

Title 26. Taxation

Chapter I. Generally, Department of Finance and Administration

Subchapter F. Miscellaneous Taxes

Part 166. Real Estate Transfer Tax

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"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 rule:"

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

Subpart 1. Generally

26 CAR § 166-101. Purpose.

This part is promulgated to administer and enforce the provisions of Acts 1971, No. 275, as amended by Acts 1985, Nos. 926, 1063, and 1081.

Authority. Arkansas Code § 26-60-104.

26 CAR § 166-102. Real estate transfer tax exemptions.

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 Acts 1971, No. 275, as amended:

(1)(A) Instruments given by one (1) 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.

(B) This exemption applies regardless of:

(i) Whether the instrument is in the form of:

(a) A warranty deed;

(b) A quitclaim deed; or

(c) Other instrument evidencing transfer of title to real estate; or

(ii) Whether the parties agreed to the division.

(C) For purposes of this exemption the term "divorce" includes both divorce or separate maintenance;

(2)(A) 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 that the instrument conveys.

(B) However, this exemption applies only if the instrument conveys the real estate to a party to the action who is seeking to enforce his or her security interest in the property conveyed.

(C)(i) 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.

(ii) In this case, the tax must be paid and stamps must be placed on the deed reflecting the full amount of consideration;

Example facts: Jane Doe bought property from Jim Smith. Jane gives one hundred thousand dollars (\$100,000) as consideration for the property. She pays twenty-five thousand dollars (\$25,000) cash. She borrows fifty thousand dollars (\$50,000) from ABC Bank and gives them a note and first mortgage for this amount. She gives Jim Smith a note for the twenty-five-thousand-dollar balance and a second mortgage. Several years

later Jane becomes insolvent and fails to make her mortgage payments.

Example 1: 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 thirty-five thousand dollars (\$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 2: ABC Bank files suit to foreclose, naming Jim Smith as a party. The bank obtains judgment against Jane Doe for thirty-five thousand dollars (\$35,000). Jim Smith obtains a judgment for twenty thousand dollars (\$20,000) against Jane Doe. To protect his mortgage, Jim Smith bids forty thousand dollars (\$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 thirty-five thousand dollars (\$35,000) plus costs and satisfaction of his own judgment in the amount of five thousand dollars (\$5,000). No tax is due on the commissioner's deed.

Example 3: Assume the same facts as Example B except that Mary Jones bids fifty-five thousand dollars (\$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 fifty-five thousand dollars (\$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 fifty-five thousand dollars (\$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) A foreclosure; or

(B) Another similar judicial proceeding to enforce the security interest;

(4) Deeds, whether 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:

(A) Rescission of the contract;

(B) Cancellation of the contract;

(C) Foreclosure; or

(D) Other similar proceedings; and

(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.

Authority. Arkansas Code § 26-60-104.

26 CAR § 166-103. Acceptance of deed without affidavit.

(a) On and after June 27, 1985, the clerk may accept a deed for filing without an affidavit as required by Acts 1971, No. 275, § 4, 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"

(b) This statement may be:

- (1) Stamped on the deed;
- (2) Typed or printed as part of the deed; or
- (3) Attached to the deed

(c) 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.

(d) The statement must be signed by the grantee or his or her 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.

Authority. Arkansas Code § 26-60-104.