your time.

While Vested was the first to revise our invoices so they would reflect where our fees and charges were to be inserted on the GFE and Settlement Statement, the information was not readily available when you needed it most—when the lender called you for it.

Well, we've fixed that by adding a Good Faith Estimate and Premium Calculator to our website. It can be found as one of the buttons on the front page of our site

(Continued on page 2)

Don't Mess with Short Sales Making payments outside of closing is asking for trouble

We have been warning our customers and anyone who asks that fooling around with a short sale payoff letter can be hazardous. Bob Hunt, a director of the National Association of Realtors, weighs in on the problem in Realty Times in a posting, "Undisclosed Short Sale Payments May Lead to Trouble." (The full article may be found at http://realtytimes.com/rtpages/20100427_shortsale.htm.)

He points to

"A recent memorandum from the legal department of the California Association of Realtors® (CAR) warns CAR members as follows: "Undisclosed payments in short sale transactions, especially those paid outside of escrow, may violate the law, including RESPA, laws against loan fraud, and licensing laws."

(Continued on page 2)

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Short Sales(Continued from page 1)

For instance? The senior mortgagee authorizes a small payment to the junior mortgagee and the latter demands money be paid outside of the closing to obtain a release of the mortgage.

Why is the first mortgagee opposed to this? Because, if there's money to be had, the first mortgagee wants it. Let's face it, the lender has given its approval because of the money available at closing.

Remember, the lender must approve the proposed HUD-1 before closing. Once that's done, you are asking for trouble if it's not accurate when you get to closing. It may even constitute loan fraud on a Federal level if the lender is federally-related. So, our advice has been and will always be--- when dealing with a short sale, disclose, disclose and disclose

GFE(Continued from page 1)

www.vested.com or at
http://www.vested.com/GFE_calc.html.

The calculator is easy to use. You need two pieces of information- for purchases, the sale price and mortgage amount; for mortgage refinances, the amount of the new mortgage and the amount of the old mortgage. Push calculate, and voila, you have a version of a proposed invoice with a line-by-line breakout of the GFE items.

We trust this tool will make your professional life easier.

RTF (Continued from page 1)

swer is unclear, but if the latter interpretation is adopted, the regulation would seem to be at odds with **N.J.S.A. 46:15-10(a)**, which exempts from payment of RTF deeds "... for a consideration, as defined in [N.J.S.A. 46:15-5(c)] of less than \$100.00". In one recent transaction, a deed for nominal consideration between related entities was rejected by the recording officer on the grounds that the regulation quoted above required payment of RTF in accordance with the assessed value.

However, a recent decision by the New Jersey Tax Court may have resolved the issue in favor of the grantor. In ***Mack-Cali Realty v. Bergen County Clerk*, 25 N.J. Tax 243 (Tax Ct. 2009)**, the parties, by way of cross-motions for summary judgment, sought a judicial determination of whether deeds between related entities, each of which contained stated consideration of \$10.00, were exempt from payment of RTF under **N.J.S.A. 46:15-10(a)**, notwithstanding the provisions of **N.J.A.C. 18:16-6.1**. The Tax Court determined that the deeds were in fact RTF-exempt. It reasoned that the interpretation of the regulation advanced by the County Clerk and the Division of Taxation was inconsistent with the statutory exemption, and hence unsupported. In reaching its conclusion, the court found decisions relied upon by the defendants, ***Zimmerer v. Clayton*, 7 N.J. Tax 15 (Tax Ct. 1984)** and ***EWB 1979 Dev. Co. v. State*, 10 N.J. Tax 321 (Tax Ct. 1989)** to be factually distinguishable. Thus, it seems the phrase "when a value is indeterminable" as used in the regulation is not intended to include automatically all deeds which recite nominal consideration.

On the other hand, it is important to recall that the definition of "consideration" found in **N.J.S.A. 46:15-5 (c)** includes "...the actual amount of money and the monetary value of any other thing of value ... including the remaining amount of any prior mortgage...". Thus, even in cases where the deed recites nominal consideration, RTF may be payable if (for example) the grantee assumes or takes subject to an existing mortgage, or if the grantor receives payment in a form other than money, such as stock certificates.

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