

State of Wisconsin, Department of Revenue

DIVISION OF STATE AND LOCAL FINANCE, BUREAU OF PROPERTY TAX, 2135 Rimrock Road, P.O. Box 8971, MS6-97, Madison, WI 53708-8971

REAL ESTATE TRANSFER NEWS (RETN)

SHERIFF SALES

October 2008

Current review of transfer returns in reference to foreclosures indicates the grantee being a “nominee” or “assignee” of the person holding the mortgage. This memorandum is an update of prior letters issued to clarify when exemption per s. 77.25(14), Stats. applies, or if a fee is due on a sheriff sale and how the transfer returns should be completed. The last newsletter was March 2007, Sheriff Sale located on Revenue’s web page at:

<http://www.revenue.wi.gov/ust/news/index.html>

Exemption s. 77.25(14), Stats. applies when "Under a foreclosure or a deed in lieu of a foreclosure to a person **holding** a mortgage or to a seller under a land contract."

A transfer fee is due whenever a “third party” is the successful bidder. A “third party” is defined as someone who is not holding a lien or mortgage on the property or if under a land contract is not the seller (vendor). Usually lien holders are listed as plaintiffs or defendants in the lis pendens and foreclosure judgment; consequently, the propriety of the exemption per s. 77.25(14), Stats. is fairly easy to establish. On an assignment to a “nominee” or “assignee” not listed on the lis pendens and no assignment of mortgage or other assignment instrument is recorded in the office of the register of deeds where the property is located, the exemption is not so apparent.

The Department of Revenue’s position on the exemption applying without having to provide or record an “assignment” of mortgage or lien is as follows:

1. The plaintiff assigns to an insurer such as HUD, Fannie May, Freddie Mac, VA, Etc.
2. To another lender who may actually be holding the mortgage and plaintiff was acting as servicing agent.
3. To a subsidiary of the lender due to regulations not allowing lender to hold assets. **Note:** this is a new position the Department is taking allowing the assignment to the lender's subsidiary regardless if the assignment occurs before or after the sale is confirmed by the court. In the past, if the assignment was after the sheriff's sale, a transfer fee was due on a conveyance to a subsidiary under Tax. 15.03, Wis. Adm. Code.

When the Sheriff’s deed is assigned to a party not having a relationship as above and appears to be a “third party”, the assignment of the mortgage or lien must be **dated prior** to the Sheriff Sale. The assignment needs to be either filed in the clerk of courts or recorded in the register of deeds office for future reference. See Wi Stats. 706.05 (1) ... every other instrument which affects title in this state, shall be entitled to record in the office of the register of deeds....” to prove that the grantee was properly assigned the lien and the exemption applies.

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The Department of Revenue will honor the claim that the exemption is properly claimed, but has the right to verify the exemption per s. 77.26, Stats. Any document claiming the exemption found not to be proper will be assessed the transfer fee, interest and penalty. **The assessment will be issued to the preparer of the transfer return that claimed the exemption.** All returns, either the paper PE-500 or the electronic (eRETR) **MUST** have the preparer's section completed prior to delivery to the Civil Process Supervisor, or in absence, the Civil Process Server, Sheriff's Department or Clerk of Courts.

When a transfer fee is due, it is calculated on the amount of the successful bid and is to be paid out of the proceeds on the sale in the same manner as all other expenses are paid per s. 846.16, Stats. The statute further states the Sheriff shall deposit a completed transfer return, a transfer fee (if due) and the sheriff's deed with the **Clerk of Court who shall then transmit all documents, including assignments, if not previously recorded to the Register of Deeds for recording.** Effective November 1, 2008, the Register of Deeds should not accept any documents for recording from anyone other than the Clerk of Courts or assigns. The Sheriff is acting as trustee/fiduciary for the debtor and is responsible to ensure that these expenses are properly satisfied.

Weatherization exclusion code W-3 applies when the conveyance is exempt from transfer fee per s. 77.25(14), Stats. When a transfer fee is due, the conveyance may also be excluded under another of the Exclusion Code(s). See Instructions for the Wisconsin Electronic Real Estate Transfer Return eRETR: <https://ww2.revenue.wi.gov/GenericFile/help/eRetr/detail.htm> If the property use does not qualify for an Exclusion Code then a COMMERCE Stipulation, Waiver or Certificate of Compliance must be submitted with the transfer return.

The Sheriff acting as trustee/fiduciary for the debtor does not have title to the property; therefore, the Sheriff is NOT the grantor. The exemption per s. 77.25(2), Stats. "From the United States or from this state or from any instrumentality, agency or subdivision of either" cannot be used.

If you have any questions or comments, please do not hesitate to contact:

Russel Reppen, DOR Auditor, (608) 266-1594, E-mail: russel.reppen@revenue.wi.gov

Jeremy Wedige, DOR Auditor, (608) 264-6885, E-mail: jeremy.wedige@revenue.wi.gov

[See also Real Estate Transfer Newsletters – April, 2003; March, 2007](http://www.revenue.wi.gov/ust/news/index.html)
<http://www.revenue.wi.gov/ust/news/index.html>