

State of Wisconsin* DEPARTMENT OF REVENUE
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REAL ESTATE TRANSFER NEWS May 1994

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to: Bureau of Utility and Special Taxes
Wisconsin Department of Revenue P.O. Box 8933
Madison, WI 53708-8933

1Q. Does the value of the real estate conveyed have to be put on every transfer return whether or not a fee is imposed?

A. Yes. 1993 Wisconsin Act 307, effective for conveyances on or after April 29, 1994 requires the value of the real property to be reported on all transfer returns. Definition of value is per s. 77.21(3), Stats.

2Q. Are the statements "full value as per tax bill" or "not known" acceptable instead of a dollar value on line 25 of the transfer return?

A. No. The transfer return is NOT COMPLETE without the actual value being stated in dollars which value may be taken from the tax bill. Beware, that zero or one dollar may be sufficient to consider the return complete, but the penalty per s. 77.27, Stats. may be appropriate @ihen in fact the value of the property conveyed is substantial.

3Q. I understand exemption s. 77.25(15), Stats. has been amended. What is the Department's position on conveyances between a corporation and individuals?

A. 1993 Wisconsin Act 307, effective for conveyances dated on or after April 29, 1994, has amended s. 77.25(15), Stats. allowing for shareholders to also be siblings and for the assumption of debt by the grantee. Prior to this date the shareholders had to be spouses, lineal ascendants / descendants of each other and to be for no consideration other than stock of the corporation. Exemption 15 for corporations now has similar requirements to exemptions 15m for partnerships and 15s for limited liability companies.

4Q. Can the Register of Deeds accept a "fax" in lieu of the actual real estate transfer return?

A. No. A completed multi-page Wisconsin Real Estate Transfer Return (PE-500) must be filed with the instrument of conveyance. Faxes and photocopies are not acceptable.

5Q. Are all conveyances between a husband and wife exempt from fee per s. 77.25(8), Stats.?

A. No. The exemption not only requires the conveyance to be between husband and wife, but to be for no consideration. The following will further clarify prior REAL ESTATE TRANSFER NEWS, Question 21, February 1991 and Question 25, January 1992:

Example 1 - A owned property PRIOR to marriage to B. Upon their marriage, A conveys title to B showing they own the property together, whatever ownership method is used, joint tenants, marital or tenants in common is not important to this example. The property currently has a mortgage of \$50,000 on it. The debt obligation does not meet the requirement to be "for no or nominal consideration", thus the fee would be calculated on one half the debt obligation since B would be obligated for that amount. Note that if they are refinancing and take out a new mortgage, the fee is still calculated on the current mortgage of \$50,000.

Example 2 - @B (married couple) purchase a home together but only put the title in A's name. Later the lender wants both names on the title and deed is drawn from A to AB. Since they both originally had purchased the property as a married couple and were both obligated for the mortgage, this deed would be exempt from fee per

s. 77.25(3), Stats. as a "correction deed" as there is no conveyance of a real property interest. This exemption would also be used for changing the way the spouses hold title together, whether changing to or from joint tenants, marital or tenants in common.

In summary, where one spouse owned property prior to the marriage and there is a debt obligation, a fee is due on one half the debt. The existence of a lien on the property constitutes consideration whether the spouse takes title "subject to,, or by a mortgage assignment. The marriage may have given a spouse an interest in the real property through the marital property law; however, a transfer fee (if due) is not imposed until the instrument of conveyance is recorded per s. 77.22(1), Stats.

6Q. As a licensed real estate broker, I am offered a parcel of land as commission for services rendered. Is this conveyance to me exempt from fee per s. 77.25(9), Stats. as agent - principal?

A. No. The exemption requires the conveyance to be without actual consideration. A commission payment in the form of real property is consideration. The fee would be calculated on the fair market value of the property.

7Q. Pursuant to a divorce decree, the husband is to give his vendee's interest in the land contract to his wife. Is a transfer fee triggered on the deferred original land contract even if the divorce conveyance is exempt per Tax 15.05(4), Wis. Adm. Code?

A. Yes. Any assignment of a vendee's interest in a land contract where the original land contract fee was deferred requires a transfer return and fee based upon the original land contract value. The assignment will be stamped indicating the transfer fee paid for the original land contract and the assignment of vendee's interest pursuant to the divorce would be exempt from fee using exemption 8. Please see REAL ESTATE TRANSFER NEWS, February 1994 for more land contract information.

8Q. Does the recording of a Judgment or an Abridgment of the Judgment require a transfer return?

A. Yes. s. 77.21(1), Stats. defines conveyances of real property as including deeds and other instruments passing an ownership interest in real property. If the judgment conveys an interest in real property and will be the only document submitted for recordation, a return is required.

9Q. B (buyer) purchases property from S (seller) and records the deed with a transfer fee paid. B has a contingency in the offer to purchase that states if certain conditions of the property don't comply with State Law, then the conveyance will be rescinded with a deed from B back to S. Is the deed back from B to S exempt from transfer fee?

A. Yes. Exemption s. 77.25(3), Stats. would apply as a reformation of the original deed from S to B. The transfer fee paid on the original deed from S to B may be refunded by submitting to the Bureau of Utility & Special Taxes: (A) copy of both recorded deeds, (B) the offer or agreement showing the contingency and how it was not met causing the rescission, (C) an "amended transfer return" completed like the return for the original deed from S to B paying the fee, except now using exemption 3 on line 27 and line 18 checked as "Other" and explain.

IOQ. There are times when the Department of Revenue requests copies of deeds from the Register of Deeds. Can I charge them for the copies of the deeds that they request?

A. No. According to s. 59.57(4), Stats., they are exempt from the fees that are charged under s. 59.57, Stats.

IIQ. Question 8 of REAL ESTATE TRANSFER NEWS, February 1994 states that a transfer return does not have to be filed for some correction deeds. Could you give some examples?

Examples of Deeds	Form Required	Add middle initial
to name of grantor or grantee	No	Correct misspelled grantor or grantee name
	No	Add execution or acknowledgement date
No	Correct legal without adding/deleting	property
legal description (now known as)	No	Record boundary line agreement
No	Property line clarification	grantor or grantee
corrected	from deed	Yes
		Can't determine what's

The above is not intended to be a complete listing. A transfer return is not required when it is certain (beyond a doubt) that the deed being recorded is merely correcting a prior recorded deed that conveyed the real property between the parties. Your judgement is necessary in making a determination as to whether the current deed being recorded is a NEW conveyance.

12Q. Is a transfer fee due on a deferred original land contract when there is a deed in partial satisfaction of the land contract?

A. Question 3, II, E of REAL ESTATE TRANSFER NEWS, February 1994 needs to be clarified in that a fee is only due on the total portion satisfied and not the total of the original land contract. As per the Tax 15.04(5), Wis. Adm. Code example: a land parcel of 40 acres was sold under an original land contract for \$80,000, and a deed was issued in partial satisfaction of this land contract covering 5 acres, the fee is based upon 5/40 of \$80,000 or \$10,000.